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

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST

FINAL DECISION AND ORDER
Case No. LS-9606071-LSR

PAUL N. SMITH, R.L.S.,
RESPONDENT.

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Paul N. Smith, R.L.S.
HCR 1, Box 171
Athelstane, Wisconsin 54104

Examining Board of Architects, Landscape Architects,
Professional Geologists, Professional Engineers, Designers
and Land Surveyors, Land Surveyor Section
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708

This matter was commenced by the filing of a Notice of Hearing and Complaint on June 7, 1996. A hearing was held in the above-captioned matter on July 10, 1996. Atty. Roger R. Hall appeared on behalf of the Division of Enforcement. Mr. Smith did not file an Answer and did not appear at the hearing. The hearing transcript was filed on September 10, 1996, and the Administrative Law Judge filed her Proposed Decision on January 10, 1997. Mr. Hall Filed his Objections to Proposed Decision on January 17, 1997. Mr. Smith neither filed objections nor responded to those filed by Mr. Hall. The Land Surveyor Section of the board considered the matter on February 6, 1997.

Based upon the entire record in this matter, the Land Surveyor Section of the Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Paul N. Smith, R.L.S., Respondent herein (d.o.b. 03/06/25), is duly registered to practice land surveying in the state of Wisconsin pursuant to certificate of registration #1125, which was first granted on October 19, 1973. Respondent's most recent address on file with the Department of Regulation and Licensing is HCR 1, Box 171, Athelstane, WI 54104.

2. The Wisconsin Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Land Surveyor Section, by a Final Decision and Order dated March 27, 1992, found that respondent had engaged in misconduct contrary to s. 443.12 (1), Stats. As a result, respondent's registration was suspended for 30 days and thereafter restored upon the following terms and conditions:

> (a) that he submit his land surveys and survey maps to Kim Pritzlaff, R.L.S or other R.L.S. approved by the Board for review and approval prior to filing or recording his survey maps.
>
> (b) that he submit a certification to the Land Surveyor Section annually stating that he has not practiced land surveying in a manner inconsistent with the foregoing, and that he report immediately to the Land Surveyor Section any suspected violations of the Order.

3. On or about July 18, 1992, respondent amended a land survey map of the NE 1/4 and SE 1/4 in the NW 1/4 and NE 1/4 of SW 1/4, at Sec 25 T34 N, R18E, Town of Silver Cliff, Marinette County, that he had prepared for Michael and Virginia Domark, which he filed with the Marinette County Surveyor's office on September 15, 1992.

4. On or about June 5, 1992, respondent completed a property survey and prepared a survey map for Ron Yonkoski, which respondent recorded certified survey map #748, document #509116. Respondent failed to file the survey map in the County Surveyor's Office in a timely manner, as required under s. 59.60 (2), Stats. On December 31, 1992, respondent recorded an amended certified survey map for Yonkoski, #777 Document No. 515019, in the Marinette County Register of Deeds' Office, which was filed in the County Surveyor's Office on January 18, 1993.

5. On or about July 31, 1992, respondent completed a land survey and prepared a land survey map for Leander Blahnik of part of W 1/2 SE 1/4 in Sec 25, T33 N, R15E Town of

Townsend, Oconto County, Wisconsin. Respondent failed to file the survey map in the Oconto County Surveyor's Office, as required under s. 59.60 (2), Stats.

6. On or about January 29, 1993, respondent completed a land survey and prepared a land survey map for Christopher and Tami Goetz of the E 1/2 of lot 18 and all of lot 19, Blk 3 plat of Lakewood in Sec. 32, T33N, R16E, Town of Lakewood, Oconto County, WI. Respondent failed to file the survey map in the Oconto County Surveyor's Office, as required under s. 59 60 (2), Stats.

7. On or about September 10, 1992, respondent completed a property survey and prepared a land survey map for Norbert and Coralee Flynn, which respondent filed and recorded as certified survey map No. 1868 on or about October 26, 1992, in the Oconto County Zoning Office and the Oconto County Register of Deeds' Office, Document No. 403751.

8. On or about February 5, 1993, respondent completed a property survey and prepared a land survey map for Dennis Stockel, which respondent filed in the Oconto County Zoning Office on February 23, 1993, and recorded as Certified Survey Map No. 1902 on or about February 25, 1993, in the Oconto County Register of Deeds' Office, Document No. 406656.

9. On or about May 27, 1993, respondent completed a property survey and prepared a land survey map for Audrey Starr, which respondent filed in the Oconto County Zoning Office on August 26, 1993, and recorded as Certified Survey Map No. 1996 on or about August 30, 1993, in the Oconto County Register of Deeds' Office, Document No. 411705.

