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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 ROLAND F. SARKO, RESPONDENT	:	FINAL DECISION AND ORDER LS9108161LSR

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 Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, 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.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

The rights of a party aggrieved by this Decision to petition the board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 28TH day of JULY, 1992.

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To Mary Celentani	From
Co. Justice	Co.
Dept.	Phone #
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Division of Enforcement

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

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST ROLAND F. SARKO, RESPONDENT.	: : : : :	NOTICE OF FILING *PROPOSED DECISION* LS9108161LSR

TO: Robert J. Kasieta, Attorney
Bell, Metzner, Gierhart & Moore
44 East Mifflin Street
Madison, WI 53701
Certified P 568 982 557

Roger Hall, Attorney
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors by the Administrative Law Judge, John N. Schweitzer. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the office of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, Room 290, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before May 29, 1992. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, together with any objections and arguments filed, the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 5th day of May, 1992.

John N. Schweitzer
Administrative Law Judge

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

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST ROLAND F. SARKO, RESPONDENT.	: : : : :	PROPOSED DECISION Case No. LS-9108161-LSR (DOE case numbers 86 LSR 39, 86 LSR 45, 87 LSR 16, and 87 LSR 34)

PARTIES

The parties in this matter under sec. 227.44, Wis. Stats. and sec. RL 2.036, Wis. Adm. Code, and for purposes of review under sec. 227.53, Wis. Stats. are:

Roland Sarko
2919 University Avenue
Madison, WI 53705

Examining Board of Architects, Professional Engineers,
Designers and Land Surveyors, Land Surveyors Section
1400 East Washington Ave.
Madison, WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

POSTURE OF CASE

A. This case was initiated by the filing of a complaint with the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, Land Surveyors Section on August 16, 1991. A disciplinary proceeding (hearing) was scheduled for November 12, 1991. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on August 16, 1991 to Mr. Sarko, who received it on August 21, 1991.

B. Attorney Roger Hall of the Division of Enforcement, acting for the Board, filed Complainant Interrogatories and Request for Production of Documents on September 30, 1991.

C. As stated explicitly in the Notice of Hearing, Mr. Sarko was required to file an answer to the Complaint within twenty days of service, under sec. RL 2.09, Wis. Admin. Code. Mr. Sarko did not file an answer within the time limit, and Attorney Hall filed Complainant's Motion for Default on October 28, 1991, following which Mr. Sarko filed Respondent's Response to Complaint.

D. On November 8, 1991, Attorney Robert J. Kasieta of Bell, Metzner, Gierhart & Moore, S.C., 44 East Mifflin Street, Madison, WI 53701 filed a Notice of Appearance on behalf of Mr. Sarko.

E. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on November 12, 1991. Mr. Sarko appeared in person and represented by Attorney Kasieta. The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors was represented by Attorney Hall. The hearing was recorded, and a transcript of the hearing was prepared and delivered on January 6, 1992. The testimony and exhibits entered into evidence at the November 12th hearing form the basis for this Proposed Decision.

APPLICABLE STATUTES AND RULES

Because the allegations in the five counts of the disciplinary complaint span a period from March, 1986 to December, 1989, different versions of statutes and rules are referred to in the complaint and in testimony. No dispute was raised over the equivalence of the various versions, and for uniformity in this opinion the current version of statutes and rules will be used. The numbers of earlier versions are noted here as appropriate.

Section 59.60, Wis. Stats.

59.60 Surveyor; duties. (1) The county surveyor shall:

(a) Execute, personally or by a deputy, all surveys required by the county or by any court. Surveys for individuals or corporations may be executed at the county surveyor's discretion.

(b) Make, personally or by a deputy, a record in books or on drawings and plats kept therefor of all corners set and the manner of fixing the same and of all bearings and the distances of all courses run, of each survey made personally, by deputies or by other land surveyors and so arrange or index the same as to be easy of reference and file and preserve in the office the original field notes and calculation thereof; and within 60 days after completing any survey, make a true and correct copy of the foregoing record, in record books or on reproducible papers to be furnished by the county and kept in file in the office of the county surveyor to be provided by the county. ...

(2) Surveys for individuals or corporations may be performed by any land surveyor who is employed by the parties requiring the services, provided that within 60 days after completing any survey the land surveyor files a true and correct copy of the survey in the office of the county surveyor. ....

Section 59.60(2) was previously section 59.60(6).

Section 59.61, Wis. Stats.

59.61 How bearings expressed in surveys. In all surveys the bearings shall be expressed with reference to a magnetic, true or other identifiable line of the public land survey, recorded subdivision or to the Wisconsin coordinate system. In all cases the reference selected shall be so noted as set forth in s. 59.60(1)(b) and if magnetic must be retraceable and identifiable by reference to a monumented line.

Section 236.15, Wis. Stats.

236.15 Surveying requirements. For every subdivision of land there shall be a survey meeting the following requirements:

(1) MONUMENTS.

...

(c) All lot, outlot, park and public access corners and the corners of land dedicated to the public shall be monumented in the field by iron pipes at least 24 inches long and one inch in diameter, weighing not less than 1.13 pounds per lineal foot, or by round or square iron bars at least 24 inches long and weighing not less than 1.13 pounds per lineal foot.

(d) (similar requirements for lines that extend to lakes or streams)

....

Section 236.20, Wis. Stats.

236.20 Final plat. A final plat of subdivided land shall comply with the following requirements:

...

(2) MAP AND ENGINEERING INFORMATION. The final plat shall show correctly on its face:

...

(i) A north point properly located thereon identified as referenced to a magnetic, true or other identifiable direction and related to a boundary line of a quarter section, recorded private claim or federal reservation in which the subdivision is located.

(j) The area in square feet of each lot and outlot.

...

Section 236.295, Wis. Stats.

236.295 Correction instruments. (1) Correction instruments may be recorded in the office of the register of deeds in the county in which the plat or certified survey map is recorded and may include:

(a) Affidavits to correct distances, angles, directions, bearings, chords, block or lot numbers, street names or other details shown on a recorded plat or certified survey map;

...

Section 236.34, Wis. Stats.

236.34 Recording of certified survey map; use in changing boundaries; use in conveyancing. (1) PREPARATION. ... A certified survey map must meet the following requirements:

...

(b) All corners shall be monumented in accordance with s. 236.15(1)(c) and (d).

(c) The map shall be prepared in accordance with s. 236.20(2)(a), (b), (c), (e), (f), (g), (i), (j), (k) and (L) and (3)(b)

...

(e) A certified survey map may be used for dedication of streets and other public areas

....

Section A-E 7.01, Wis. Admin. Code (previously A-E 5.01).

A-E 7.01 Scope. The minimum standards of this chapter apply to every property survey performed in this state ... (with certain exceptions).

Section A-E 7.04, Wis. Admin. Code

A-E 7.04 Descriptions. Descriptions defining land boundaries written for conveyance or other purposes shall be complete, providing unequivocal identification of lines or boundaries. The description shall contain necessary ties to adjoiners together with data dimensions sufficient to enable the description to be mapped and retraced and shall describe the land surveyed by government lot, recorded private claim, quarter-quarter section, section, township, range and county and by metes and bounds commencing with some corner marked and established by the U.S. public land survey ....

Section A-E 7.05(2), Wis. Admin. Code.

A-E 7.05 Maps. A map shall be drawn for every property survey showing information developed by the survey. The map shall:

...

(2) Be referenced as provided in s. 59.61, Stats.

...

Section A-E 7.08, Wis. Admin. Code.

A-E 7.08. U.S. public land survey monument record. (1) WHEN MONUMENT RECORD REQUIRED. A U.S. public land survey monument record shall be prepared as part of any land survey which includes or requires the perpetuation, restoration or reestablishment of a U.S. public land survey corner, and

a. There is no U.S. public land survey monument record for the corner on file in the office of the county surveyor or the register of deeds for the county in which the corner is located; or,

b. The land surveyor who performs the survey accepts a location for the U.S. public land survey corner which differs from that shown on a U.S. public land survey monument record filed in the office of the county surveyor or register of deeds for the county in which the county is located; or

c. The witness ties referenced in an existing U.S. public land survey monument record have been destroyed.

....

Section A-E 8.03, Wis. Admin. Code (previously section A-E 4.003).

