

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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Filed
12-9-75

STATE OF WISCONSIN

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

78

IN THE MATTER OF THE LAND SURVEYORS'
LICENSE OF ANTHONY B. KIEDROWSKI,
RESPONDENT (S-878)

COMPLAINT

75-12-11

The State of Wisconsin, Department of Local Affairs and Development, by George A. James, complains against the respondent, Anthony B. Kiedrowski, and alleges:

1. That George A. James is the head of the planning function of the Department of Local Affairs and Development, an agency of the State of Wisconsin, and complains for the Department in his capacity as head of the planning function;
2. That the post office address of the Department of Local Affairs and Development is 123 West Washington Avenue, Madison, Wisconsin;
3. On information and belief that respondent, Anthony B. Kiedrowski, who resides at Route 2, Wisconsin Rapids, Wisconsin, is, and was at all times hereinafter mentioned, duly registered by the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors under the provisions of Wis. Stat. s. 443.02 as a land surveyor, Certificate No. S-878;
4. On information and belief, that prior to March 20, 1975, respondent prepared or supervised the preparation of a land subdivision plat entitled "Manhattan Woods" depicting a subdivision of land described as "Part of the Southeast Quarter of the Northwest Quarter and all of the Southwest Quarter of the Northeast Quarter, Section 26, Town 21 North, Range 6 East, Town of Saratoga, Wood County, Wisconsin," and referred to hereinafter as "Manhattan Woods plat;"
5. On information and belief, that respondent submitted to the head of the planning function of the Department of Local Affairs and Development a request for land subdivision plat review, pursuant to Wis. Adm. Code s. LAD 1.01, that said request for land subdivision plat review was dated

March 20, 1975, and was received by the Department of Local Affairs and Development on March 21, 1975 and that a copy of said request for said land subdivision plat review is annexed hereto, marked Exhibit A, and made part of this complaint;

6. On information and belief that respondent submitted with said request for land subdivision plat review a final original of the Manhattan Woods plat and that said plat was signed and sealed by respondent and dated March 5, 1975, and that a copy of said plat is annexed hereto, marked Exhibit B, and made part of this complaint;

7. That the Manhattan Woods plat was certified as non-objectionable by the Department of Local Affairs and Development on April 10, 1975;

8. On information and belief, that the Manhattan Woods plat was recorded in the Office of the Register of Deeds for Wood County on June 6, 1975 as Document Number 541158 in Volume 11, at p. 158 of Plats;

9. On information and belief that at the time of recording the Manhattan Woods plat respondent had not placed monuments in the field in accordance with the description of the location of monuments shown on the Manhattan Woods plat;

10. On information and belief that on December 3, 1975 respondent had not placed monuments in the field at more than 100 points within the Manhattan Woods subdivision and shown as monumented by the Manhattan Woods plat;

11. On information and belief that the placing of monuments in the field in the Manhattan Woods subdivision has not been waived by any governing body;

12. That in submitting the Manhattan Woods plat to the Department of Local Affairs and Development for review and in recording said plat with the Office of the Register of Deeds for Wood County, Wisconsin prior to placing monuments in the field in accordance with said plat, respondent failed to meet the platting requirements of Wis. Stat. ss. 236.15 and 236.20;

✓ 13. That the preparation, submittal and recording of a land subdivision plat by a registered land surveyor without meeting the platting requirements of Wis. Stat. s. 236.15 and 236.20 constitutes misconduct in the practice of land surveying;

✓ 14. That the preparation, submittal and recording of a land subdivision plat by a registered land surveyor without placing monuments at more than 100 points required to be monumented constitutes gross negligence in the practice of land surveying

SECOND CAUSE FOR DISCIPLINARY ACTION

15. For a separate, distinct and additional cause for disciplinary action against said respondent the complainant hereby repeats and incorporates herein, as if fully set forth, all of the allegations contained in paragraphs 1 through 8, above, and further alleges;

16. That respondent represented on sheet 2 of the Manhattan Woods plat that he was the owner of the land described on the Manhattan Woods plat;