10. On or about July 19, 1993, respondent completed a property survey and prepared a land survey map for Don Bartels, which respondent filed in the Oconto County Zoning Office on July 27, 1993, and recorded as certified Survey Map No. 1981 on or about July 28, 1993, in the Oconto County Register of Deeds' Office, Document No. 410759.

11. Respondent did not submit the Domark or the Yonkoski land surveys and survey maps referred to in Findings of Fact 3 and 4 herein to Kim Pritzlaff or any other registered land surveyor appointed by the Land Surveyor Section for review and approval prior to filing and recording them in the public records, and did not report this violation to the Land Surveyor Section, as required under the Final Decision and Order dated March 27, 1992.

12. Respondent submitted the survey maps referred to in Findings of Fact 7-10 herein to Kim Pritzlaff for review and approval prior to filing and recording them in the public records.

13. On or about August 31, 1993, Kim Pritzlaff, R.L.S. informed the Land Surveyor Section that he would no longer review the land surveys and survey maps of respondent. On

September 13, 1993, the Land Surveyor Section approved Leslie Van Horn, R.L.S., to review respondent's land surveys and survey maps prior to the filing or recording of his survey maps.

14. On or about December 10, 1993, respondent completed a property survey and prepared a land survey map for Henry Redinger, which respondent filed and recorded as Certified Survey Map No. 2069 on or about January 24, 1994, in the Oconto County Zoning Office and Register of Deeds' Office, Document No. 415925.

15. On or about September, 1994, respondent completed a property survey and prepared a land survey map for Fred Schelk.

16. Respondent did not submit the Redinger land survey and survey map referred to in Findings of Fact 14 herein to Leslie Van Horn, R.L.S., or any other registered land surveyor appointed by the Land Surveyor Section for review and approval prior to recording in the public record, and he did not report this violation to the Land Surveyor Section, as required under the Final Decision and Order dated March 27, 1992.

17. On September 2, 1993, and March 29, 1995, respondent submitted certifications to the Land Surveyor Section stating that he had not practiced land surveying in a manner inconsistent with the Final Decision and Order of the Land Surveyor Section, dated March 27, 1992.

18. Respondent did not file an Answer to the Complaint filed in this matter, and did not appear at the hearing held in this matter.

CONCLUSIONS OF LAW

1. The Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Land Surveyor Section has jurisdiction in this matter pursuant to s. 443.12 (1), Stats., and ch. A-E 8, Wis. Adm. Code.

2. Respondent's conduct as described in Findings of Fact 3 and 4 herein, constitutes gross negligence, in violation of s. A-E 8.03 (1), Wis. Adm. Code.

3. Respondent's conduct as described in Findings of Fact 3 and 4 herein, constitutes misconduct in the practice of land surveying, in violation of s. A-E 8.03 (3) (a), Wis. Adm. Code.

4. Respondent's conduct as described in Findings of Fact 11, 16 and 17 herein, constitutes misconduct in the practice of land surveying in violation of s. A-E 8.03 (3) (c), Wis. Adm. Code.

5. By failing to file an Answer to the Complaint and failing to appear at the hearing held in this matter, respondent is in default under s. RL 2.14 Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the certificate of registration of Paul N. Smith to practice land surveying (registration #1125) be, and hereby is, REVOKED.

EXPLANATION OF VARIANCE

The Land Surveyor Section has adopted the ALJ's Findings of Fact and Conclusions of Law in their entirety. The Section has not accepted the ALJ's recommended discipline, however, and has instead ordered that Mr. Smith's license be revoked.

The ALJ, in her Opinion, states:

> [B]ased upon the evidence presented, it can be concluded that Mr. Smith has not substantially complied with the Section's [March 27, 1992] Final Decision and Order. The suspension of his registration with an opportunity to petition for successive stays and an opportunity to return to full registration after two years should provide some additional incentive for Mr. Smith to comply with the Section's Order. Revocation is not being recommended at this time because Mr. Smith did to some extent comply with the Order.

The Section has shown extraordinary patience with Mr. Smith through a period of a number of years in which his compliance with the board's order has been sporadic and grudging at best. Moreover, the board's 1992 Order was not thrust upon Mr. Smith without his participation. That Order was based upon a Stipulation, by which the respondent, who was represented by legal counsel, agreed to the conditions upon his license which were ultimately adopted by the board. Respondent has thus had almost five years to conform his practice to the practice requirements he agreed to and which were ordered by the board, and he has consistently failed to do so. As stated by the ALJ in her Opinion, "the evidence establishes that on numerous occasions Mr. Smith failed to submit surveys and maps to Mr. Pritzlaff or to Mr. Van Horn for review prior to filing and recording the documents, as required by the Final Decision and Order." Mr. Van Horn, who was the second registered surveyor to have assumed responsibility for reviewing Mr. Smith's work, has testified that he has not even heard from Mr. Smith since February, 1995.

