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

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JOSEPH KROENINGER, R.L.S.,
RESPONDENT.

:
:
:
:
:

FINAL DECISION
AND ORDER

The State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers and Land Surveyors, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Hearing Examiner, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Hearing Examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers and Land Surveyors. Let a copy of this order be served on the respondent by certified mail.

A party aggrieved by this decision may petition the board for rehearing within twenty (20) days after service of this decision pursuant to Wis. Stats. sec. 227.12. The party to be named as respondent in the petition is Joseph Kroeninger, R.L.S.

A party aggrieved by this decision who is a resident of this state may also petition for judicial review by filing the petition in the office of the clerk of the circuit court for the county where the party aggrieved resides within thirty (30) days after service of this decision. A party aggrieved by this decision who is not a resident of this state must file the petition for judicial review in the office of the clerk of circuit court for Dane County. A party aggrieved must also serve the board and other parties with a copy of the petition for judicial review within thirty (30) days after service of this decision pursuant to Wis. Stats. sec. 227.16. The party to be named as respondent in the petition is the State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

Dated this 7 day of AUGUST, 1986.

Donald L. Paulsen

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

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
 : PROPOSED DECISION
JOSEPH KROENINGER, R.L.S., :
RESPONDENT. :

The parties to this proceeding, for the purposes of Wis. Adm. Code
sec. 227.53 (laws of 1985) are:

Joseph Kroeninger, R.L.S.
5402 South 114th Street
Hales Corners, WI 53130

State of Wisconsin Examining Board of
Architects, Professional Engineers,
Designers and Land Surveyors
1400 East Washington Avenue, Room 281
P.O. Box 8935
Madison, Wisconsin 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue, Room 183
P.O. Box 8935
Madison, Wisconsin 53708

A hearing was conducted in the above-captioned matter on February 11,
1986 at 1400 East Washington Avenue, Madison, Wisconsin. Complainant
appeared by Attorney Steven M. Gloe. Respondent appeared in person and
without counsel. The hearing was held open pending receipt of further
documentary evidence and written closing arguments. The last of these was
received on May 18, 1986.

Based upon the pleadings and evidence of record herein, the hearing
examiner recommends that the Land Surveyors Section of the Board adopt as
its final decision the following Findings of Fact, Conclusions of Law and
Order.

FINDINGS OF FACT

1. Joseph Kroeninger, (hereinafter referred to as Respondent) is and
was at all times relevant to this matter duly licensed in the State of Wisconsin
as a land surveyor (License #S-1504; issued on January 1, 1979).

2. In August of 1983, Mary and Sergio Castineyra negotiated to
purchase a parcel of land located at 12101 West Good Hope Road, Milwaukee,
Wisconsin, from Lester and Leila Popp. This land was to include that land
designated as Parcel #2, CSM #4030, City of Milwaukee, Milwaukee County,
Wisconsin and an additional parcel to the south of Parcel 2 which would
extend 55 feet therefrom.

3. ERA retained Respondent to prepare a survey reflecting this redivision of CSM #4030. Respondent submitted a bill of \$225.00 for this survey. He received payment in two installments and was paid in full on or about December 1, 1983 by the Castineyras.

4. Respondent completed preparation of a map of this survey on or about September 14, 1983. He filed the survey with the City of Milwaukee on or about October 10, 1984.

5. The City of Milwaukee, Bureau of Engineers subsequently informed Respondent of the following errors on the face of the map:

- a. 115th Street was incorrectly identified as 116th Street.
- b. The map failed to accurately show the outline of the parcel surveyed on the shaded location map, as required by Milwaukee City Code (MMC) 9-6(b) 1-b(3).
- c. On the map, the most northwesterly angle ($93^{\circ} 12' 48''$), the most northeasterly angle ($86^{\circ} 19' 12''$), and the angle 100 feet south of the south line of West Good Hope Road ($256^{\circ} 46' 48''$), did not agree with the bearings shown.
- d. The map incorrectly designated which abutting lands to the west of Parcel were "unplatted", and which lands were included in CSM #1254 (recorded April 17, 1970).
- e. The most easterly line of the map was identified on the map with a bearing of S $03^{\circ} 09' 23''$ E. This bearing did not agree with the description in the surveyor's certificate of S $00^{\circ} 03' 25''$ E.
- f. The map failed to show the pre-existing reservation for street purposes indicated CSM #4030 (recorded May 11, 1981) across a portion of Parcel 2, as required by Wis. Stats. sec. 236.20(2)(c) and MCc sec. 9-6(b)-2c-(8) and (9).

