

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY 72

November 16, 1972

Mr. James F. Biagi  
256 W. Rockwell St.  
Elkhorn, WI 53121

Dear Mr. Biagi:

As a result of the judgment entered in Dane County Circuit Court on November 7, 1972 in the case of Biagi v. State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors #136-037, your certificate of registration as a land surveyor will be suspended until November 6, 1973.

Would you please return your renewal card to the Examining Board.

Sincerely,

William Dusso  
Board Counsel

WD/jcr

OCT 12 1977

FILED IN  
BIAGI  
DANE COUNTY

STATE OF WISCONSIN

CIRCUIT COURT

JAMES F. BIAGI,

Petitioner,

vs.

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

Respondent.

#136-037

MEMORANDUM DECISION

This is a petition for review under the provisions of Chapter 227, Stats., of an order of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, dated March 8, 1972, suspending petitioner's certificate of registration for one year.

Proceedings to revoke the registration of petitioner, James F. Biagi, were initiated on a motion by the Land Surveyor's Section of the Examining Board, pursuant to the Wisconsin Administrative Code sec. A-E 3.02(2) implementing sec. 443.02(8) (b), Stats., and a hearing was held on February 18, 1972. The complaint of the respondent alleged--and the petitioner admitted--that petitioner signed, sealed and recorded three certified survey maps for a tract of land in the Town of LaGrange, Walworth County, Wisconsin, which created eleven (11) parcels of land less than 1-1/2 acres in size. The Board concluded that this created a subdivision of land contrary to the provisions of Chapter 236, Stats., and was misconduct on the petitioner's part. In addition, the Board found as a fact that the survey maps themselves were deficient in that they contained technical error, thus failing to conform to the requirements of sec. 236.34, Stats. And this, the Board concluded, constituted negligence, though not gross negligence, on petitioner's part. These findings and conclusions led the Board to order the suspension, pursuant to sec. 443.02 (8) (a), Stats., from which action this petition for review was instituted.

Although the petitioner enumerates all the statutory grounds for review under sec. 227.20(1), Stats., his appeal to this court really focuses on only two: (1) that the entire record as submitted does not present substantial evidence to support the Board's conclusion that petitioner's actions constituted misconduct; (2) that the admission into evidence at the hearing of a letter from Mr. Lloyd Jensen to the Department of Local Affairs and Development [Complainant's

Exhibit F (Tr. p. 29)] which contributed to initiation of the Board's inquiry into petitioner's actions, without the actual appearance of Mr. Jensen, amounted to a denial of petitioner's constitutional right to subpoena, confront and cross-examine his accuser. See sec. 227.20(1)(c), Stats.

In the court's opinion, petitioner's first contention is without merit. A tract of land divided into eleven parcels of less than 1-1/2 acres in size is a subdivision by definition in sec. 236.02 (8)(a), Stats., and, therefore, the recording by petitioner of the tract was, in effect, the recording of the plat of a subdivision without approval as required by sec. 236.10, Stats. Petitioner's course of action thereby violated sec. 236.03(1), Stats., which provides:

"Any division of land which results in a subdivision as defined in s. 236.02(8)(a) shall be . . . surveyed and a plat thereof approved and recorded as required by this chapter." (Emphasis added.)

Misconduct includes in its core meaning the notions of unlawful conduct as heretofore described and the failure to follow an established and definite rule of action as set forth in the Wisconsin Administrative Code sec. A-E 4.06. See, e.g., Hatfield v. New Mexico State Bd. of Registration for Professional Engineers and Land Surveyors (1956), 60 N.M. 252, 290 P. 2d 1077, 1080. Since, by petitioner's own admission, he did in fact record what was in legal effect a subdivision plat lacking the necessary approval, the Board's decision that there was a serious violation of Chapter 236, rising to the level of misconduct in the profession of land surveying, was warranted.