Had Mr. Smith answered the Complaint filed in this matter, and had he appeared for the hearing, it is possible that he could have provided testimony or other evidence in mitigation of his failure to comply with the previous board order. Instead, the section is left with no basis for believing that any future reinstatement of the limited license, imposing essentially the same conditions with which respondent has failed to comply over the past five years, will result in any greater compliance. Should Mr. Smith be able to demonstrate to the section at some future time that he is able to safely and competently re-enter the practice of land surveying, then under 443.11(6), he

may petition the Land Surveyor Section for reinstatement of his license. Until such time, however, he must be deprived of the privilege of practicing as a registered land surveyor.

Dated this 13TH day of February, 1997.

Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors

by _____

G. Robert Sheffers, RLS
Chairman, Land Surveyor Section

WRA:9702072.doc

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL GEOLOGISTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS, LAND SURVEYOR SECTION

In the Matter of the Disciplinary Proceedings Against

Paul N. Smith, R.L.S., AFFIDAVIT OF MAILING

Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On February 18, 1997, I served the Final Decision and Order dated February 13, 1997, LS9606071LSR, upon the Respondent Paul N. Smith, R.L.S. by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 201 377 319.

3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

Paul N. Smith, R.L.S.
HCR 1, Box 171
Athelstane WI 54104

Kate Rotenberg
Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 18th day of February, 1997.

John Schweitzer
Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review. The Times Allowed For Each. And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:
STATE OF WISCONSIN EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROF. GEOLOGISTS, PROF. ENGINEERS, DESIGNERS AND LAND SURVEYORS

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

February 18, 1997

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

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

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	NOTICE OF FILING PROPOSED DECISION LS9606071LSR
PAUL N. SMITH, RESPONDENT.	:	

TO: Paul N. Smith
HCR 1, Box 171
Athelstane, WI 54104
Certified P 213 340 394

Roger R. 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, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Land Surveyors Section, by the Administrative Law Judge, Ruby Jefferson-Moore. 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. If your objections or argument relate to evidence in the record, please cite the specific exhibit and page number in the record. Your objections and argument must be received at the office of the Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Land Surveyors Section, Room 290, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before January 21, 1997. 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, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Land Surveyors Section, 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, the Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 10th day of January, 1997.

Ruby Jefferson-Moore

Ruby Jefferson-Moore
Administrative Law Judge

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

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST

PROPOSED DECISION
Case No. LS-9606071-LSR

PAUL N. SMITH, R.L.S.,
RESPONDENT.

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Paul N. Smith, R.L.S.
HCR 1, Box 171
Athelstane, Wisconsin 54104

Examining Board of Architects, Landscape Architects,
Professional Geologists, Professional Engineers, Designers
and Land Surveyors, Land Surveyor Section
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708

This matter was commenced by the filing of a Notice of Hearing and Complaint on June 7, 1996. A hearing was held in the above-captioned matter on July 10, 1996. Atty. Roger R. Hall appeared on behalf of the Division of Enforcement. Mr. Smith did not file an Answer and did not appear at the hearing. The hearing transcript was filed on September 10, 1996.

Based upon the record herein, the Administrative Law Judge recommends that the Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Land Surveyor Section adopt as its final decision in this matter, the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Paul N. Smith, R.L.S., Respondent herein (d.o.b. 03/06/25), is duly registered to practice land surveying in the state of Wisconsin pursuant to certificate of registration #1125, which was first granted on October 19, 1973. Respondent's most recent address on file with the Department of Regulation and Licensing is HCR 1, Box 171, Athelstane, WI 54104.

2. The Wisconsin Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Land Surveyor Section, by a Final Decision and Order dated March 27, 1992, found that respondent had engaged in misconduct contrary to s. 443.12 (1), Stats. As a result, respondent's registration was suspended for 30 days and thereafter restored upon the following terms and conditions:

> (a) that he submit his land surveys and survey maps to Kim Pritzlaff, R.L.S or other R.L.S. approved by the Board for review and approval prior to filing or recording his survey maps.
>
> (b) that he submit a certification to the Land Surveyor Section annually stating that he has not practiced land surveying in a manner inconsistent with the foregoing, and that he report immediately to the Land Surveyor Section any suspected violations of the Order.