8.03 Definitions. In ch. 443, Stats, and chs. A-E 1 to 8:

(1) "Gross negligence in the practice of architecture, professional engineering, designing or land surveying" means the performance of professional services by an architect, professional engineer, designer or land surveyor which does not comply with an acceptable standard of practice that has a significant relationship to the protection of health, safety or public welfare and is performed in a manner indicating that the professional knew or should have known, but acted with indifference to, or disregard of, the accepted standard of practice.

(2) "Incompetency in the practice of architecture, professional engineering, designing or land surveying" means conduct which demonstrates:

(a) Lack of ability or fitness to discharge the duty owed by an architect, professional engineer, designer or land surveyor to a client or employer or to the public;

(b) Lack of knowledge of the fundamental principles of the profession or an inability to apply fundamental principles of the profession; or

(c) Failure to maintain competency in the current practices and methods applicable to the profession.

(3) Misconduct in the practice of architecture, professional engineering, designing or land surveying means an act performed by an architect, professional engineer, designer or land surveyor in the course of the profession which jeopardizes the interest of the public, including the following:

(a) Violation of federal or state laws, local ordinances or administrative rules relating to the practice of architecture, professional engineering, designing or land surveying;

(b) Preparation of deficient plans, drawings, maps, specification or reports;

(c) Engaging in conduct which evidences a lack of trustworthiness to transact the business required by the profession;

...

FINDINGS OF FACT

1. Respondent Roland F. Sarko is and was at all times relevant to the facts set forth herein a land surveyor licensed in the state of Wisconsin by the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, under license number 1377, originally granted on December 17, 1976.

2. At all times relevant to the facts of this case, Mr. Sarko worked as a land surveyor for R. F. Sarko and Associates, Inc., 2919 University Avenue, Madison, WI 53705.

3. On or about March 21, 1986, Mr. Sarko prepared a mortgage inspection map of property located at 1206 Grand Avenue, Janesville, Rock County, Wisconsin (exhibit 1). A copy of the mortgage inspection map was inadvertently filed by Mr. Sarko's office staff in the office of the surveyor in Dane County rather than in Rock County.

4. On or about March 13, 1986, Mr. Sarko prepared a mortgage inspection map of property located at 6 Bernwich Circle, Madison, Dane County, Wisconsin (exhibit 2). A copy of the mortgage inspection map was filed in the Dane County surveyor's office, and the Dane County surveyor's filing system until recently was not indexed to permit retrieval of mortgage inspection maps by location, or to provide proof of the date of filing.

5. On or about December 21, 1989, Mr. Sarko prepared a plat of survey for property located at Township 2 North, Range 12 East, Rock Township, Rock County, Wisconsin (exhibit 3).

6. Mr. Sarko oriented the plat of survey in exhibit 3 to a straight line connecting the east and west monumented corners of section 35, by assigning the bearing N 90° 00' 00" W to the line.

7. In the process of preparing the plat of survey in exhibit 3, Mr. Sarko used as reference points three iron pipes (1 1/4" x 24") which he set in the roadbed of the Chicago, Milwaukee, St. Paul & Pacific Railroad.

8. In the process of preparing the plat of survey in exhibit 3, Mr. Sarko did not perpetuate, restore or reestablish the U.S. Public Land Survey monument at the west quarter corner of section 35, and did not file a U.S.P.L.S. monument record for that corner.

9. On or about May 23, 1986, Mr. Sarko prepared a certified survey map of a part of the southwest quarter of the northeast quarter of Section 8, Township 4 North, Range 10 East, Union Township, Rock County, Wisconsin (exhibit 4). The field work for this map was done on April 29, 1986.

10. The right-of-way appearing on the certified survey map in exhibit 4 was dedicated, and in computing the acreage of the area surveyed, Mr. Sarko excluded the area of the dedicated right-of-way.

11. In preparing the certified survey map in exhibit 4, Mr. Sarko located the west quarter corner monument, to be certain that the right-of-way of West Union Road did not lie to the south of the east-west quarter line, but he did not survey the west quarter monument.

12. Mr. Sarko oriented the certified survey map in exhibit 4 to a north line based on West Union Road, to which he assigned a bearing of N 90° 00' 00" W.

13. As part of the field work in preparing the certified survey map in exhibit 4, Mr. Sarko set a PK nail in the middle of the roadway on West Union Road, at what he determined to be the eastern corner of the section.

14. In a phone conversation on June 25, 1986 regarding the certified survey map in exhibit 4, Mr. Sarko spoke to Attorney Dean Olson, who was in the office of the Rock County zoning administrator with Rock County Surveyor Donald Barnes. Mr. Olson added a triangle to exhibit 4 at the west end of the east-west quarter line. Mr. Sarko told Mr. Barnes through Mr. Olson that he had surveyed the east-west line of the section. Mr. Barnes, acting under the mistaken belief that Mr. Sarko had set a P.K. nail on the west quarter corner, directed him to file a U.S.P.L.S. Monument Record for the west quarter corner.

15. On June 26, 1986, Mr. Barnes and Mr. Sarko surveyed the west quarter corner independently. Mr. Sarko prepared a U.S.P.L.S. monument record for the west corner of section 8, but before he filed it he received a copy of a U.S.P.L.S. record for the same monument filed by Mr. Barnes, and so Mr. Sarko did not file his.

16. On June 27, 1986, Mr. Sarko filed an affidavit of correction (exhibit 11) along with a revised version (exhibit 5) of the preliminary certified survey map in exhibit 4. In the revised map he showed the location of the west quarter corner of section 8 as that of a found limestone monument, with the notation

> cut limestone found
> ties taken on 6-26-86

He also showed that the line he had used to orient the map (West Union Road) varied from the line connecting the east and west monumented corners of section 8. He left the center line of West Union Road as N 90° 00' 00" W, and he gave the orientation of the east-west quarter line as S 89° 40' 36" W.

17. In a letter dated October 10, 1986, Department Investigator John F. Miller requested a response from Mr. Sarko to a written complaint filed by the Rock County Surveyor, Donald Barnes. In a letter dated October 24, 1986, Mr. Sarko responded to Mr. Barnes' complaint with a five-page letter with four attachments (exhibit 13). The attachments are: Mr. Sarko's field notes showing the location of the west quarter corner, a tie sheet for the west quarter corner prepared by Mr. Sarko, a tie sheet for the west quarter corner prepared by Mr. Barnes, and Mr. Sarko's affidavit of correction.

18. In his affidavit of correction, in his responses to requests for information, and in his testimony, Mr. Sarko avoided admitting that he had failed to survey the west quarter monument on April 29, 1986, and deliberately attempted to mislead the Board in his use of terms such as "locate", "survey", "tie off", "final staking", and "did not show in great detail".

19. In his testimony, Mr. Sarko made a material misstatement of fact when he said that on April 29, 1986 "they ... tied together the section corners ...".

CONCLUSIONS OF LAW

I. The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, Land Surveyors Section has personal jurisdiction over the Respondent, based on fact 1 above and paragraph A above under "Posture of Case".

II. The Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, Land Surveyors Section has jurisdiction over the subject-matter of this complaint, under sec. 15.08(5)(c), Wis. Stats, sec. 443.12, Wis. Stats, and current and prior versions of what are now chapters A-E 7 and A-E 8, Wis. Admin. Code.

III. The burden of proof to be met by the Board in prosecuting all five counts of the complaint is a preponderance of the evidence.

With regard to the survey map of property located at
1206 Grand Avenue, Janesville, Rock County, Wisconsin
(Count I):

IV. Respondent violated sec. 59.60(2), Wis. Stats (previously sec. 59.60(6), Wis. Stats.) and A-E 8.03(3)(a), Wis. Admin. Code (previously A-E 4.003(3)(á), Wis. Admin. Code) by failing to file a copy of the survey map in the office of the Rock County surveyor within 60 days after the survey was completed.

With regard to the survey map of property located at
6 Bernwich Circle, Madison, Dane County, Wisconsin
(Count II):

V. Respondent did not violate any statute or Board rule with regard to filing a copy of the survey map in the office of the county surveyor.

With regard to the plat of survey of property located at
Township 2 North, Range 12 East, Rock Township, Rock County, Wisconsin
(Count III):

VI. Respondent complied with sec. A-E 7.05(2), Wis. Admin. Code and sec. 59.61, Wis. Stats. by referencing the map to a line connecting the east and west monumented corners of section 35.

VII. Respondent did not violate secs. A-E 7.05(2) and 7.08, Wis. Admin. Code, or sec. 59.61, Wis. Stats., by failing to file a U.S. Public Land Survey Monument Record of the west quarter of section 35, because he did not perpetuate, restore or reestablish the U.S. Public Land Survey monument in question.