Petitioner challenged the Board's finding as to his credibility and argues, in effect, that speculation by the Board as to petitioner's true motives for subdividing the tract are what motivated the Board to act. However:

"The courts will not inquire into motives which impel action by the administrative agency, for that does not affect the legality or validity of the action except where it involves fraud, malice, or intentional wrongdoing." 2 Am. Jur. 2d, Administrative Law, sec. 677, p. 559, citing Louisville & Jefferson County Metropolitan Sewer Dist. v. Joseph E. Seagram & Sons, 307 Ky. 418, 211 S.W. 2d 122, 125, and Wiley v. Oklahoma Natural Gas Company, 429 P. 2d 957, 958 (Okla., 1967).

The court is satisfied that the Board's finding that petitioner was not a credible witness is substantiated by the record. In any case,

it is for the administrative body to pass on the credibility of witnesses appearing before it, and not for the reviewing court. 73 C.J.S., Public Administrative Bodies and Procedure, sec. 270, p. 631.

As to petitioner's second contention, the Jensen letter was not used by respondent as evidence of Biagi's misconduct. The letter, apparently, was introduced by respondent's counsel at the request of petitioner's counsel for the purpose of clarifying another letter dated March 2, 1971, from Robert J. Chittenden to Lloyd L. Jensen and marked Respondent's Exhibit A (Tr. pp. 28-29). While it may have been Jensen's letter which initiated the investigation by the Board of the three certified survey maps, Jensen was not the complainant, i.e., the accuser in the action. Moreover, the petitioner could have subpoenaed Mr. Jensen had he so chosen. Sec. 15.08(5), Stats. Finally, it is unnecessary for the court to rely on the verity of Jensen's letter to conclude that there is substantial evidence to support the Board's conclusions.

Accordingly, the order of the Board is affirmed, and counsel for respondent may prepare an appropriate judgment for the court's signature.

Dated: October 11, 1972.

BY THE COURT:

/s/ William C. Sachtjen  
William C. Sachtjen, Judge

cc Attys. Lehman, Samuelson, Dusso

STATE OF WISCONSIN

BEFORE THE EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS,  
DESIGNERS, AND LAND SURVEYORS (LAND SURVEYORS' SECTION)

IN THE MATTER OF THE REVOCATION OF  
THE CERTIFICATE OF REGISTRATION AS A  
LAND SURVEYOR OF JAMES F. BIAGI,  
RESPONDENT (S-272)

NOTICE OF HEARING

Professional Engineer, State of Wisconsin, No. 17,000 of 1971

TO: James F. Biagi, its Secretary, and against the Respondent,  
256 W. Rockwell St.  
Elkhorn, Wisconsin

PLEASE TAKE NOTICE, That a hearing will be held on the 18th day of  
February, 1972, at 110 North Henry Street, Madison, Wisconsin, at 10:00  
o'clock in the forenoon, or as soon thereafter as the matter can be heard,  
on the question of whether the certificate of registration as a Land  
Surveyor in the State of Wisconsin, heretofore issued to the above named  
respondent, pursuant to Section 443.01, Wis. Stats., should be revoked  
by the Examining Board of Architects, Professional Engineers, Designers,  
and Land Surveyors (Land Surveyors' Section). The issues involved and  
the charges then and there to be considered are set forth in the attached  
Complaint, to which you are required to make answer in writing at least  
fifteen (15) days before the date set for said hearing.

Dated at Madison, Wisconsin, this 17th day of January, 1972.  
Maps in the office of the Register of Deeds for Walworth County, Wisconsin, and

EXAMINING BOARD OF ARCHITECTS,  
PROFESSIONAL ENGINEERS, DESIGNERS  
AND LAND SURVEYORS  
(LAND SURVEYORS' SECTION)

By



C.F. Hurc, Secretary

Complaint's Attorney:

Sherwood K. Zink  
110 N. Henry St.  
Madison, WI 53703

## DESIGNERS, AND LAND SURVEYORS (LAND SURVEYORS' SECTION)

## COMPLAINT

The Land Surveyors' Section of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, an agency of the State of Wisconsin, by C.F. Hurc, its Secretary, complains against the respondent, James F. Blagi, and alleges:

2. That C.F. Hurc is the Secretary of the Examining Board of Architects, Professional Engineers, Designers, and Land Surveyors, and has been directed by the Land Surveyors' Section of said Board to institute these proceedings to revoke the registration as a Land Surveyor of said James F. Biagi, under the provisions of Section 443.02 (8), Wis. Stats.