3. On or about July 18, 1992, respondent amended a land survey map of the NE 1/4 and SE 1/4 in the NW 1/4 and NE 1/4 of SW 1/4, at Sec 25 T34 N, R18E, Town of Silver Cliff, Marinette County, that he had prepared for Michael and Virginia Domark, which he filed with the Marinette County Surveyor's office on September 15, 1992.

4. On or about June 5, 1992, respondent completed a property survey and prepared a survey map for Ron Yonkoski, which respondent recorded certified survey map #748, document #509116. Respondent failed to file the survey map in the County Surveyor's Office in a timely manner, as required under s. 59.60 (2), Stats. On December 31, 1992, respondent recorded an amended certified survey map for Yonkoski, #777 Document No. 515019, in the Marinette County Register of Deeds' Office, which was filed in the County Surveyor's Office on January 18, 1993.

5. On or about July 31, 1992, respondent completed a land survey and prepared a land survey map for Leander Blahnik of part of W 1/2 SE 1/4 in Sec 25, T33 N, R15E Town of Townsend, Oconto County, Wisconsin. Respondent failed to file the survey map in the Oconto County Surveyor's Office, as required under s. 59.60 (2), Stats.

6. On or about January 29, 1993, respondent completed a land survey and prepared a land survey map for Christopher and Tami Goetz of the E 1/2 of lot 18 and all of lot 19, Blk 3 plat of Lakewood in Sec. 32, T33N, R16E, Town of Lakewood, Oconto County, WI. Respondent failed to file the survey map in the Oconto County Surveyor's Office, as required under s. 59.60 (2), Stats.

7. On or about September 10, 1992, respondent completed a property survey and prepared a land survey map for Norbert and Coralee Flynn, which respondent filed and recorded as certified survey map No. 1868 on or about October 26, 1992, in the Oconto County Zoning Office and the Oconto County Register of Deeds' Office, Document No. 403751.

8. On or about February 5, 1993, respondent completed a property survey and prepared a land survey map for Dennis Stockel, which respondent filed in the Oconto County Zoning Office on February 23, 1993, and recorded as Certified Survey Map No. 1902 on or about February 25, 1993, in the Oconto County Register of Deeds' Office, Document No. 406656.

9. On or about May 27, 1993, respondent completed a property survey and prepared a land survey map for Audrey Starr, which respondent filed in the Oconto County Zoning Office on August 26, 1993, and recorded as Certified Survey Map No. 1996 on or about August 30, 1993, in the Oconto County Register of Deeds' Office, Document No. 411705.

10. On or about July 19, 1993, respondent completed a property survey and prepared a land survey map for Don Bartels, which respondent filed in the Oconto County Zoning Office on July 27, 1993, and recorded as certified Survey Map No. 1981 on or about July 28, 1993, in the Oconto County Register of Deeds' Office, Document No. 410759.

11. Respondent did not submit the Domark or the Yonkoski land surveys and survey maps referred to in Findings of Fact 3 and 4 herein to Kim Pritzlaff or any other registered land surveyor appointed by the Land Surveyor Section for review and approval prior to filing and recording them in the public records, and did not report this violation to the Land Surveyor Section, as required under the Final Decision and Order dated March 27, 1992.

12. Respondent submitted the survey maps referred to in Findings of Fact 7-10 herein to Kim Pritzlaff for review and approval prior to filing and recording them in the public records.

13. On or about August 31, 1993, Kim Pritzlaff, R.L.S. informed the Land Surveyor Section that he would no longer review the land surveys and survey maps of respondent. On September 13, 1993, the Land Surveyor Section approved Leslie Van Horn, R.L.S., to review respondent's land surveys and survey maps prior to the filing or recording of his survey maps.

14. On or about December 10, 1993, respondent completed a property survey and prepared a land survey map for Henry Redinger, which respondent filed and recorded as Certified Survey Map No. 2069 on or about January 24, 1994, in the Oconto County Zoning Office and Register of Deeds' Office, Document No. 415925.

15. On or about September, 1994, respondent completed a property survey and prepared a land survey map for Fred Schelk.

16. Respondent did not submit the Redinger land survey and survey map referred to in Findings of Fact 14 herein to Leslie Van Horn, R.L.S., or any other registered land surveyor appointed by the Land Surveyor Section for review and approval prior to recording in the public record, and he did not report this violation to the Land Surveyor Section, as required under the Final Decision and Order dated March 27, 1992.

17. On September 2, 1993, and March 29, 1995, respondent submitted certifications to the Land Surveyor Section stating that he had not practiced land surveying in a manner inconsistent with the Final Decision and Order of the Land Surveyor Section, dated March 27, 1992.

18. Respondent did not file an Answer to the Complaint filed in this matter, and did not appear at the hearing held in this matter.