With regard to the certified survey map of a part of
the southwest quarter of the northeast quarter of Section 8,
Township 4 North, Range 10 East, Union Township, Rock County, Wisconsin
(Count IV):

VIII. Respondent violated no statute or Board rule by failing to locate the west quarter corner of section 8.

IX. Respondent did not inappropriately monument the western and southern (sic) quarter corners by using PK nails instead of iron pipes or bars.

X. Respondent failed to reference the initial map (exhibit 4) to a magnetic, true or other identifiable line of the public land survey, recorded subdivision or to the Wisconsin coordinate system, thereby violating sec. 236.20(2)(i), Wis. Stats., but respondent corrected his violation by filing promptly a revised map (exhibit 5) and affidavit of correction (exhibit 11).

XI. Respondent complied with sec. 236.20(2)(j), Wis. Stats. by excluding the acreage of a dedicated right-of-way from his computation of the area surveyed.

XII. Respondent violated sec. 236.20(2)(i), Wis. Stats. by failing to accurately map the east-west quarter line of section 8, but this charge merely duplicates the charge in paragraph X above.

XIII. No proof was made of continuing deficiencies in the revised map.

XIV. Respondent made no false statement in the affidavit of correction.

With regard to the Respondent's correspondence with the Board (Count V):

XIV. Respondent made misleading and unresponsive statements to the Board, including one material misstatement of fact, thereby engaging in conduct which indicates a lack of trustworthiness to practice land surveying and which constitutes misconduct, under sec. A-E 8.03(3)(c), Wis. Admin. Code (previously sec. A-E 4.003(3)(c), Wis. Admin. Code).

ORDER

THEREFORE, IT IS ORDERED that

(1) no discipline be imposed for the Respondent's failure to file a survey map of property located at 1206 Grand Avenue, Janesville, Rock County, Wisconsin in the office of the Rock County surveyor within sixty days after the survey was completed;

(2) Count II of the disciplinary complaint be dismissed;

(3) Count III of the disciplinary complaint be dismissed;

(4) Count IV of the disciplinary complaint be dismissed;

(5) the license issued to the Respondent as a land surveyor be suspended for a period of forty-five days, effective on the tenth day after this order is signed on behalf of the Board, for engaging in conduct which indicates a lack of trustworthiness to transact the business required by the profession and which constitutes misconduct;

(6) the Respondent pay one-half of the costs of this proceeding.

OPINION

The complaint in this case charges the respondent, Roland F. Sarko, with nine separate violations of standards related to the practice of land surveying. These nine alleged violations, along with two others which were implied but not clearly charged, were grouped into four counts based on four different surveys performed by Mr. Sarko. In addition, a fifth count contained an allegation that Mr. Sarko evidenced a lack of trustworthiness in correspondence with the Board. The evidence presented in the hearing showed

- that Mr. Sarko committed one relatively minor violation by failing to file a survey in the proper county, for which discipline is unnecessary; and
- that he committed a serious violation in failing to properly orient a certified survey map, but that he corrected the violation as soon as it was brought to his attention; and
- that he made misleading statements to the Board to cover up the original problem with the certified survey map, for which discipline is appropriate.

This opinion will address all these issues as follows:

Outline of Opinion

Counts I and II - p. 11

- Count I - failure to file - violation found
- Count II - failure to file - no violation

Count III - p. 13

- failure to reference bearings - no violation
- failure to file a U.S.P.L.S. monument record - no violation

Count IV - p. 15

- failure to accurately locate the west quarter corner - no violation
- inappropriate monumentation of corners with PK nails - no violation
- failing to reference a north point - violation found
- failing to accurately compute acreage - no violation
- failing to accurately map the quarter line - dismissed as duplicitous
- continuing deficiencies in the revised map - no violation proved
- false statements in affidavit of correction - no violation
- the corrective effect of the revised map

Count V - p. 24

- lack of trustworthiness - violation found

Discipline - p. 26

Appendix (copies of exhibits 4, 5, 14, and 20) - p. 29

Counts I and II - The Failure to File Copies of Surveys.

Counts I and II of the Complaint allege that Mr. Sarko failed to file copies of survey maps as required by sec. 59.60(2), Wis. Stats. Count I was proven; count II was not.

Mr. Sarko stated his belief that the statute does not cover what his office calls "mortgage inspection maps" (transcript, pp. 18-19), but sec. 59.60(2) makes no such distinction, referring only to "surveys for individuals or corporations" and "any survey." Rock County surveyor Donald Barnes confirmed this in his opinion that the statute makes no such distinction (transcript, p. 88). The same interpretation is contained in 80 Att. Gen. 160 (OAG 43-80). Also, Mr. Sarko was on notice by letter dated 11-21-83 from William Dusso on behalf of the Board (exhibit 7) that the Board interprets sec. 59.60(2) to include mortgage inspection maps. Therefore, the 60-day filing requirement in the statute does cover the mortgage inspection maps which are the subject of counts I and II.

Questions also arose during the hearing regarding the waiver, under sec. A-E 7.01, Wis. Admin. Code of certain information which is otherwise required to appear on all survey maps, including mortgage inspection maps (transcript, pp. 15-18, 57-58 and 104). However, the complaint alleged no violation of these standards, and no violation was shown.

With regard to Count I, involving property at 1206 Grand Avenue, Janesville, Rock County, Wisconsin, the evidence shows that Mr. Sarko's office filed a copy of the mortgage inspection map prepared on March 21, 1986 in Dane County rather than Rock County (transcript, pp. 12, 59). It was eventually filed on November 3, 1986 in Rock County, by some person or office other than Mr. Sarko (transcript, pp. 12 and 89). Mr. Sarko testified that the map was most likely left in a large batch of maps to be placed in order by sequential map number and delivered to Dane County, when it should have been pulled out by a clerical employee to be delivered to Rock County.

Filing a map in the county of the surveyor's business, or in any county other than the county in which the surveyed land lies, fails to satisfy the statutory requirement. No prior Board case spells this out explicitly, but all reasonable interpretations lead to that conclusion. First, the statute says "in the office of the county surveyor". The simple word "the" rather than "a" implies that there is only one appropriate office, which logically would be the county in which the surveyed land lies. This is because the purpose of filing is to provide a record of any and all surveys done on a given piece of property, and thereby to facilitate the accurate determination of its boundaries. The only reasonable location for a map is in the county containing the property in question. Anyone searching for information on the property should be able to find it in that county, not in some other county, such as the location of a surveyor who happened to perform a survey. This interpretation is supported by 80 Att. Gen. 160 (OAG 43-80), which states "copies of all surveys performed must be filed with the county surveyor in the county where the land is located." In addition, Mr. Sarko stated that the map should have been pulled out of the Dane County batch for filing in Rock County (transcript, pp. 12, 59), thereby acknowledging that Rock rather than Dane was the proper county for filing.

It was sufficiently shown[1] that the map was not filed in Rock County within 60 days of the date of the survey. Failing to file a survey map in the proper county within 60 days following the survey is a violation of sec. 59.60(2), Wis. Stats., and thereby misconduct in the practice of land surveying under sec. A-E 8.03(3)(a), Wis. Admin. Code. The issue of discipline for this violation is addressed below.

With regard to count II, no violation was proved. The evidence shows that a copy of the mortgage inspection map of property located at 6 Bernwich Circle, Madison, Dane County, Wisconsin, was found in the Dane County surveyor's office on October 3, 1991 (transcript, p. 144 and exhibit 2), although a search on March 25, 1988 had failed to find it (transcript, pp. 13-14, and exhibit 6). Mr. Sarko testified regarding the filing system for mortgage survey maps in the Dane County surveyor's office (transcript, pp. 12-14, 19 and 59-62), and his testimony was not refuted by any other evidence; it was in fact substantially confirmed by the testimony of Donald Barnes, the Rock County surveyor (transcript, pp. 110-111).