4. That said maps contain the certificate, stamp and signature of the respondent James F. Biagi.

Qd. 15. That said certified survey maps create eleven (11) parcels of land of less than 1 1/2 acres in size, contrary to the requirements of Section 236.03, Wis. Stats. *Q. 1967*

BEFORE THE EXAMINING BOARD OF ARCHITECTS' REGISTRATION ENGINEERS'

7. That the preparation of certified survey maps which create eleven (11) parcels of land of less than 1 1/2 acres without conforming to the requirements of Chapter 236, Wis. Stats., constitutes gross negligence, incompetence and misconduct in the practice of land surveying pursuant to Section 443.02 (8), Wis. Stats. *WITNESSETH* *and an atty* *vid*

vid 4.06

By C. F. Hurc  
C. F. Hurc, Secretary

100

10m + North,  
 period of 18 m.  
 12, 13; 14;  
 15, 16, 17, 18;  
 19, 20, 21, 22;  
 of 18 m. or less; thence  
 to take the 1st northerly  
 line of "S.S." "12";  
 "S.S." "12", -21.4 ft.

-2-



compliance with the provisions of Section 538.34, R.S. 2492, in that

it is that said survey maps, identified herein as exhibits A, B and C, are

WALWORTH COUNTY ) ss

I, William O. Ketchpaw, Register of Deeds of said County do hereby certify that the copy hereunto annexed has been compared by me with the original Certified Survey as recorded in Certified Surveys Vol 1 Page 45 of Walworth County Records.

now on record in my office and required by law to be in my custody and in my office, and that said copy is a true copy of said record and the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Walworth County Register of Deeds at the City of Elkhorn, in said County, this 28 day of December A.D. 1971.

William O. Ketchpaw  
WILLIAM O. KETCHPAW  
Register of Deeds *by LT*

CERTIFIED SURVEY NO. 113

LAUDERDALE COUNTRY CLUB

REGISTER'S OFFICE ) S  
Walworth Co., Wis. ) S  
for record this 24th  
of February, 1971 at 10:57  
AM and recorded in Vol.  
1 of C. 3. on page 45  
Ketchum, Register of Deeds,

Deputy

EAST 1/4 CORNER  
SEC. 36, T2N, R.16E

S 88° 34' W

2668.58'

SOUTH  
1418.67'

PLACE OF BEGINNING

WEST 254.84'  
254.84'

PUBLIC ACCESS 60.00' WIDE  
S 20° 35' W 254.5'  
203.48'

110° 35'

135° 03'

31° 2'

31° 2'

31° 2'

31° 2'

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31° 2'

31° 2'

SCALE 1" = 100'

LEGEND

- O = IRON PIPE  
2" x 30", 3.65#/FT
- = IRON PIPE  
1" x 30", 1.13#/FT

DON JEAN BAY

LAUDERDALE LAKE

OUTLOT "A"  
STRAWBERRY BANKE

PLAT OF SURVEY OF

A parcel of land located in the SW $\frac{1}{4}$  of Section 36, Town 4 North, Range 16 East, Walworth County, Wisconsin, and described as follows, to-wit: Commencing at the East  $\frac{1}{4}$  corner of said Section 36; thence S 88° 34' W, 2668.58 feet; thence South, 1418.67 feet; thence West, 33.00 feet to the place of beginning; thence West, 254.84 feet; thence S 20° 35' W, 254.5 feet to the shore of Lauderdale Lake; thence Southeasterly along said shore of Lauderdale Lake 200 feet more or less; thence S 53° 06' E, 290.00 feet to the west line of U.S.H. "12"; thence N 01° 31' E along said west line of U.S.H. "12", 571.71 feet to the place of beginning.

State of Wisconsin )  
County of Walworth ) SS

I, James F. Biagi, surveyor, do hereby certify that I have surveyed the lands hereon described according to the official records, and that the plat hereon is a correct representation of all lot lines and fully complies with Chapter 236.34 of the Wisconsin Statutes of 1967.