CONCLUSIONS OF LAW

1. The Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Land Surveyor Section has jurisdiction in this matter pursuant to s. 443.12 (1), Stats., and ch. A-E 8, Wis. Adm. Code.

2. Respondent's conduct as described in Findings of Fact 3 and 4 herein, constitutes gross negligence, in violation of s. A-E 8.03 (1), Wis. Adm. Code.

3. Respondent's conduct as described in Findings of Fact 3 and 4 herein, constitutes misconduct in the practice of land surveying, in violation of s. A-E 8.03 (3) (a), Wis. Adm. Code.

4. Respondent's conduct as described in Findings of Fact 11, 16 and 17 herein, constitutes misconduct in the practice of land surveying in violation of s. A-E 8.03 (3) (c), Wis. Adm. Code.

5. By failing to file an Answer to the Complaint and failing to appear at the hearing held in this matter, respondent is in default under s. RL 2.14 Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the certificate of registration of Paul N. Smith to practice land surveying (registration #1125) be, and hereby is, SUSPENDED for an INDEFINITE PERIOD of time.

IT IS FURTHER ORDERED that:

(1) **Petition for Stay**. Mr. Smith may petition the Section at any time for a stay of the suspension of his registration.

(2) **Section Action.** Upon its determination that Mr. Smith can safely and competently return to the practice of land surveying, the Section may stay the suspension for a period of three (3) months, conditioned upon compliance with the conditions and limitations set forth in paragraph (3).

(a) Respondent may apply for consecutive three (3) months extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed upon respondent's practice during the prior three (3) month period.

(b) Upon a showing by respondent of complete, successful and continuous compliance for a period of two (2) years with the terms of paragraph (3), below, the Section may grant a petition by respondent for return to full registration if it determines that respondent may safely and competently engage in practice as a land surveyor.

(3) **Conditions of Stay**

(a) Respondent shall submit all land surveys and survey maps to a registered land surveyor approved by the Section for review and approval prior to filing or recording.

(b) Respondent shall comply with the standards for property surveys set forth in Ch. A-E 7, Code, including but not limited to s. A-E 7.05 (7), which requires that survey maps be filed as required by s. 59.60 (2), Stats.

(c) Respondent shall submit a signed certification to the Land Surveyor Section annually stating that he has not practiced land surveying in a manner inconsistent with the conditions set forth in paragraphs (3) (a) and (b) above, and shall report immediately to the Section any violations of said conditions.

(d) Respondent shall, within six (6) months from the date of the initial Section Order granting stay of suspension, certify to the Section that he has completed twelve (12) approved credits in land surveying courses with a concentration on the legal principles of land surveying and the technical aspects of land surveying. Within 30 days of the date of the initial stay Order, respondent shall submit course outlines for approval by a Section designee, which shall include a synopsis of the course content, the name of the institution (s) providing the instruction and the name of the instructor(s).

(e) In conjunction with the Section's consideration of any petition for stay filed by respondent under this Order, respondent shall appear in person before the Section, at its discretion, to answer any questions the Section may have relating to respondent's practice as a land surveyor.

(4) **Petition for Modification of Terms**

Respondent may petition the Section in conjunction with any application for an additional stay to revise or eliminate any of the above conditions. Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. S. 227.01 (3) and 227.42.

IT IS FURTHER ORDERED that pursuant to s. 440.22, Stats., the cost of this proceeding shall be assessed against respondent, and shall be payable to the Department of Regulation and Licensing.

This order is effective on the date on which it is signed by a designee of the Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Land Surveyor Section.

OPINION

This matter was commenced by the filing of a Notice of Hearing and Complaint on June 7, 1996. A hearing was held in the above-captioned matter on July 10, 1996. Atty. Roger R. Hall appeared at the hearing on behalf of the Division of Enforcement. Mr. Smith did not file an Answer to the Complaint and did not appear at the hearing.

The Complainant alleges in paragraph 19 of its Complaint that Mr. Smith engaged in unprofessional conduct contrary to Wis. Stats., section 443.12 (1) (2), and Wis. Adm. Code s. A-E 8.03 (1) and (2) (a), (b) and (c); and (3) (a), (b) and (c) in violating the terms and conditions of the limitations on his license to practice land surveying imposed by the Final Decision and Order of the Land Surveyor Section, dated March 27, 1992.

Section A-E 8.03 (1), Code states, in part, that "gross negligence in the practice of ... land surveying" means the performance of professional services by a 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.

Section A-E 8.03 (2), Code states, in part, that incompetency in the practice of land surveying means conduct which demonstrates:

> (a) Lack of ability or fitness to discharge the duty owed by a 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.