6. On or about October 16, 1984, Respondent retrieved the map filed with the City of Milwaukee for the expressed purpose of correcting the errors referred to in paragraph 5, above.

7. On or about March 2, 1985, respondent resurveyed the parcel at the request of the Castineyras for the purpose of moving the southerly boundary an additional five feet to the south.

8. As of the date of the hearing in this matter on February 11, 1986, the corrected certified survey map (CSM #4738) had not yet been filed with the Milwaukee Department of City Development.

9. On March 14, 1986, the Department of City Development Bureau of Engineers approved CSM #4738, and the Department of City Development recorded the map on April 25, 1986.

CONCLUSIONS OF LAW

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

2. In preparing a certified survey map containing the deficiencies set forth at Finding of Fact #5, above, and in having failed to record the corrected survey until April 25, 1986, respondent has prepared deficient plans, drawing, maps, specifications or reports, in violation of Wis. Adm. Code sec. A-E 4.003(3), and has thereby engaged in misconduct within the meaning of Wis. Stats. sec. 443.12(1).

ORDER

NOW, THEREFORE, IT IS ORDERED that Joseph S. Kroeninger, R.L.S., be, and hereby is, reprimanded.

OPINION

The findings of fact set forth above are either admitted or otherwise not in dispute. Accordingly, the only questions are whether respondent's admitted conduct constitutes a violation of the land surveyors statute and code, and, if so, what if any discipline is appropriate.

Examination of the CSM found as an attachment to exhibit #4 graphically demonstrates the errors contained in the map originally submitted for recording. It would be difficult to conclude that those errors do not render the map deficient as that term is used in Wis. Adm. Code sec. RL 4.003(3)(b). Similarly, the fact that respondent did not file the corrected map until almost a year and a half after retrieving the deficient document must also be considered misconduct for the purposes of sec. RL 4.003(3).

However, in fashioning discipline appropriate to respondent's misconduct, there are mitigating factors which must be considered. First, while the land surveyors section is in the best position to judge the seriousness of the errors found in the original CSM, the evaluation of the Milwaukee City Engineer is worthy of note. At page 2 of his letter of September 30, 1985 to investigator John Miller, Mr. Laszewski states:

"The corrections needed to allow this certified survey map to be approved by the City of Milwaukee are very minimal and, if they had been done by the surveyor when requested, there would have been no problem with the recording of this instrument.

"I believe that if you would have come to my office and examined the map in July of 1985 it would have been apparent that the problems were minimal."

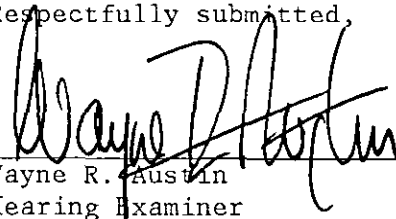
Second, as to respondent's failure to file the corrected map until approximately March, 1986, it should be noted that some time after respondent had retrieved the original instrument, the buyers of the parcel in question requested, and the seller agreed to provide, an additional five foot strip

of land at the south end of the parcel in order to include within the parcel an existing grape arbor (in respondent's words, "the grapes of wrath"). Between the filing of the original CSM and the corrected instrument, respondent was therefore required to do additional field work in the spring of 1985. While this does not perhaps excuse respondent's tardiness, it does mitigate it.

Given these various factors, the examiner concludes that there is not evidence that Mr. Kroeninger has been guilty of incompetence or gross negligence as those terms are used in Chapter A-E 4, and that the seriousness of the misconduct found supports the recommended reprimand but not more.

Dated at Madison, Wisconsin this 16th day of July, 1986.

Respectfully submitted,


Wayne R. Austin
Hearing Examiner

WRA:cld
120-505