James F. Biagi R.L.S. 272

February 20, 1971

OWNER: JAMES F. BIAGI  
BARBARA A. BIAGI



WALWORTH COUNTY )

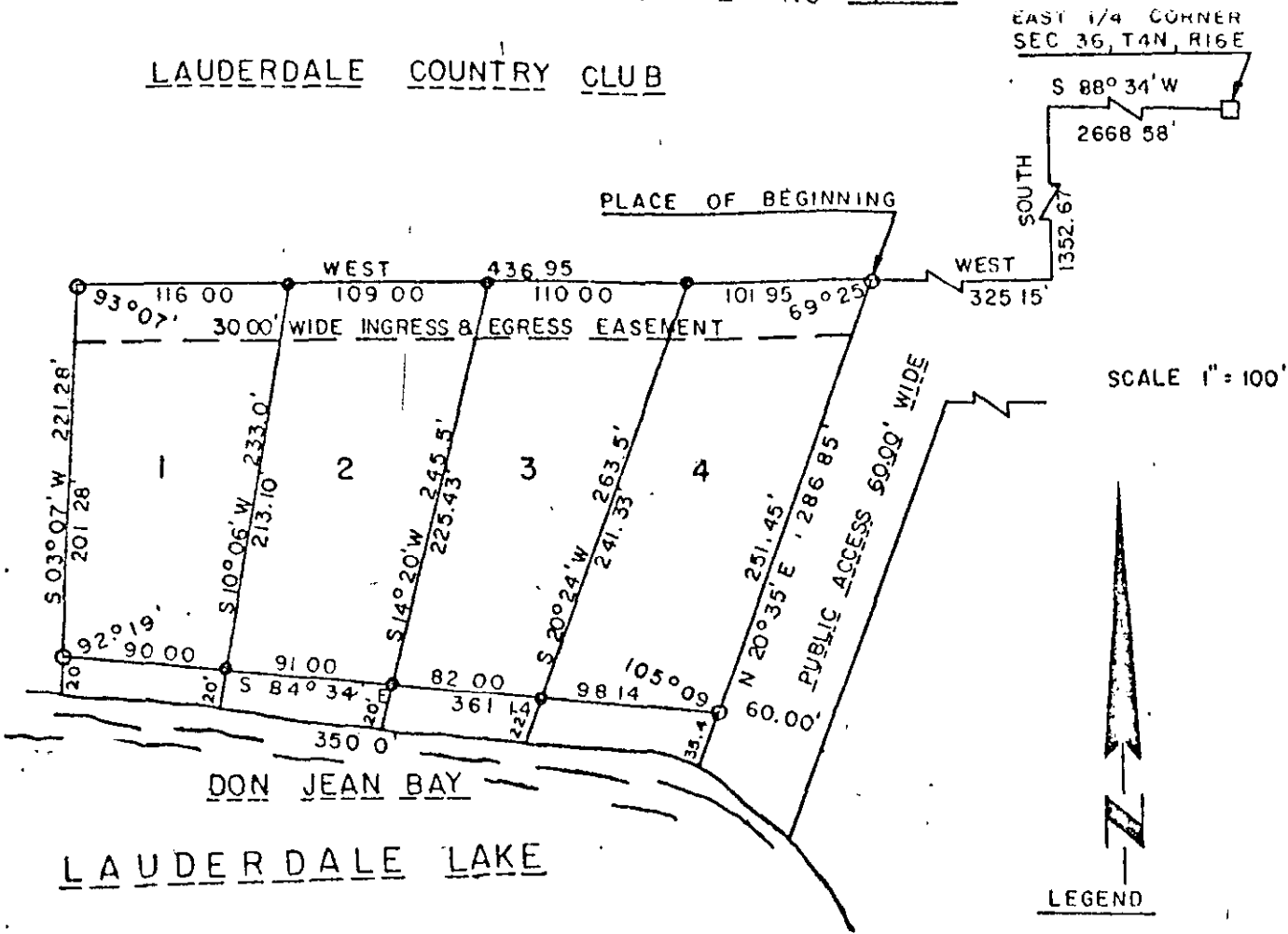
I, William O. Ketchpaw, Register of Deeds of said County do hereby certify that the copy hereunto annexed has been compared by me with the original Certified Survey as recorded in Certified Surveys  
Vol 1 Page 46 of Walworth County Records.

now on record in my office and required by law to be in my custody and in my office, and that said copy is a true copy of said record and the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Walworth County Register of Deeds at the City of Elkhorn, in said County, this 28 day of December A.D. 19 71.