Finally, s. A-E 8.03 (3), Code states, in part, that misconduct in the practice of land surveying means an act performed by a land surveyor in the course of the profession which jeopardizes the interest of the public including:

> (a) Violation of federal or state laws, local ordinances or administrative rules relating to the practice of ... land surveying;
>
> (b) Preparation of deficient plans, drawings, maps, specifications or reports;
>
> (c) Engaging in conduct which evidences a lack of untrustworthiness to transact the business required by the profession; ...

The evidence presented establishes that Mr. Smith engaged in conduct which constitutes gross negligence in the practice of land surveying, in violation of s. A-E 8.03 (1), Code and misconduct in the practice of land surveying, in violation of s. A-E 8.03 (3) (a) and (c), Code.

I. Violation of Terms And Conditions

The Final Decision and Order issued by the Land Surveyor Section on March 27, 1992, provided for the restoration of Mr. Smith's registration after the expiration of his suspension period subject to his compliance with the following terms and conditions:

> (1) That he submit his land surveys and survey maps to Kim Pritzlaff, R.L.S., or other R.L.S. approved by the Section, for review and approval prior to filing or recording.
>
> (2) That he submit a certification to the Section annually that he has not practiced land surveying in a manner inconsistent with the foregoing, and that he report any suspected violation of the Final Decision and Order.

(A) Review of Surveys and Maps

(1) Pritzlaff Review

At least from March, 1992 to August 31, 1993, Mr. Pritzlaff agreed to review and approve surveys and survey maps prepared by Mr. Smith. It is not clear from the evidence how many surveys Mr. Smith conducted or how many survey maps he filed and/or recorded during that time period.

Mr. Pritzlaff did not testify at the hearing; however, a summary of his meeting in October, 1993, with Investigator Jack Johnson is including in the record. *Transcript p. 30-35; Exhibit #19.*

The evidence establishes that of the 8 surveys referred to in the Complaint, Mr. Pritzlaff reviewed 4 survey maps submitted to him by Mr. Smith, which included surveys done for Norbert and Coralee Flynn (reviewed in October 1992); Dennis Stockel (reviewed in February 1993); Don Bartels (reviewed in July 1993), and Audrey Starr (reviewed in July 1993). In reference to the other 4 surveys referred to in the Complaint (Domark, Yonkoski, Blahnik and Goetz), there is no specific evidence in the record regarding whether Mr. Pritzlaff reviewed the Domark and Yonkoski surveys before they were filed. Since Mr. Smith did not file an Answer to the Complaint, allegations relating to the Domark and Yonkoski surveys are deemed admitted. *Transcript p. 33-34; Exhibits # 7-10; RL 2.09, Code.*

During the meeting with Mr. Johnson in October 1993, Mr. Pritzlaff told Investigator Johnson that he had not reviewed the Blahnik map as well as 3 additional maps prepared by Mr. Smith. The Blahnik map, which was prepared in July 1992, is marked as Exhibit #4 and is referred to in paragraph #8 of the Complaint. Mr. Smith did not file or record the Blahnik or the Goetz surveys with local governmental officials. [1]

(2) <u>Van Horn Review</u>

In August, 1993, Mr. Pritzlaff informed the Land Surveyor Section that he would no longer review the land surveys and survey maps of Mr. Smith. On September 13, 1993, the Section approved Leslie Van Horn, R.L.S., to review Mr. Smith's land surveys and maps.

At least from September 13, 1993 to February 15, 1995, Mr. Van Horn agreed to review and approve surveys and survey maps prepared by Mr. Smith. It is not clear from the evidence how many surveys Mr. Smith conducted or how many survey maps he filed and/or recorded during that time period. Mr. Van Horn testified that he did not know the exact number of surveys and maps which he reviewed, but estimated the number to be less than 10. Mr. Van Horn's letter to the Section, dated March 31, 1994, indicates that he received 2 surveys in December 1993, which he reviewed, and 10 surveys in January 1994, 3 of which he corresponded on. The Complaint contains only two references to surveys conducted during the time period which Mr. Van Horn served as reviewer (Redinger and Schelk surveys). Since Mr. Smith did not file an Answer to the Complaint, allegations in the Complaint relating to the Redinger survey are deemed admitted. The Schelk survey was not filed or recorded with governmental officials. *Complaint, par. 16-17; Transcript p. 17, lines 7-15 and p. 26, lines 18-24; Exhibits #12-13 and 18; RL 2.09, Code.*