17. On information and belief, that respondent had by deed transferred title to the property described as Lot 1 on the Manhattan Woods plat prior to March 5, 1975;

✓ 18. That in failing to identify all persons holding an interest in Lot 1 of the Manhattan Woods plat and representing that he was the owner of Lot 1 respondent violated provisions of Wis. Stat. s. 236.21 which constitutes misconduct and gross negligence in the practice of land surveying;

WHEREFORE, complainant demands that the Land Surveyors' Section of the Examining Board hear evidence relevant to matters recited herein and determine whether the land surveyors' license of respondent should be revoked or suspended or whether respondent should receive an official reprimand.

Dated this 7th day of July, 1975.

George A. James
George A. James, Director

STATE OF WISCONSIN)
COUNTY OF DANE)

George A. James, being first duly sworn, on oath deposes and says that he is the Director of the Bureau of Regional Planning and Community Assistance, Division of State-Local Affairs, State of Wisconsin, Department of Local Affairs and Development and is duly authorized to make this verification, that he has read the foregoing complaint and knows the contents thereof, that the same is true to his own knowledge, except as to those matters alleged on information and belief, and as to those matters, he believes it to be true.

George A. James

George A. James, Director

Subscribed and sworn to before me
this 9th day of December, 1979.

Joseph L. Hoffman

Notary Public, Dane County, Wisconsin

My Commission February 25 1979.

SEP 23 1976

Surveyor's reprimand can't be reconsidered

By Associated Press

A state commission which regulates land surveyors is not authorized to reconsider its reprimand of a surveyor, the attorney general's office said Monday.

The informal opinion to the board by Assistant Atty Gen Lowell Nass concerns the case of surveyor Anthony B. Kiedrowski of Wisconsin Rapids.

The commission had been asked in May by its attorney, William Dusso, to reconsider its reprimand of Kiedrowski and levy a harsher penalty.

Dusso said he was unsure Monday what to do now in view of Nass' opinion.

Ruling Given On Surveyor

Sentinel Madison Bureau

Madison, Wis. — The state regulatory board for land surveyors lacks the authority to reconsider its reprimand of a Wood County surveyor, an assistant attorney general said Monday.

Lowell E. Nass gave the advice to the three member board, which had been petitioned last May by its attorney, William Dusso, to reconsider the reprimand and order a stiffer penalty in the case of Anthony B. Kiedrowski of Wisconsin Rapids.

Dusso, who had called the reprimand lenient and not in line with previous penalties, said Monday he is unsure what he will do now. Dusso said he has several options under consideration, including filing a petition in a circuit court or dropping the case.

Nass' opinion is informal and was sent to the board and to Dusso in the form of a memorandum.

The board involved is the Land Surveyors Section of the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

Kiedrowski had been charged with knowingly making a false statement and filing a false certificate, saying he properly had placed monuments in his Manhattan Woods subdivision. The monuments are required by law.

Dusso also had claimed in his petition to the board last May that the board's reprimand of Kiedrowski was illegal because the chairman at the time, Donald L. McConoghy of Baraboo, had disqualified himself from the voting in Kiedrowski's case. Two of the board members, Anthony Thousand of Madison and John Fisher of Minnoka, had disagreed with Dusso's position.

They were expected to act in line with the opinion from Nass.

Last April Kiedrowski had charged that the Department of Regulation and Licensing, the agency that administers regulatory board books, was deliberately fostering a negative attitude against the Wisconsin Society of Land Surveyors.

Kiedrowski was responding to criticism from Sarah Dean, secretary of regulation and licensing, who had rebuked the society for holding a private meeting in the department's offices.

✓ Sarah
— file

Waukeee Sentinel
September 21, 1976

STATE NEWS

PAGE 5, PART 1

THURSDAY, MAY 20, 1976

Reprimand Of Surveyor Called 'Lenient'

By DEAN SHOWERS

Sentinel Madison Bureau

Madison, Wis. — The recent reprimand of a Wood County surveyor by the state regulatory board for land surveyors was shockingly lenient, the board's attorney charged Wednesday.