William O. Ketchpaw  
WILLIAM O. KETCHPAW  
Register of Deeds *W. O. K.*

LAUDERDALE COUNTRY CLUB



PLAT OF SURVEY OF

A parcel of land located in the SW $\frac{1}{4}$  of Section 36, Town 4 North, Range 16 East, Walworth County, Wisconsin, and described as follows, to-wit: Commencing at the East  $\frac{1}{4}$  corner of said Section 36; thence S 88° 34' W, 2668.58 feet; thence South, 1352.67 feet; thence West, 325.15 feet to the place of beginning; thence West, 436.95 feet; thence S 03° 07' W, 221.28 feet more or less to the shore of Lauderdale Lake; thence Easterly along said shore of Lauderdale Lake, 350 feet more or less; thence N 20° 35' E, 286.85 feet to the place of beginning.

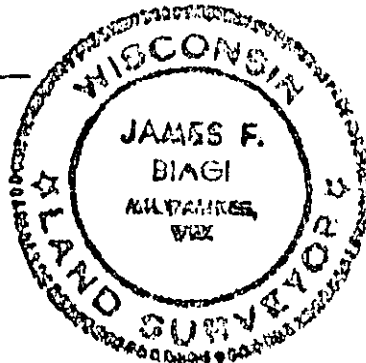
State of Wisconsin }  
County of Walworth } SS

I, James F. Biagi, surveyor, do hereby certify that I have surveyed the lands hereon described according to the official records, and that the plat hereon is a correct representation of all lot lines and fully complies with Chapter 236.34 of the Wisconsin Statutes of 1967.

James F. Biagi R.L.S. 272

February 20, 1971

OWNER: JAMES F & BARBARA A.  
BIAGI



REGISTER'S OFFICE ) S  
Walworth Co., Wis. ) S

for record this 24th  
day of February 1971 at 10:57  
o'clock A.M., and Recorded in Vol  
1 of C. S. on page 46  
Valerie L. Fiedlow, Register of Deeds,

J Biagi Deputy 1.504

WALWORTH COUNTY )

I, William O. Ketchpaw, Register of Deeds of said County do hereby certify that the copy hereunto annexed has been compared by me with the original Certified Survey as recorded in Certified Surveys Vol. 1 Page 47 of Walworth County Records.