Mr. Van Horn, a registered land surveyor, testified at the hearing at the request of the Division of Enforcement. He is the county surveyor for Brown County. He testified that in 1993, he contacted Mr. Smith and sat down in a face-to-face meeting with him, explaining to him the type of information that he would be looking for, which included the review of all the maps that he prepared as part of his normal business. He also indicated that he wanted to review the survey support documents necessary for the preparation of the survey, which included "all of the legal descriptions of the boundaries that he was attempting to retrace, his field notes of the measurements and the data that he was collecting in the field to assist him in the preparation of his final determinations and the calculations that he made in respect to the positioning of lines and the reduction of his measurement data". *Transcript, p. 6.*

The evidence reflects that Mr. Van Horn met with Mr. Smith in December, 1993, at which time Mr. Smith asked him to review 2 surveys that he had prepared for clients in Oconto County. Mr. Van Horn reviewed the 2 surveys. He indicated that he needed some changes made to reflect this review. Some time after Mr. Van Horn's review, Mr. Smith recorded his maps at the Courthouse without providing Mr. Van Horn with a revised copy of the survey. *Transcript p. 17; Exhibit #16.*

1. No consideration has been given to evidence relating to the Heart Lake map, Map 777 or the Maiden Lake Realty map because there are no allegations of violations in the Complaint relating to these surveys. The Heart Lake map and Map 77 are not part of the record. The Maiden Lake Realty map is marked as Ex. #6. See also, Ex. #19.

In January 1994, Mr. Van Horn met with Mr. Smith again at which time Mr. Smith requested that he review 10 different survey projects. Mr. Van Horn sent a letter to Mr. Smith identifying what he needed to complete the next map he had scheduled to review. As of March 31, 1994, Mr. Van Horn had not received any communication from Mr. Smith concerning his request for information. Mr. Van Horn indicated that because of the time it takes for his review and the lack of response to that review he would no longer be responsible to the Land Surveyor Section for Mr. Smith's work. He further asked that if the Section wanted Mr. Smith to continue surveying that someone else would have to review his work because he was not getting any cooperation from him. Mr. Van Horn indicated that the last contact he had with Mr. Smith was in February, 1995 when he requested additional survey data relating to the Eisner and Schumacher surveys. *Exhibits #15, 16 and 18.*

(B) <u>Certification Reports</u>

The Final Decision and Order, contained a requirement that Mr. Smith submit a certification to the Section annually stating that he has not practiced land surveying in a manner inconsistent with the survey and map review and approval process. Mr. Smith was also ordered to report any suspected violations of the Final Decision and Order to the Section.

On September 2, 1993 and March 29, 1995, Mr. Smith submitted certifications to the Land Surveyor Section stating that he had not practiced land surveying in a manner inconsistent with the Final Decision and Order. *Exhibits #11, 14.*

The evidence establishes that on numerous occasions Mr. Smith failed to submit surveys and maps to Mr. Pritzlaff or to Mr. Van Horn for review and approval prior to filing and recording the documents, as required by the Final Decision and Order. In addition, Mr. Smith did not report these violations to the Section.

II. <u>Violations of State Law</u>

The Complainant alleges in its Complaint, at paragraphs 7-9 and 19, that Mr. Smith failed to file the Yonkoski, Blahnik and Goetz survey maps in accordance with s. 59.60 (2), Wis. Stats., in violation of s. A-E 8.03 (1) and (3)(a), Code.

Section A-E 8.03 (1), Code states, in part, that "gross negligence in the practice of ... land surveying" means the performance of professional services by a 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.

Section A-E 8.03 (3) (a), Code states, in part, that misconduct in the practice of land surveying means an act performed by a land surveyor in the course of the profession which jeopardizes the interest of the public including:

> (a) Violation of federal or state laws, local ordinances or administrative rules relating to the practice of ... land surveying;

Section 59.60 (2), Wis. Stats., states, in part, that surveys for individuals or corporations may be performed by any land surveyor who is employed by the parties requiring the services, providing 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.

The evidence presented establishes that Mr. Smith did not file a copy of the Yonkoski, Blahnik or the Goetz survey in accordance with s. 59.60 (2), Wis. Stats., in violation of s. A-E 8.03 (1) and (3)(a), Code. See also, s. A-E 7.05 (7), Code. *Transcript p. 26; RL 2.09, Code.*

Having found that Mr. Smith violated statutes and rules relating to the practice of land surveying, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Land Surveyor Section is authorized under s. 443.12 (1), Stats., to reprimand a land surveyor or limit, suspend or revoke the certificate of registration of a land surveyor for gross negligence, incompetence or misconduct.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. McIntyre, 41 Wis. 2d 481 (1969).

The Administrative Law Judge recommends that Mr. Smith's certificate of registration to practice as a land surveyor be suspended for an indefinite period of time and that he be permitted to petition for 3 month stays of the suspension subject to compliance with certain conditions. This measure is designed primarily to assure protection of the public and to deter other registrants from engaging in similar misconduct.