In a case that a board member said has gained unusual notoriety, William Dusso, the attorney for the Land Surveyors Section of the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, has petitioned the three member panel to reopen the Wood County case involving Anthony B. Kiedrowski and to reconsider its "lenient" action.

Dusso also charged in the petition that the board's action was illegal because Chairman Donald L. McCann 'V. of Baraboo, had disqualified himself from voting on the reprimand and because all three votes, according to Dusso, are needed for disciplinary action.

Dusso seeks a stiffer penalty than a reprimand. He said his job is not in jeopardy for filing the petition and that he wants the board to make a decision that holds up legally.

Dusso's petition comes on the heels of the board's reprimand of Kiedrowski, who was charged with knowingly making a false certificate saying that he had no interest in his Manhattan Woods subdivision in Wood County. The monuments are required by law.

Dusso said that earlier this year the board had suspended for one year the license of Winston J. Woodware, now of Alaska, for violations of certain technical requirements.

"In comparison," said Dusso's petition for reopening the Kiedrowski case, "the penalty imposed by the section is so lenient as to shock the conscience of any reviewing court."

Board members Anthony Thousand, of Madison, John Fisher, of Menomonie, disagree with Dusso's appraisal of the situation, though both indicated they did not want to be backed into a position that would prevent them from reopening the Kiedrowski case.

"I'm not sure I agree with Dusso's opinions, but it's hard to comment until we hear from the attorney general's office," Thousand said.

The board has referred Dusso's petition to Asst. Atty. Gen. Lowell Ness. He said Wednesday he should have an opinion soon on whether the board could or should reopen Kiedrowski's case.

"This case was gaining unusual notoriety before it came to a head," Thousand said. "I do have some thoughts (on the case), but I'm not sure I should make them public."

Fisher said he is trying not to get involved in the case on opinion.

McCann was unavailable for comment.

file in
our
Kiedrowski
file

V. Applications: (Continued)

- b. Each of the following 2 individuals is withheld from registration as additional information is required:

NAME

NAME

JEFFREY B. HILD

GLENN R. KOEPP

In the above listing one individual, namely, GLENN R. KOEPP, appeared in person, presented and discussed exhibits of his land surveying work and was withheld registration at this time.

VI. Unfinished Business:

A. LEGAL AND DISCIPLINARY, ACTIONS, FINDINGS, COMPLAINTS

1. Formal Revocation Proceedings

a. HERBERT S. MOORE, S-407

Hearing rescheduled to November 19, 1976 commencing at 10:00 a.m. in Room 179, 1400 East Washington Avenue, Madison, Wisconsin.

b. ANTHONY B. KIEDROWSKI, S-878

- (1) Petition dated May 11, 1976 of Board Counsel Dusso for review and consideration of Findings, Conclusions and Order.

Assistant Attorney General Lowell Nass appeared in person and stated that it was his opinion that the Land Surveyors' Section has no authority to act on this matter since Board Counsel William Dusso is not an aggrieved party. Mr. Nass further stated that Board Counsel Dusso has been advised in writing of the opinion expressed above.

B. BROCHURE DEFINING LAND SURVEYING

Deferred.

VII. New Business: None scheduled.

VIII. Examinations:

1. Revise and prepare 4-hour Wisconsin portion of Land Surveyor exam to be offered November 19-20, 1976. Finalized copy due in Board Office not later than October 1, 1976.

Land Surveyor Members will review the 4-hour Wisconsin portion on October 11, 1976.