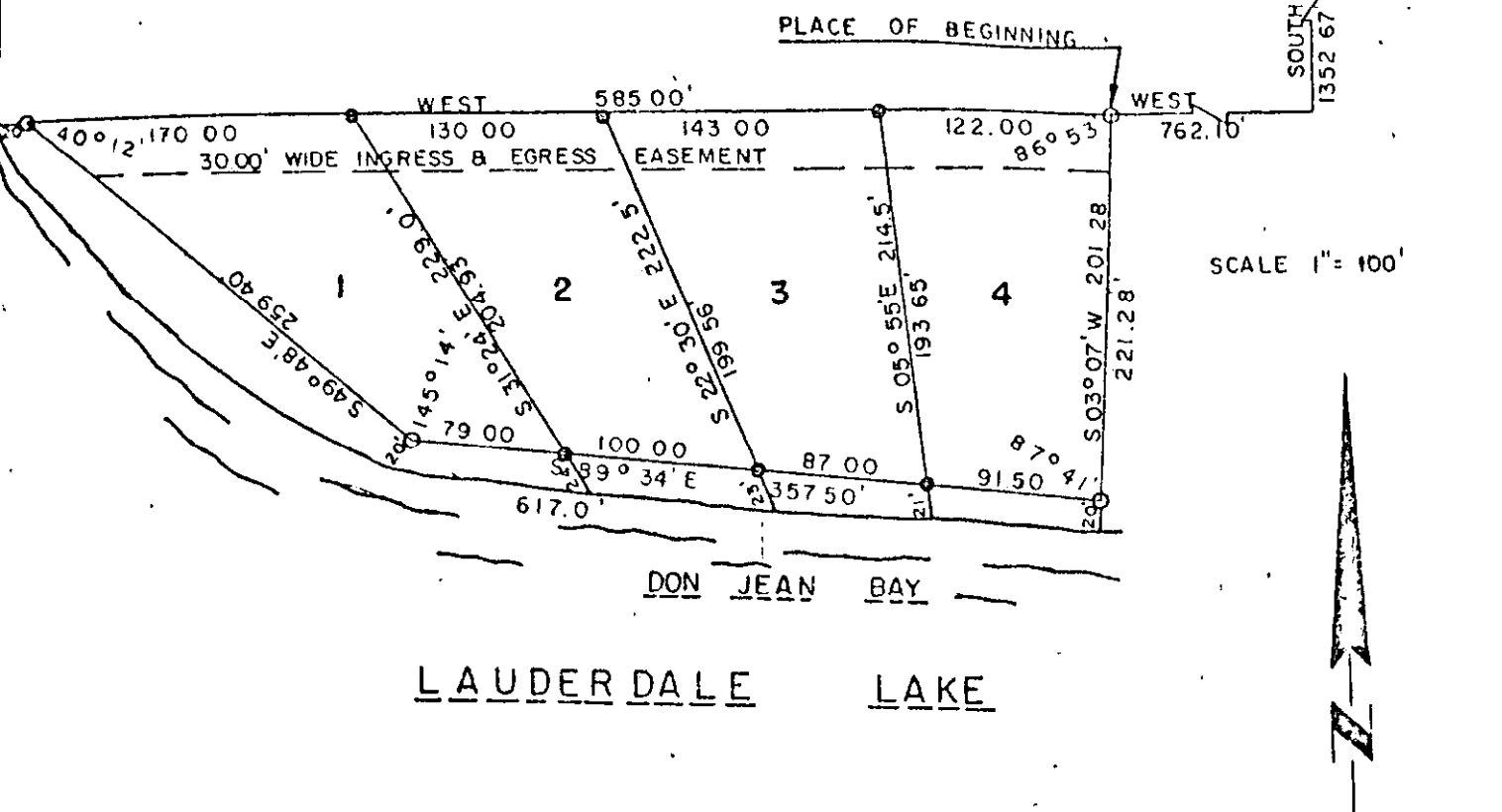
now on record in my office and required by law to be in my custody and in my office, and that said copy is a true copy of said record and the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Walworth County Register of Deeds at the City of Elkhorn, in said County, this 28 day of December A.D. 19 71.

William O. Ketchpaw  
WILLIAM O. KETCHPAW  
Register of Deeds *W O K*

CERTIFIED SURVEY NO. 47

LAUDERDALE COUNTRY CLUB



PLAT OF SURVEY OF

A parcel of land located in the S $\frac{1}{4}$  of Section 36, Town 4 North, Range 16 East, Walworth County, Wisconsin, and described as follows, to-wit: Commencing at the East  $\frac{1}{4}$  corner of said Section 36; thence S 88°34' W, 2668.58 feet; thence South, 1352.67 feet; thence West, 762.10 feet to the place of beginning; thence West, 565.00 feet; thence continue West, 20.00 feet more or less to the shore of Lauderdale lake; thence Easterly along said shore of Lauderdale Lake, 617 feet more or less; thence N. 03°07' E, 221.28 feet to the place of beginning.

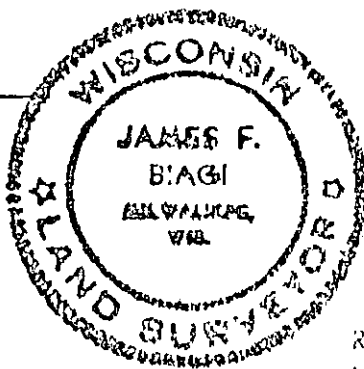
State of Wisconsin }  
County of Walworth } SS

I, James F. Biagi, surveyor, do hereby certify that I have surveyed lands hereon described according to the official records, and that the plat hereon is a correct representation of all lot lines and fully complies with Chapter 236.34 of the Wisconsin Statutes of 1967.