Mr. Sarko explained the inability of the Dane County surveyor to find the map in question on March 25, 1988 by saying that the Dane County surveyor's office has no record of what maps are contained in numerous boxes of maps received from private surveyors. According to Mr. Sarko, the Dane County surveyor until recently accepted mortgage inspection maps from private land surveyors, as required by sec. 59.60, Wis. Stats., but simply filed them in boxes without indexing them or marking them upon receipt. Mr. Sarko stated that R. F. Sarko and Associates sends their mortgage inspection maps to the Dane County surveyor in large batches ordered by a sequential number. Investigator Johnson was able to locate the map in question in the Dane County surveyor's office on October 3, 1991 because he was armed with the Sarko map number. Because the map had been filed, and the filing system in the Dane County surveyor's office provides no proof of the date of filing, it was not shown by a preponderance of the evidence that the map was not filed within the prescribed 60-day period. Therefore, **no violation of statute or Board rule was shown in Count II, and it must be dismissed.**

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[1]The burden of proof which must be met by the Board in disciplinary hearings has alternated over the past few years between "clear and convincing" and "a preponderance of the evidence." Prior to January 1, 1986 it was "clear and convincing." From January 1, 1986 to June 30, 1989 it was "a preponderance of the evidence." From July 1, 1989 to August 8, 1989 it was "clear and convincing." And since August 9, 1989 it has been "a preponderance of the evidence." The actions alleged in this complaint occurred on or about March 13, 1986, March 21, 1986, May 23, 1986, October 24, 1986 and December 21, 1989. All the actions which are the subject of this disciplinary hearing therefore occurred during periods when the burden was "a preponderance of the evidence."

Count III

In Count III, involving a survey map of property located in Township 2 N, Range 12 E, Rock Township, Rock County, Mr. Sarko was charged with two separate violations, neither of which was proven.

The first allegation was that he failed to reference bearings to a magnetic, true or other identifiable line of the public land survey, recorded subdivision or to the Wisconsin coordinate system, contrary to sec. A-E 7.05(2), Wis. Admin. Code. The basis for this allegation seems to be the assumption that Mr. Sarko referenced his map to the railroad tracks which form one boundary of the property. That assumption is contained in this question and answer from page 92 of the transcript:

> Q (by Mr. Hall): All right. Now with reference to whether this survey is properly referenced, if I hypothetically suggested to you that I have a letter from Mr. Sarko that states that he referenced it to the railroad tracks, would you have an opinion as to whether he has properly referenced his survey?
>
> A (by Mr. Barnes): In terms of bearings I don't think it's properly referenced because it'd be almost — it'd be quite difficult if not impossible to get the same reference line because railroad tracks are not straight. They actually meander somewhat and they're difficult — the actual individual rails, if you look down the center of a straight railroad track you'll notice that they just wander because of the use of the train over the tracks. It's not really a proper reference to a bearing.

This assumption has its basis in a letter dated January 24, 1991 from Mr. Sarko to Investigator John F. Miller (exhibit 21), which states

> Per your request, I have investigated the facts contained in your November 29, 1990 letter. ... During the course of the survey, we utilized the Chicago, Milwaukee, St. Paul and Pacific Railroad right-of-way as a bearing reference, which is clearly shown on sheet 1 of 4 of our survey map. ... The East quarter corner of section 35 is not needed to retrace the bearings on the survey, since page 1 of 4 of our survey map clearly shows the bearing on the Chicago, Milwaukee, St. Paul and Pacific Railroad ....

Mr. Barnes seems to have further assumed that Mr. Sarko did not locate the west quarter corner and that the reference line of the map was arbitrary or based on such unreliable monuments as the railroad tracks (transcript, p. 93):

> Q (by Mr. Hall): Is there any way without having a U.S. public land survey monument filed or available to him for the west one quarter corner of that survey that he could have referenced the bearing to that line?
>
> A (by Mr. Barnes): Yes, he could have did a sun shot or a Polaris shot.
>
> Q: Is there any indication that he did that here?

A: No.

Q: There's a bearing indicated on here of north 90 degrees west. Without the west one quarter corner could he have established that other than to assume it?

A: No, not that I can see.

Mr. Barnes' opinion of railroad tracks as an unreliable bearing for a survey map is certainly true, but exhibit 3 and Mr. Sarko's testimony (transcript, pp. 20-23) show that the map was not oriented "to the railroad tracks", as characterized by Mr. Hall, but to a line connecting the east and west quarter corner monuments of section 35-2-12, shown on page 2 of exhibit 3, which was assigned a bearing of N 90° 00' 00" W. To establish one part of the survey, Mr. Sarko did take sightings along the railroad bed, but instead of sighting along the tracks themselves, he used iron pipes which he set along the edge of the roadbed. These are not subject to the concerns expressed by Mr. Barnes, and they represent an acceptable means of marking references on a survey map, providing the entire survey is properly referenced, as this one was, to established monuments.

The second charge against Mr. Sarko in count III was a failure to file a U.S. Public Land Survey (U.S.P.L.S.) monument record for the west quarter corner of section 35, contrary to sec. A-E 7.05(2) and A-E 7.08, Wis. Admin. Code and sec. 59.61, Wis. Stats. The allegation, though somewhat unclear, appears to be that Mr. Sarko was required to file a U.S.P.L.S. monument record for the west quarter corner because he used that corner monument in his survey and no U.S.P.L.S. monument record was on file (transcript, pp. 89-92). It can be noted parenthetically that this charge is somewhat inconsistent with the previous charge that Mr. Sarko failed to reference his bearings to an identifiable line of the public land survey.

What the evidence showed (transcript, p. 23) was that Mr. Sarko found a "brand-new" monument at the appropriate location for the west quarter corner, but no U.S.P.L.S. monument record was on file. He was told by the town clerk that Mr. Barnes was in the process of re-monumenting Rock Township. Mr. Barnes expressed his opinion that Mr. Sarko was under an obligation to file a U.S.P.L.S. monument record because none was on file at the time (transcript, p. 92), but upon further questioning (transcript, p. 116) Mr. Barnes agreed that sec. A-E 7.08, Wis. Admin. Code requires such a filing only if no record is on file <u>and</u> the surveyor perpetuates, restores, or reestablishes a monument. Mr. Barnes further clarified the word "perpetuate" by saying (transcript, pp. 132-133) that it does not mean merely to record a monument in another survey. A lingering concern remains over how Mr. Sarko could be professionally certain that the monument he found was the quarter corner, without a record on file, and the better practice might have been for him to have prepared and filed a U.S.P.L.S. monument record, to guarantee the accuracy of his own survey. Nevertheless, since no evidence was presented that Mr. Sarko altered the quarter corner monument in any way, I conclude that he was not required to file a U.S.P.L.S. monument record, even though no record was on file for that corner at the time.

Neither of the charges in Count III was proved, and it must be dismissed.

Count IV

In Count IV, Mr. Sarko was charged with five separate offenses: (1) failing to accurately locate the west quarter corner of section 8[2], (2) inappropriately monumenting the western and southern (sic) property corners of the parcel surveyed, by using PK nails as monuments instead of the prescribed iron pipes or bars, in violation of sec. 236.15, Wis. Stats., (3) failing to reference the north point to a magnetic, true or other identifiable direction, in violation of sec. 236.20(2)(i), Wis. Stats., (4) failing to include within the computation of the acreage the area of a non-dedicated right-of-way, in violation of sec. 236.20(2)(j), Wis. Stats., and (5) failing to accurately map the east/west quarter line of section 8[3]. In addition, (6) paragraph 16 of the original complaint refers to continuing deficiencies in the revised map (exhibit 5) and (7) paragraph 17 of the original complaint implies that false statements were made in the affidavit of correction (exhibit 11). Mr. Sarko was not charged with failing to file a U.S.P.L.S. monument record.

All but one of these alleged offenses stem from the fact that in his initial field work on April 29, 1986 Mr. Sarko did not survey the west quarter corner marker. The most likely interpretation of all the evidence is that he located the west quarter corner on that occasion, but only to ascertain that the right-of-way of West Union Road did not lie to the south of the east-west line. Mr. Sarko never admitted in so many words that the west quarter corner was not initially surveyed, and his evasive answers to questions on the subject were never completely pinned down. Nevertheless, as will be explained, the evidence reasonably permits only that conclusion.

In his initial field work on April 29th, Mr. Sarko did locate and survey the east quarter corner. There was no monument at that location because the corner lay within the roadbed of West Union Road, and he set a PK nail in the blacktopped roadbed to mark the east quarter corner of the section as located by ties. Mr. Sarko set two more PK nails in West Union Road along the center line of the roadbed, which approximated the east-west line of the quarter, and he oriented the map to that line on West Union Road, assigning it the bearing N 90° 00' 00" W.

The property which Mr. Sarko was surveying is described in the warranty deed (exhibit 18) as

> The Southwest Quarter of the Northeast Quarter (SW 1/4 NE 1/4), except the West three (3) rods thereof and also excepting therefrom all that part lying south and west of the Madison and Beloit Road, subject to existing railroad rights of way; the above described premises containing Thirty-seven and 75/100 (37.75) acres, more or less, and being in Section Eight (8), Township Four (4) North, Range Ten (10) East.