WCE MEMO

SEP 20 1976

William Dusso
From Snell E. Nass Date 9/17/76

PLEASE

- | | |
|--|---|
| <input type="checkbox"/> Comment | <input type="checkbox"/> Sign |
| <input type="checkbox"/> Note | <input type="checkbox"/> Reply |
| <input checked="" type="checkbox"/> For Your Information | <input type="checkbox"/> Prepare Reply For My Signature |
| <input type="checkbox"/> See Me | |
| <input type="checkbox"/> Investigate | AND |
| <input type="checkbox"/> Take Necessary Action | <input type="checkbox"/> Return |
| <input type="checkbox"/> Approve | <input type="checkbox"/> File |

REMARKS

You have petitioned for reopening and reconsideration and modification of the examining board's order in the matter of the Land Surveyor's License of Anthony B. Kiedrowski, Respondent (S-878). The board lacks jurisdiction to take such action. Please see sec. 443.02(8)(d), and sec. 227.16(1), Stats., and A-E 3.025(8) and A-E 3.26, Wis. Adm. Code.

Rec'd & Filed
May 11, 1976
C. J. June

STATE OF WISCONSIN

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

IN THE MATTER OF THE LAND SURVEYOR'S
LICENSE OF ANTHONY B. KIEDROWSKI,
RESPONDENT (S-878)

PETITION FOR REOPENING AND
RECONSIDERATION AND
MODIFICATION OF ORDER

Board Counsel respectfully petitions the Land Surveyors' Section of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors: (1) For reopening and reconsideration of the Findings of Fact, Conclusions of Law and Order filed in the above entitled matter on May 5, 1976 and, (2) For modification of the May 5, 1976 order.

In support of this petition, board counsel respectfully submits the following:

PETITION FOR REOPENING AND RECONSIDERATION

The Land Surveyors' Section erred in making its May 5, 1976, Findings, Conclusions and Order in the following respects:

- (1) The Section's May 5, 1976 decision was in excess of its statutory authority.

The decision of the Land Surveyors' Section resulting in the May 5, 1976 order was made on a vote of only two of the three members, Chairman McConaghy having disqualified himself. Wis. Stat. s. 443.02(8)(d) requires that no such disciplinary action be taken without having three members of the section voting in favor of disciplinary action. The section's action in reprimanding respondent is therefore void, a nullity and without force and effect and the matter must be reopened and reconsidered.

- (2) The Section's May 5, 1976 decision was made and promulgated upon unlawful procedures and affected by error of law.

- (a) The procedure by which the Section Chairman disqualified himself from participation in the decision was improper. The Section Chairman presided at the hearing and was

privity to the entire record in the matter. No affidavit of personal bias or disqualification was filed requesting his disqualification. No evidence for disqualification appears in the record. No findings or reasons for disqualification were made part of the decision. Respondent and Board Counsel were not afforded an opportunity to present evidence or argument on the question of the Chairman's disqualification. The question of the disqualification of an agency decision maker is an appropriate question for judicial review. Wis. Tel. Co. v PSC, 232, Wis. 274, 287 NW 122 (1939). Permitting the Section Chairman to disqualify himself without a showing of reasons for disqualification constituted unlawful procedure.

- (b) Failure of the Section Chairman to participate in the decision of the Section constitutes error of law. Without participation in the decision by Section Chairman McConaghy, the Section could not take action in the instant matter. Under such circumstances, the rule of necessity requires that the officer participate and that the tribunal act. Davis, Administrative Law Treatise, (West Publishing Co., 1958) s. 12.04, Wis. Tel Co. v PSC, supra.

PETITION FOR MODIFICATION OF ORDER

- (1) The Section's order was arbitrary, capricious, unsupported by substantial evidence in view of the entire record as submitted, taken without regard to the experience, technical competence and specialized knowledge of the Land Surveyors' Section, and is beyond any discretionary authority conferred by statute upon the Land Surveyors' Section.


In its Conslusions, the Section found that the respondent had engaged in conduct which constituted misconduct, incompetency in the practice of land surveying and gross negligence in the practice of land surveying. The record shows that respondent, as owner of Manhattan Woods, benefitted personally from his own violations of law and rules of conduct. Respondent knowingly made a false statement and false certificate which enabled review and recording

of an unfinished plat of land owned by respondent. Respondent showed no attitude of regret for his actions at the hearing, but rather expressed contempt for plain term requirements of the statute.