James F. Biagi R.L.S. 272

February 20, 1971

OWNER: JAMES F. & BARBARA A. BIAGI



REGISTER'S OFFICE | S  
Walworth Co, Wis. | S  
received for record this 24<sup>th</sup>  
day of February, 19 71 A.D. at 6:57  
o'clock AM, and Recorded in Vol.  
1 of C.S. on page 47  
William J. Ketchpaw, Register of Deeds,

J. Biagi Deputy / SCA

STATE OF WISCONSIN

BEFORE THE EXAMINING BOARD OF ARCHITECTS, PROFESSIONAL ENGINEERS,  
DESIGNERS, AND LAND SURVEYORS (LAND SURVEYORS' SECTION)

-----  
IN THE MATTER OF THE REVOCATION OF  
THE CERTIFICATE OF REGISTRATION AS  
A LAND SURVEYOR OF JAMES F. BIAGI,  
RESPONDENT (S-272)

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER  
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This action coming on to be heard before the Land Surveyors' Section of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors on the 18th day of February, 1972, pursuant to notice duly given, and on complaint of said Board, and the complainant having appeared by Sherwood K. Zink, Attorney for said Board, and respondent, James F. Biagi, having appeared in person, and by his Attorneys Lehman and Seymour, by Robert F. Lehman, and the Land Surveyors' Section of the Board having heard the evidence, and being advised in the premises, makes the following:

FINDINGS OF FACT

1. That James F. Biagi, of 256 W. Rockwell Street, Elkhorn, Wisconsin, is duly registered under the provisions of Section 443.02, Wis. Stats., as a Land Surveyor, certificate number S-272.
2. That C.F. Hurc is the Secretary of the Examining Board of Architects, Professional Engineers, Designers, and Land Surveyors, and was directed by the Land Surveyors' Section of said Board to institute these proceedings to revoke the registration as a Land Surveyor of said James F. Biagi, under the provisions of Section 443.02 (8), Wis. Stats.
3. That the respondent, James F. Biagi, prepared three (3) certified survey maps for a tract of land located in the SW 1/4 of Section 36, T4N, R16E, Town of LaGrange, Walworth County, Wisconsin, said survey maps being recorded on pages 45, 46 and 47 of Volume 1 of Certified Survey Maps in the office of the Register of Deeds for Walworth County, Wisconsin.

4. That said maps contained the certificate, stamp and signature of the respondent James F. Biagi.

5. That said certified survey maps represented a division of the aforesaid tract into eleven (11) parcels of land of less than 1 1/2 acres in size, which constituted a subdivision of land contrary to the requirements of Chapter 236, Wis. Stats.

6. That said survey maps, were deficient in that they contained error and failed to conform to the requirements of Section 236.34, Wis. Stats.

7. That, regarding his understanding of the requirements of Chapter 236, Stats., upon the testimony, evidence, and demeanor, the respondent was not a credible witness.

#### CONCLUSIONS OF LAW

1. That the preparation of certified survey maps which created a subdivision of land contrary to the requirements of Chapter 236, Wis. Stats., constituted misconduct in the practice of land surveying on the part of said James F. Biagi.

2. That the preparation of certified survey maps which are deficient constituted negligence, but not gross negligence, in the practice of Land Surveying on the part of the respondent.

3. That it is in the public interest to suspend the certificate of registration as a Land Surveyor of the respondent, James F. Biagi, for a period of one (1) year, for misconduct in the practice of land surveying.

#### ORDER

NOW THEREFORE, IT IS ORDERED, that the certificate of registration, number S-272, of the respondent, James F. Biagi, as a Land Surveyor, be, and the same hereby is, suspended for one year, said suspension to take effect thirty (30) days from the date of service of this Order.



IT IS FURTHER ORDERED, that a copy of these Findings of Fact,  
Conclusions of Law, and Order be served upon the respondent's attorneys,  
Lehman and Seymour, by certified mail.

Dated this 8th day of March, 1972.

EXAMINING BOARD OF ARCHITECTS,  
PROFESSIONAL ENGINEERS, DESIGNERS,  
AND LAND SURVEYORS  
(LAND SURVEYORS' SECTION)

By C.F. Hurc  
C.F. Hurc, Secretary