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[2]The charge is alleged as a general violation of chapter A-E 5 (now A-E 7), Wis. Admin. Code, **Minimum Standards for Property Surveys**, not a specific violation of any statute or administrative rule.

[3]Same as footnote 2.

Given this description of the property, Mr. Sarko explained his decision to orient the map to the center line of the road as follows (exhibit 13):

> The fact is that our client's Warranty Deed specifically stated that he owned all lands in the SW 1/4 of the NE 1/4, except "all that part lying South and West" of the road. It would be impossible to perform the survey or determine land ownership without knowing where "the East/West centerline" of the road was, and where the South line of the SW 1/4 of the NE 1/4 is.

This explains why he used the center line of the roadway as one of the reference lines on the map, but it does not excuse him from the requirements of sec. 236.20(2)(i), Wis. Stats. Mr. Barnes testified that a "center line road survey" was an unacceptable way to reference a map (transcript, pp. 96, 107), and I conclude as a matter of law that it fails to satisfy the requirements of sec. 236.20(2)(i), Wis. Stats., in that it fails to orient the map to "a north point properly located thereon identified as referenced to a magnetic, true or other identifiable direction and related to a boundary line of a quarter section, recorded private claim or federal reservation".

The failure to survey the west corner monument was not in itself a violation as alleged, because no statute or rule requires a certified survey map to reference two quarter corners per se. Sec. A-E 7.04, Wis. Admin. Code, formerly A-E 5(1)(4), states only that "the description shall ... describe the land surveyed ... by metes and bounds commencing with some corner ...." Section 236.20(2)(i), Wis. Stats. requires that a certified survey map show correctly on its face "a north point properly located thereon identified as referenced to a magnetic, true or other identifiable direction and related to a boundary line of a quarter section, recorded private claim or federal reservation ....", but a violation of that section was charged directly, and the allegation that Mr. Sarko failed to survey a particular quarter corner is not directly based on any administrative rule or statutory language. Therefore, in this context, **Mr. Sarko's failure to survey the west quarter corner monument on April 29th was not a violation as alleged in the first charge in Count IV.**

He may have violated a Rock County ordinance requiring surveys to reference at least two U.S.P.L.S. corners (transcript, pp. 24-25), and this violation would have provided him with an incentive both to correct and to conceal his original oversight, but that question is not before this Board.[4] His failure to survey the west quarter corner led to a host of other problems for Mr. Sarko, though, especially after he informed Mr. Barnes in his phone conversation on June 25th that he had surveyed the east-west line. The most likely interpretation of all the evidence is that in the following days and months, Mr. Sarko stood by his misstatement about surveying the east-west line, making further evasive or misleading statements, and even revising his field notes in a manner designed to cover up his oversight.

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[4]Although sec. A-E 8.03(3)(a), Wis. Admin. Code permits a finding of misconduct in the practice of land surveying for a violation of a local ordinance, this was not alleged as a specific basis for the charge in Count IV, and neither party addressed the Rock County ordinance in sufficient detail for such a finding to be made in this case. Even had this been proven, the recommended outcome would have been the same, because of Mr. Sarko's prompt filing of the revised map and affidavit of correction.

Although four different versions of the map for the property in question are in evidence[5], the map which was available to Mr. Barnes for review was exhibit 4 (lacking at that time the triangle at the west end of the east-west line). It was the lack of any identifiable reference to the west quarter corner which prompted Mr. Barnes to characterize it as a "center line road survey" and led to the call to Mr. Sarko from the office of the Rock County zoning administrator on June 25, 1986 (transcript, pp. 96-97).

Mr. Barnes had no responsibility as county surveyor to review surveys filed by private surveyors. In fact, "the county surveyor has no statutory discretionary authority to evaluate or refuse surveys brought to him by registered land surveyors for filing. The county surveyor may, however, report 'any gross negligence, incompetence or misconduct in the practice of land surveying' to the Examining Board ...." 80 Att. Gen. 160 (OAG 43-80). Nevertheless, he did review the map for correctness at the request of the Rock County zoning administrator (transcript, p. 96), and he participated in the call to Mr. Sarko in an attempt to clarify the map.

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[5]The four maps (exhibits 4, 5, 14 and 20) present a chronology of changes, some disputed, some not disputed, and some simply confusing. Because of their crucial importance to understanding this part of the decision, copies of all four maps are included as part of this opinion in an Appendix.

The most confusing are exhibits 4 and 14 (both copies of the original in exhibit 20), which both show Mr. Sarko's seal dated 5-23-86, but which differ in the following details: (1) the seals and dates were made at different times; (2) exhibit 4 has an additional typewritten note at the top regarding a private sewage system; (3) exhibit 4 shows "page one of three" in a different location; (4) exhibit 4 shows a line (drawn by a draftsperson's hand, not an attorney's) extending to the west quarter corner, with an arrow to the end of the line from the legend "west 1/4 corner, section 8-4-10" (from graphological details such as the slant of the letters, the slant of the break mark, the closed "4", and the tailed "R"s this legend was most likely made at a different time, or by a different hand, than the original); and (5) exhibit 4 has a triangle at the west quarter corner, which all parties agree was added by Attorney Olson. There is a hint of a straight vertical line extending above the triangle, possibly the "tick mark" testified to by Mr. Sarko (transcript, p. 30). It is clear that exhibit 14 was copied from exhibit 20 before exhibit 4 was. The timing and the reasons for the changes, especially the addition of the line to the west quarter corner, were not explored in the hearing.

In exhibit 20 (but unfortunately not in the photocopy in the Appendix), the line to the west quarter corner has been visibly erased, though the mark which was originally at that end is indistinguishable. (It is clear, however, that whatever was at the end of the line was not in fact cut off by a copier, since the arrow on exhibit 4 was not cut off, and hence it is certain that the line did not end in a triangle or any other identifiable symbol, or else Mr. Barnes' reaction to the map would have been completely different.) The legend at the west quarter corner is unchanged on exhibit 20, although the arrow has been partially erased and redrawn to point to a solid square at the end of a redrawn east-west line, with the additional legend "cut limestone found, ties taken on 6-26-86". A detailed inset has been added showing the deviation between the centerline of West Union Road and the east-west line.

Exhibit 5 is a photocopy of the final version of exhibit 20, sealed and dated on 6-26-86.

Mr. Sarko testified that during the phone call on June 25th he did not have a copy of the map with him, and that he thought Mr. Barnes' challenge regarding the missing quarter corner referred to the east quarter corner, on the assumption that the edge of the drawing had been cut off in photocopying (transcript, pp. 32, 49, 73-74). Whether one of them mis-spoke or one of them mis-heard, or whether Mr. Sarko knew there was a problem with the west quarter corner and prevaricated, cannot be determined, especially since their communication was through a third person, Attorney Dean Olson. Mr. Barnes asked about the west corner, and Mr. Sarko responded about the east corner. Mr. Sarko went on to tell Attorney Olson that a P.K. nail had been set at that location, and instructed him to place a triangle there (transcript, pp. 73-74, 96-97).

During this conversation, Mr. Barnes mentioned the Rock County ordinance already referred to (exhibit 13, p. 16), and Mr. Sarko, either because he did not have the map in front of him or because he was caught in an embarrassing oversight, responded with a serious mis-statement, that he had surveyed the line from the east quarter corner to the west quarter corner of section 8 (transcript, p. 49, and exhibit 13, p. 2). Based upon this statement by Mr. Sarko, and the addition of the triangle to the preliminary certified survey map made by Attorney Olson, Mr. Barnes appropriately requested a U.S.P.L.S. monument record for the west quarter corner (transcript, pp. 96-97, 120), despite the apparent absurdity of the monument being a P.K. nail in a field!