The Section issued a Final Decision and Order in March 1992, requiring Mr. Smith to submit his surveys and survey maps to Mr. Pritzlaff for review and approval prior to filing or recording. It is not clear from the evidence how many surveys Mr. Smith conducted or how many survey maps he filed and/or recorded during the time period Mr. Pritzlaff had agreed to review his work. The Complaint contains references to 8 surveys which were conducted during that time period. Of the 8 surveys conducted, Mr. Pritzlaff reviewed four survey maps (Flynn, Stockel, Bartels and Starr). In August 1993, Mr. Pritzlaff informed the Section that he would no longer review the land surveys and survey maps of Mr. Smith. There is no explanation in the record as to why Mr. Pritzlaff declined to continue with the reviews.

In September 1993, the Section appointed Mr. Van Horn to review and approve Mr. Smith's work. Again, it is not clear from the evidence how many surveys Mr. Smith conducted or how may survey maps he filed/recorded during the time period Mr. Van Horn served as reviewer. Mr. Van Horn testified that he did not know exactly how many surveys he reviewed for Mr. Smith, but estimated the number to be less than 10. The allegations contained in the Complaint refer only to 2 surveys conducted during that time period (Redinger and Schelk surveys). Mr. Van Horn testified that he had not reviewed the Redinger and Schelk surveys. The Schelk survey was not filed or recorded with governmental officials. Mr. Van Horn informed the Section in March, 1994, that if it wanted Mr. Smith to continue surveying someone else would have to review his work because he was not getting any cooperation from him.

Based upon a review of the evidence, it can be concluded that the record contains a reference to at least 26 surveys conducted by Mr. Smith between March 27, 1992 and July 13, 1995, (the date of Mr. Pritzlaff's appointment and the date of Mr. Van Horn's correspondence to Investigator Johnson regarding the Jack Flynn survey). The 26 surveys referenced include: [2]

Complaint and related Exhibits: (10)

1. Domark
2. Yonkoski
3. Blahnik*
4. Goetz
5. Norbert and Coralee Flynn*
6. Stockel*
7. Starr*
8. Bartels*
9. Redinger
10. Schelk

Exhibits #16 and 18: (12) (including Eisner and Schumacher)

Exhibit #17: (1) (Jack Flynn)

Exhibit #19: (3) (not including surveys noted above*)

1. Heart Lake map
2. Map 777
3. Maiden Lake Realty map

2. No consideration has been given to evidence relating to the Heart Lake map, Map 777, Maiden Lake Realty map or the Jack Flynn survey because there are no allegations of violations in the Complaint relating to these surveys. The Heart Lake map and Map 77 are not part of the record. The Maiden Lake Realty map is marked as Ex. #6. The Flynn survey is part of Exhibit #17. See also, Exhibit #19.

Of the 26 surveys referenced in the record, only 7 survey maps were filed and/or recorded with governmental officials (Domark; Yonkoski; Norbert and Coralee Flynn; Stockel; Starr; Bartels and Redinger). Of the 7 survey maps filed and/or recorded, 6 were prepared during Pritzlaff's review period and 1 (Redinger) was prepared during Van Horn's review period. Pritzlaff reviewed 4 of the 6 surveys (Flynn, Stockel, Starr and Bartels). Van Horn did not review the Redinger survey. The bottom line is that 3 of the 7 survey maps which were filed and/or recorded were not submitted to Mr. Pritzlaff and/or Mr. Van Horn for review and approval prior to filing and recording, as required by the Final Decision and Order.

In addition to failing to submit the 3 surveys/survey maps for review and approval, Mr. Smith also failed to provide the follow-up information requested by Mr. Van Horn. Finally, Mr. Smith failed to file and record the Yonkoski, Blahnik and Goetz surveys in accordance with s. 59.60 (2), Stats., and he misrepresented in his certification filed with the Section that he had practiced land surveying in accordance with the conditions and terms set forth in the Final Decision and Order. Therefore, based upon the evidence presented, it can be concluded that Mr. Smith has not substantially complied with the Section's Final Decision and Order. The suspension of his registration with an opportunity to petition for successive stays and an opportunity to return to full registration after two years should provide some additional incentive for Mr. Smith to comply with the Section's Order. Revocation is not being recommended at this time because Mr. Smith did to some extent comply with the Order.

Based upon the record herein, the Administrative Law Judge recommends that the Examining Board of Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors, Land Surveyor Section adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 10th day of January, 1997.

Respectfully submitted,

Ruby Jefferson-Moore

Ruby Jefferson-Moore
Administrative Law Judge