The order of the Section reprimanding respondent is a less-severe penalty than was exacted by the board for similar offenses committed by other land surveyors. The most recent action by the Section In The Matter Of The Land Surveyor's License Of Winston J. Woodward involved violations of a technical requirement of land surveying practice for which the respondent was suspended for one year. In comparison, on the record in the instant matter, the penalty imposed by the Section is so lenient as to shock the conscience of any reviewing court.

Wherefore, board counsel respectfully requests that the Section modify its order to suspend the certificate of registration of the respondent for a term comparable with terms of suspension imposed in similar matters.

Respectfully Submitted,


William Dusso, Board Counsel

1969

STATE OF WISCONSIN

LRB-5182
BC:el:l

1969 ASSEMBLY JOINT RESOLUTION 63

May 28, 1969 — Introduced by COMMITTEE ON RULES, by request of
Assemblyman Czerwinski. Referred to Joint Committee on
Finance.

1 Relating to a study of Wisconsin regulation and licensing laws
2 and standards by the legislative council.

4 Analysis by the Legislative Reference Bureau

5 This joint resolution requires the legislative council to study
6 Wisconsin licensing laws, their administration and the standards
7 which should be used to determine who should be licensed by the state
8 and who should not be.

9 For further information, see the appended fiscal note.
10

11 Whereas, there is an increased interest by professions, trades
12 and occupations in being licensed by the state of Wisconsin as evidenced
13 by the large number of licensing bills introduced in the 1969 session
14 of the legislature; and

15 Whereas, several proposals have been introduced in the 1969 ses-
16 sion of the legislature to alter or abolish the department of regulation
17 and licensing; and

18 Whereas, there are no standards or guidelines established to measure
19 whether or not it is in the public interest for the state to license a
20 specific profession, trade or occupation; now, therefore, be it

21 Resolved by the assembly, the senate concurring, That the legislative

1 council conduct a study of existing licensing laws, the administration
2 of Wisconsin's licensing laws and what standards and guidelines should
3 be used to determine if it is in the public interest for the state to
4 license a profession, trade or occupation; and, be it further

5 Resolved, That the legislative council report its findings,
6 conclusions and any recommended legislation to the 1971 legislature.

7 (End)

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STATE OF WISCONSIN

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

IN THE MATTER OF THE LAND SURVEYOR'S
LICENSE OF ANTHONY B. KIEDROWSKI,
RESPONDENT (S-878).

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

The above entitled proceeding having come on for hearing before the Land Surveyors' Section of the Examining Board of Architects, Professional Engineers, Designers and Land Surveyors at General Executive Office Facility No. 1, Madison, Wisconsin, on March 9, 1976, pursuant to notice of hearing containing the issues involved and charges to be considered, duly served upon the respondent, Anthony B. Kiedrowski, and respondent having filed answer on January 2, 1976, and having appeared in person and by his attorneys, Voss, Nesson & Koberstein, by Robert Voss, and the Land Surveyors' Section of the Examining Board, represented by Lowell E. Nass, Assistant Attorney General, having heard the evidence presented by William Dusso, attorney, in support of said charges, and the evidence presented by respondent, in opposition thereto, and Chairman Donald McConaghy having disqualified himself from further participation in this matter, and the Board having considered the stipulation, transcript, pleadings, testimony, exhibits, briefs and proceedings herein, hereby makes and files its findings of fact, conclusions of law and order, constituting its decision in this matter.

FINDINGS OF FACT

1. That respondent, Anthony B. Kiedrowski, who resides at Route 2, Wisconsin Rapids, Wisconsin, is, and was at all times hereinafter mentioned, duly registered by the Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors under the provisions of sec. 443.02, Wis. Stats., as a land surveyor, Certificate No. S-878;

2. That prior to March 20, 1975, respondent prepared or supervised the preparation of a land subdivision plat entitled "Manhattan Woods" depicting a subdivision of land described as "Part of the Southeast Quarter of the Northwest Quarter and all of the Southwest Quarter of the Northeast Quarter, Section 26, Town 21 North, Range 6 East, Town of Saratoga, Wood County, Wisconsin," and referred to hereinafter as "Manhattan Woods plat";