There is no question of Mr. Sarko placing a PK nail at the west quarter corner. In addition to his outright denial on that issue (exhibit 13, p. 3), logic requires the conclusion that he did not. Mr. Sarko did use PK nails on occasion, but both exhibit 3 and exhibit 4 show that Mr. Sarko sets iron stakes as reference points when necessary. A P.K. nail may appropriately be used to mark a point on a roadway, but it is not a monument. Each time Mr. Sarko used a PK nail in the roadway of West Union Road he also placed an iron pipe alongside at the edge of the right-of-way as a reference point, so placing the P.K. nail on the eastern corner was acceptable. Using a P.K. nail anywhere but in a roadway, even as a reference point, would be unacceptable (exhibit 13, p. 3), and the photographs of the field in which the west quarter corner is located (exhibits 16 and 17) clearly show that a P.K. nail would be inappropriate and inadequate. In addition, if Mr. Sarko had set a P.K. nail at the west quarter corner, there is no reason he would not have placed it on the map, where it would be visible on exhibit 14. Nothing in this record remotely suggests that Mr. Sarko would be so incompetent as to monument a quarter corner with a P.K. nail in a field, and further, to leave a monument off his map. The inescapable conclusion is that he did not. Thus **Mr. Sarko *did not violate sec. 236.15, Wis. Stats. by inappropriately monumenting the* western and southern (sic) corners of the parcel as alleged in the second charge in Count IV.**

After his oversight was brought to his attention, Mr. Sarko proceeded immediately to correct the deficiency. He went the next day to survey the corner, filed a corrected map (exhibit 5) and an affidavit of correction (exhibit 11) one day later, and prepared a U.S.P.L.S. monument record as requested, even though he had not in fact made any physical change to the west

quarter corner which would have created an obligation under any statute or rule to file such a record. His promptness in correcting his preliminary certified survey map is notable, and it would be commendable, were it not for the fact that he was also most likely attempting to recover from the mis-statement he made on the phone about surveying the east-west line, and rushing to file a correctly-oriented map within sixty days of the original survey (exhibit 13, p. 5). (The sixtieth day after April 29, 1986 would have been June 28, 1986.) Although he prepared the U.S.P.L.S. monument record (exhibit 13, pp. 8-9), he ultimately did not file it, because within a day or two he received a copy of the one filed by Mr. Barnes for the same corner (transcript, p. 33).

He surveyed the limestone monument on June 26, 1986, apparently no more than a few hours after Mr. Barnes surveyed it; Mr. Sarko stated that when his people located the monument on June 26th, they found brand new witness monuments (transcript, p. 74). In contrast, Mr. Barnes stated that when he located the cut limestone monument and photographed it on June 26, 1986 he observed no evidence of any recent surveying activity (transcript, p. 101), though Mr. Sarko complained that this proved nothing about his original work at that corner, as "the weeds did not stop growing from the time the field survey work was done" (exhibit 13, p. 3). Without further proof, this evidence has very little probative value, though for what it is worth, it tends to confirm rather than to negate the conclusion that Mr. Sarko did not conduct any significant surveying activity around the west quarter monument in April.

The most convincing evidence that Mr. Sarko did not survey the west quarter corner in his initial field work is the map he prepared, the original version of which can be seen best in exhibit 14. Based upon all the information regarding the quality of Mr. Sarko's work presented in this hearing, I am of the opinion that if the west quarter corner monument had been surveyed on April 29th, it would have been included on the preliminary certified survey map. Because it was not, it is more likely than not that it was not surveyed, even though it may have been located to insure that the right-of-way of West Union Road did not lie to the south of the east-west quarter line. Exhibit 14 does not show the west quarter corner at all, and Mr. Sarko, apparently referring to the later version in exhibit 4, said that "originally this west quarter corner just had a tick mark and was not labeled on the original map" (transcript, p. 30), and "there was just a straight line there that -- it was unlabeled; no symbol" (transcript, p. 31). Further evidence on the maps themselves is the very fact that Mr. Sarko assigned the bearing of N 90° 00' 00" W to the centerline of West Union Road rather than to the east-west line, a deviation he later had to "clarify" on exhibit 5. Having reached this conclusion about the west quarter corner, my opinion could have been changed by objective evidence, such as field notes which showed that the corner was surveyed on April 29th, but Mr. Sarko admitted that the sketch on page 6/6 of the field notes, showing the ties taken on the west quarter corner, was made on June 26th (transcript, pp. 74-75), and the potentially exculpatory field notes (exhibit 19 - not sealed) show evidence of alterations related

specifically to the west quarter corner[6]. In the context of all the evidence, the alterations in the field notes (exhibit 19) only become further evidence that Mr. Sarko's initial survey did not include the west quarter corner.

All of the above evidence, assessed using the burden of "a preponderance of the evidence", is sufficient to show that Mr. Sarko did not survey the west quarter corner in his initial field work on April 29, 1986. By failing to survey the west quarter corner and orienting his original certified survey map to the center line of West Union Road, **Mr. Sarko failed to reference the north point to a magnetic, true or other identifiable direction, thereby violating sec. 236.20(2)(i), Wis. Stats., as alleged in the third charge of Count IV.**

The one charge in count IV which is unrelated to the west quarter corner monument is that Mr. Sarko failed to include within the computation of the acreage the area of a non-dedicated right-of-way. The evidence (transcript, pp. 34, 76-78 and 80-81, and exhibit 4, p. 3) showed that the property owner dedicated the right-of-way as represented on the certified survey map. Therefore, **Mr. Sarko did not violate sec. 236.20(2)(j), Wis. Stats. as alleged in the fourth charge in Count IV.**

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[6]A report was prepared by the Wisconsin Crime Lab describing the alterations found, and during the hearing Attorney Kasieta objected on behalf of the Respondent to the introduction and use of this report and various documents associated with it. Mr. Kasieta might have obtained the documents in question through discovery, and arranged for a deposition or testimony by a qualified expert, had he been retained more than two business days before the hearing. Because of his inability to prepare adequately, he was given the opportunity to call an appropriate witness at a later date, an option which he chose not to exercise. Especially considering that the rules of evidence with regard to hearsay evidence need not be enforced in an administrative hearing under sec. 227.45, Wis. Stats., it is not error to admit and use the documents in question in this decision.

However, I note here that I reached the conclusion stated in this proposed decision without reference to the Crime Lab report or to its associated documents. Nor did I consider the testimony of Richard Talarczyk (transcript, pp. 154-166) in my initial analysis, even though under sec. 907.03, Wis. Stats. an expert witness may express an opinion or an inference even if the facts upon which it is based are not admissible in evidence. Having reached an opinion as to which charges were proven and what discipline was appropriate, I then reviewed the Crime Lab report, the associated documents, and Mr. Talarczyk's testimony to ensure that this information did not change my opinion. It did not.

Since the Crime Lab report itself is not essential to this decision, and to avoid a potential evidentiary issue, I have placed the Crime Lab report and its associated documents in an envelope marked "Exhibit 19 - Sealed", which will not be available to the Board in its review of this proposed decision without a specific order to that effect. Mr. Sarko's original field notes, which were included in exhibit 19, and which are not subject to evidentiary objection, are available in an envelope marked "Exhibit 19 - Not Sealed."

The fifth charge in Count IV is that Mr. Sarko failed to accurately map the east-west quarter line of section 8. This was not alleged as a violation of any specific statute or rule, and in this context, the allegation is basically that the orientation of the map to the center of the road was inadequate (transcript, pp. 99-100). As such, the charge that Mr. Sarko failed to accurately map the east-west quarter line of section 8 is just another way of saying that he failed to reference the map to an identifiable direction, and hence, in legal terminology, duplicitous. Therefore, even though Mr. Sarko admitted that his initial map contained this error (transcript, p. 189), **the allegation in the fifth charge of Count IV that he failed to accurately map the east-west quarter line of section 8 is dismissed.**

As stated, Mr. Sarko admitted that he failed to accurately map the east-west line in the first map submitted, but he went on to assert that this was not a violation because he corrected those deficiencies in the final map, submitted within sixty days of the survey (transcript, p. 189; exhibit 13, p. 5). This leads to the remaining issues in this count: (6) whether the revised certified survey map (exhibit 5) continued to contain deficiencies, (7) whether false statements were made in the affidavit of correction, and finally, as argued by Mr. Sarko, whether his revised map negates any errors in the initial map.

The basic deficiency in the original map (other than its possible violation of a Rock County ordinance) was its failure to orient the north point to a magnetic, true, or other direction. The revised map filed on 6-27-86 showed the east-west quarter line as S 89° 40' 36" W. This is an inelegant solution to the problem of orientation, but it is serviceable, because the orientation of the map can be reliably reconstructed.

Nevertheless, one potential problem remains which could be considered a continuing deficiency in the revised map, and this is whether Mr. Sarko accurately surveyed the lot in question, and whether he accurately placed his monuments, especially since two of the other lot lines are mapped with reference to the center line of the road. (That is, the eastern boundary of the lot is mapped as being at a right angle to the roadway, and the north boundary is mapped as being parallel to the roadway.) There appears to be a strong possibility that the lot as monumented and mapped is not in fact "the southwest quarter of the northeast corner", etc. However, this issue was not addressed in the hearing, and no proof was offered that the lot as mapped is wrong, so **no finding that the revised map contains continuing deficiencies can be made.**

With regard to whether he made false statements in his affidavit of correction, Mr. Sarko trod a line close to the edge of the truth, but he did not make a false statement. He stated:

> ... WHEREAS, Page One of the Certified Survey Map did not show in great detail the variation between the East-West quarter line of said Section 8 and the actual centerline of the existing pavement. Attached as Exhibit A is a detail, showing the variation between the centerline of the existing pavement and the East-West quarter line. NOW, THEREFORE, the affidavit is filed to clarify the difference between the East-West quarter line and the centerline of the pavement. ...

The truth is that page one of the certified survey map did not show in any detail the variation between the east-west quarter line and the centerline, and the detail added for "clarification" is an unabashed reorientation of the map. Nevertheless, Mr. Sarko's statement that the original map did not show the variation in great detail is literally true. It is weaseling, and it is illustrative of the equivocation which will addressed in the next section, but it is not a lie; therefore, **no false statement was made in the affidavit of correction.**

Finally, as to whether the revised map cancelled the oversight on the first map, affidavits of correction are specifically authorized under sec. 236.295, Wis. Stats. and Mr. Barnes agreed that they are an appropriate way to amend deficiencies in maps submitted to the County Surveyor (transcript, p. 109). Mr. Sarko testified that "a lot of times there is as many affidavits of corrections as there are certified survey maps recorded in any one period" (transcript, p. 67). The question is whether filing a revised map with an affidavit of correction is sufficient to correct an original error, for one of two reasons: either because a correct (or at least minimally adequate) map is filed within 60 days of the original survey, or because a corrected map along with an affidavit of correction effectively cancels a deficiency.

The issue is not one of meeting a deadline. Mr. Sarko filed a certified survey map, or more accurately, he prepared a certified survey map which Attorney Olson presented for review and filing by the County. At any rate, the first map was filed. Mr. Sarko raised the question of whether there is a requirement to file a certified survey map at all; he testified that "I don't know of any statutory requirement that requires a land surveyor to record a certified survey map in a register of deeds office. In fact, I would presume that if the owner chose not to record it and the land surveyor went ahead and recorded it, he could be held liable for damages" (transcript, p. 47).[7] Regardless, once the map was filed, any sixty-day requirement was satisfied, and the sixty days is not a period in which a map is considered tentative or subject to change. The sixty-day deadline which Mr. Sarko acted so diligently to meet is irrelevant in this situation.

The question remains of whether a correction instrument "corrects" any deficiency in a surveyor's work, and the issue of whether Mr. Sarko's revised map effectively canceled the original deficiency must be analyzed as a more general question of professional behavior. The authority in sec. 236.295, Wis. Stats. to file affidavits of correction would be meaningless if the procedure did not serve to "correct" an error, and use of this mechanism should be encouraged in the interest of individual land surveyors, the profession, and the public. On the other hand, sec. 236.295 should not provide an unassailable bar to discipline for a land surveyor whose work regularly falls below minimum standards. The

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[7]Mr. Sarko's opinion may not be the final word on this, however. It is worth noting that in 1985 the Board imposed a sixty-day suspension of the license of a land surveyor who had prepared certified survey maps but failed to prepare or file subdivision plats (In the Matter of Disciplinary Proceedings against Steven J. Johnson, R.L.S., January 31, 1985).

issue is most appropriately handled as a matter of discretionary judgment. The Board must decide whether discipline is appropriate, after considering factors such as:

- the general quality of the surveyor's work,
- the frequency of errors in maps prepared by the surveyor,
- the nature of the errors, and
- the responsiveness of the surveyor to correcting errors once noticed, including both the amount of prodding necessary to get the surveyor to act, and the amount of time until the correction is made.

Discipline would certainly be appropriate for a surveyor who regularly produces inferior work and who is dilatory in making corrections, even if all errors have been corrected by the time a disciplinary proceeding is completed. For example, in 1986, the Board reprimanded a land surveyor in a disciplinary proceeding involving a mortgage survey map which contained six material errors, which was filed on 10-10-84, retrieved for correction 10-16-84, and which had not been refiled with corrections as of the date of the hearing on 2-11-86 (In the Matter of Disciplinary Proceedings against Joseph Kroeninger, R.L.S., August 7, 1986). In 1989, the Board reprimanded another surveyor in a disciplinary proceeding related to two maps which were not filed and which failed to show proper waivers; one of the maps, for property surveyed on 3-29-86, contained a material error, and the surveyor "did not correct the map of survey until August 26, 1986 despite repeated requests to do so by the property owner" (In the Matter of the Investigation of Mark R. Wendt, R.L.S., January 12, 1989). On the other hand, a surveyor who promptly corrects an error should not be subject to discipline for a lapse which is not characteristic of his or her work in general.

With regard to whether the error in Mr. Sarko's work shown here is typical of his work, it was shown that Mr. Sarko does a high volume of business. The testimony was that the mortgage survey maps filed by his firm in Dane County filled eight banker's boxes, and numbered approximately 12,000 maps, while mortgage survey maps filed by all other surveyors in Dane County filled four copy paper boxes (transcript, p. 60). A rough estimate was also made by Mr. Barnes that Mr. Sarko's firm had filed approximately one hundred maps in Rock County (transcript, p. 112). And despite the fact that this proceeding involved nine alleged violations in four different maps, only two of those were proved.

Further, Mr. Sarko was exceptionally responsive to the need to correct his map. Although he may have been partially motivated by a desire to cover up his twin errors (not surveying the west quarter corner on April 29th, and stating to Mr. Barnes that he had), he nevertheless did file his revised map and affidavit of correction within two days. (Of course Mr. Barnes still felt that he had not corrected all of his errors, because he was under the impression that Mr. Sarko had monumented the west quarter corner with a P.K. nail, but, as shown, that was an excusable misunderstanding on his part, not an actual violation by Mr. Sarko. Without that misunderstanding, it is entirely possible that Mr. Sarko's original oversight would not have been seen by Mr. Barnes as a violation serious enough to merit reporting to the Board.) All in

all, I am led to conclude that in the absence of a pattern of generally sloppy and unprofessional work, Mr. Sarko should be allowed to benefit from his prompt and sufficient response to Mr. Barnes' phone call. Although county surveyors are generally under no obligation to review survey maps filed by private surveyors, Mr. Barnes did so in this case, and under the circumstances of this disciplinary proceeding, **the revised map and affidavit of correction filed on June 27, 1986 effectively corrected Mr. Sarko's violation of sec. 236.20(2)(i), Wis. Stats.** Therefore, even though Mr. Sarko did commit an oversight in his initial certified survey map which could have been the basis for a finding that he failed to meet minimum professional standards, in the final analysis **Count IV should be dismissed.**

Count V

Count V is an allegation that Mr. Sarko was untruthful in responding to a request for information from the Division of Enforcement on behalf of the Board. Specifically, it is alleged that Mr. Sarko "engaged in preparation of deficient surveys, maps or reports; and conduct which evidences lack of 'trustworthiness' to practice land surveying and which constitutes misconduct." Although it is possible to interpret "surveys, maps or reports" as encompassing Mr. Sarko's written responses to the Board, it would be misleading to make a finding on that basis, as it would imply that Mr. Sarko's professional work as a land surveyor is deficient. The more appropriate part of this charge is "conduct which evidences lack of 'trustworthiness'", consisting of his evasive, misleading, and downright false statements to the Board. This is an appropriate charge, because even though such actions are somewhat distinct from the professional duties of a land surveyor, they nevertheless relate to the professional's duties to the profession itself.

As stated above, Mr. Sarko found himself caught in a mis-statement about the west quarter corner, which may have been an honest mistake at the time, made in a phone conversation without the opportunity to refer to the survey map in question, or it may have been made knowing there was a problem. But instead of admitting that he had made two mistakes (failing to orient the map to two quarter corners, and telling Mr. Barnes that he had surveyed both corners) he attempted to cover over the mistakes by surveying immediately, filing the revised map and affidavit of correction within forty-eight hours and within sixty days of the original survey, and filing the U.S.P.L.S. monument record as requested by Mr. Barnes. And Mr. Sarko was probably right: the issue might well have ended there, had there been no P.K. nail drawn on the west quarter corner.