3. That respondent submitted to the head of the planning function of the Wisconsin Department of Local Affairs and Development a request for land subdivision plat review, pursuant to LAD 1.01, Wis. Adm. Code, and that said request for land subdivision plat review was dated March 20, 1975, and was received by the Department of Local Affairs and Development on March 21, 1975;

4. That respondent submitted with said request for land subdivision plat review a final original of the Manhattan Woods plat and that said plat was signed and sealed by respondent and dated March 5, 1975;

5. That the Manhattan Woods plat was certified as non-objectionable by the Department of Local Affairs and Development on April 10, 1975;

6. That the Manhattan Woods plat was recorded in the Office of the Register of Deeds for Wood County, Wisconsin, on June 6, 1975, as Document Number 541158 in Volume 11, at p. 158 of Plats _____;

7. That at the time of recording the Manhattan Woods plat respondent had not placed monuments in said field in accordance with the description of the location of monuments shown on the Manhattan Woods plat;

8. That on December 3, 1975, respondent had not placed monuments in the field at more than 100 points within the Manhattan Woods subdivision and shown as monumented by the Manhattan Woods plat;

9. That the placing of monuments in the field in the Manhattan Woods subdivision has not been waived by any governing body pursuant to sec. 236.15 (1) (h), Stats.;

10. That respondent represented on sheet 2 of the Manhattan Woods plat that he was the owner of the land described on the Manhattan Woods plat;

11. That respondent had by deed transferred title to the property described as Lot 1 on the Manhattan Woods plat prior to March 5, 1975;

12. That respondent has fully cooperated with state officials in the investigation of this matter;

13. That respondent completed the placing of monuments in the field in accordance with the description of the location of monuments shown on the Manhattan Woods plat within three weeks of the issuance of the complaint in this matter;

CONCLUSIONS OF LAW

1. That in submitting the Manhattan Woods plat to the Department of Local Affairs and Development for review and in recording said plat with the Office of the Register of Deeds for Wood County, Wisconsin, prior to placing monuments in the field in accordance with said plat, respondent failed to meet the platting requirements of sec. 236.15 and 236.20, Stats.;

2. That the preparation, submittal and recording of a land subdivision plat by respondent, a registered land surveyor, without meeting the platting requirements of sec. 236.15 and 236.20, Stats., constitutes misconduct in the practice of land surveying within the meaning of A-E 4.003 (3), Wis. Adm. Code, and respondent is therefore subject to penalty as provided by sec. 443.02 (8), Stats.;

3. That the preparation, submittal and recording of a land subdivision plat by respondent, a registered land surveyor, without placing monuments at more than 100 points required to be monumented constitutes gross negligence in the practice of land surveying within the meaning of A-E 4.003 (2), Wis. Adm. Code, and respondent is therefore subject to penalty as provided by sec. 443.02 (8), Stats.;

4. That in failing to identify all persons holding an interest in Lot 1 of the Manhattan Woods plat and representing that he was the owner of Lot 1, respondent violated provisions of sec. 236.21, Stats., which constitutes misconduct within the meaning of A-E 4.003 (3), Wis. Adm. Code, but does not constitute gross negligence within the meaning of A-E 4.003 (2), Wis. Adm. Code, and respondent is therefore subject to penalty as provided by sec. 443.02 (8), Stats.;

ORDER

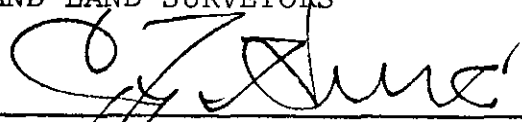
IT IS ORDERED that respondent Anthony B. Kiedrowski (S-878) be and hereby is reprimanded.

Let a copy of these findings of fact, conclusions of law and order be served by certified mail upon respondent and his counsel.

Dated this 5th day of May, 1976.

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

BY:


Secretary of The Board