However, having once said that he surveyed both corners, Mr. Sarko maintained this stance, even when it required him to make deceptive statements. Mr. Sarko rationalized his position by characterizing his survey as being in two phases, initial field work done in April of 1986 and final staking in June of 1986 (transcript, pp. 26-29), and he justified many of his statements by referring to the work done in June as part of the survey (transcript, pp. 187-189). From his point of view, most of his statements may have been narrowly truthful, although he cannot have failed to realize that he was evading the intent of the question and intentionally misleading the

questioner. Examples of such evasive statements are:

- his affidavit of correction, in which he states "the Certified Survey Map did not show in great detail the variation between the East-West quarter line of said Section 8 and the actual centerline of the existing pavement";
- his statement that the field notes were used to compute the survey on May 15, 1986 (transcript, p. 38), despite his admission that the sketch on page 6/6 was made on June 26, 1986 (transcript, pp. 74-75);
- his answers to Mr. Barnes' complaint in exhibit 13, "as I recall, I indicated that we did survey the line from the East quarter corner of Section 8 to the West quarter corner of Section 8 and had in fact 'surveyed to at least two U.S. Public Land Survey Corners as required by the Rock County Subdivision Ordinance'" and "we revisited the west quarter corner of section 8" and "we found the cut stone monument at the occupied corner by following occupation, and accepted the found perpetuated location just as Mr. Barnes did," and "the south line of the SW 1/4 of the NE 1/4 had to be determined to make sure it was south and not North of the road centerline. The property line then became the northernmost of the two lines and in this case, the centerline of the road. However, the only way I know to determine the South line of the SW 1/4 of the NE 1/4 is to run a line from the West quarter corner to the East quarter corner. Therefore, in performing an accurate survey of the property, the Rock County ordinance was automatically complied with."
- his testimony, in which he said

  Q (by Mr. Hall): Did you actually find those monuments for the east one quarter corner and the west one quarter corner?

  A (by Mr. Sarko): The east one quarter corner ...

  Q: What about the other?

  A: The other corner was sticking up out of the ground. It was visible (p. 50)

and

  Q (by Administrative Law Judge): And in one of your written responses you stated that you established the west quarter corner, I believe, by occupation. Is that the proper phrase and if so, what does it mean? ...

  A: At this particular corner there is an intersection of two fences. And the limestone monument which appears to have been set in 1870 is like less than a foot next to it. So we were able to find the monument since it was right next to the occupied corner where the farmer's fences came together. (p. 70)

and

  Q (by Mr. Kasieta): Paragraph 15 says ... you failed to accurately locate the west quarter corner of section 8. Is that true?

  A: No.

  Q: How did you do that?

  A: We walked out there. At the intersection of the farmer's fences there was a stone monument right at the surface. And it was like less than a foot away from the fence post. And according to the records in Mr. Barnes' office there was supposed to be a stone monument there, so we used it. When we went out there to tie the witness corners off which was at the time that we were staking it, there were brand new witness corners set. (pp. 187-188)

These examples show that he was generally successful in blurring the times when he "located" the west quarter corner monument with the time when he surveyed it or "went out to tie the witness corners off". Such knowingly unresponsive and evasive answers are sufficient for a finding that Mr. Sarko attempted to mislead the Board regarding a material fact (the date on which he surveyed the west quarter corner of section 8), thereby evidencing a lack of trustworthiness. In addition, Mr. Sarko did make one statement in his testimony which is simply false:

> Q (by Mr. Hall): What did they do on the 29th?
> A: Oh, they located the buildings.
> Q: That's April 29th, 1986.
> A: They located the buildings and tied the corners together and gathered the field data and set temporary points for staking at a later date and tied together the section corners, gathered the field data to produce the survey (transcript, p. 27).

Making a mistake and correcting it is one thing; attempting to deny the mistake by doctoring records and giving evasive answers is another. By making misleading and unresponsive statements to the Board, including one material misstatement of fact, Mr. Sarko has evidenced a lack of trustworthiness to transact the business required by the profession, under sec. A-E 8.03(3), Wis. Admin. Code.

Discipline

The purposes of professional discipline have been set forth by the Wisconsin Supreme Court in four cases involving attorneys: State v. Kelly, 39 Wis.2d 171, 158 N.W.2d 554 (1968), State v. MacIntyre, 41 Wis.2d 481, 164 N.W.2d 235 (1969), State v. Corry, 51 Wis.2d 124, 186 N.W.2d 325 (1970), and State v. Aldrich, 71 Wis.2d 206, 237 N.W.2d 689 (1976). Those purposes are (1) to rehabilitate the offender, (2) to protect the public, by assuring the moral fitness and professional competency of those privileged to hold licenses, and (3) to deter others in the profession from similar unprofessional conduct.

With regard to the violation in Count I, there is no question that failing to file a survey map in the proper county is a matter of concern, since the survey information in the map becomes effectively unavailable to the public. In mitigation, though, some part of the responsibility for this error lies with the Dane County Surveyor's office, for it is unlikely that a Rock County map could have been filed in Dane County if the County Surveyor's office had a workable filing system. The error would have been detected immediately, as there would have been no property under which to file the map. The violation in Count I was inadvertent and, all things considered, it was minor. Any need to impress upon Mr. Sarko the importance of filing maps in the appropriate county has undoubtedly already been satisfied by the disciplinary process itself. No further discipline is necessary, and no legitimate purpose would be served by imposing discipline for this clerical oversight.

With regard to the violation in Count V, however, discipline must be imposed, with an eye to the purposes mentioned above. "Rehabilitation", in the reasoning of the Wisconsin Supreme Court in State v. Corry, includes both positive and negative reinforcement to deter this offender from similar behavior in the future. Mr. Sarko's uncooperative and overly rationalized self-protective attitude led to a significant effort by the Board to investigate and prosecute the seeming violations, and should a similar circumstance arise in the future, Mr. Sarko must be encouraged to cooperate with more candor. The violation is not serious enough to merit a revocation of his license as a land surveyor, but to have the desired rehabilitative effect, the discipline must be more than a reprimand.

Another reason for imposing discipline of some weight in this case is to deter similar conduct by others. In order to maintain its standards, the profession must enjoy the cooperation of its members. It is appropriate to show that equivocal communications with the Board may lead to significant discipline. In 1983 the Board imposed a ninety-day suspension on a surveyor in a disciplinary proceeding related to a survey containing an error of 6 inches on the north and south boundaries of a parcel; the respondent failed to prepare or file a map of the survey, despite repeated requests, and failed to respond to inquiries by the Board (In the Matter of Disciplinary Proceedings against Eugene Kirchman, R.L.S., January 4, 1983).

Mr. Sarko's violation related to his relationship to the Board, and although some concern remains about his forthrightness if, for example, he was caught in a similar embarrassing situation by a member of the public, discipline need not be imposed for the purpose of protecting the public.

For all the above reasons, a suspension of Mr. Sarko's license is appropriate. It need not be inordinately lengthy in order to effect Mr. Sarko's own rehabilitation, but it should not be so short that it is seen as no deterrent by others. A period of forty-five days is recommended, with that figure being related to the case mentioned above, in which a ninety-day suspension was considered appropriate for a combination of failing to file a requested survey as well as being unresponsive to the Board. As the purpose of this proposed suspension is not punitive, Mr. Sarko should be allowed during the period of suspension to perform and be paid for other work associated with R.F. Sarko and Associates which does not involve the professional activities of a land surveyor. In addition, Mr. Sarko should be ordered to pay half the costs of this proceeding. Although no violation was proved in three of the five counts, the violation in Count V involved both his probity and his cooperation with the Board, and some of this disciplinary action might have been avoided had he been less coy and misleading about his initial failure to survey the second corner in Count IV.

In the final analysis, the discipline imposed here is not for Mr. Sarko's error in surveying the property in count IV, but for his attempts to conceal that error from authority. No reference was made during the hearing to any prior disciplinary actions against Mr. Sarko, and this decision was made on the assumption that there have been none. Exhibit 7, though, refers to a closed complaint file, and it is possible that because of past dealings with the Board over one or more alleged violations Mr. Sarko determined never to admit outright any error. This is obviously speculation, but it would serve to explain Mr. Sarko's otherwise perplexing evasiveness. Regardless of Mr. Sarko's reasons, such an attitude cannot be condoned, as it leads to the abuse, at all levels of private, public and professional life, of "covering up".

Dated May 5, 1992.

John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

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