

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

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

| | | |
|-------------------------------|---|----------------|
| IN THE MATTER OF DISCIPLINARY | : | |
| PROCEEDINGS AGAINST | : | FINAL DECISION |
| | : | AND ORDER |
| PAUL C. BRASHAW, R.L.S., | : | LS9107113LSR |
| RESPONDENT. | : | |

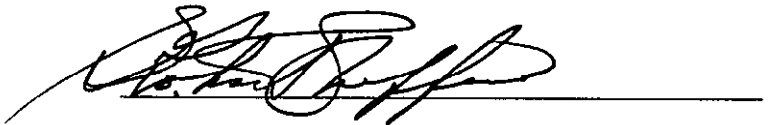
The State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers, and Land Surveyors, Land Surveyors Section, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Examining Board of Architects, Professional Engineers, Designers, and Land Surveyors, Land Surveyors Section.

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

Dated this 17TH day of OCTOBER, 1991.



"(3) '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 the following:

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

The violation of state laws, for the purposes of subpar. (3)(a) of the rule above, was established at the hearing through the introduction of the disciplinary decision rendered against Brashaw in Iowa. Documentary and testimonial evidence was also introduced at the hearing which established that the violations found in Iowa, if committed in Wisconsin, would violate this state's land surveying law. See, Exhibit 3; Trans., pp. 12-17.

Accordingly, the primary issue here is the disciplinary action, if any, which should be taken against Brashaw in light of the Iowa findings. In this regard, it must be recognized that the interrelated purposes for applying disciplinary measures are the protection of the public, deterrence of other licensees from engaging in similar misconduct, and the rehabilitation of the respondent involved. State v. Aldrich, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. State v. MacIntyre, 41 Wis. 2d 481, 485 (1969).

In determining discipline in cases such as this, the board has historically considered the nature of the violations found and the sanctions ordered by the other state's licensing authority. See, e.g., David Geiger, P.E. (7/22/88); Robert Allen Gahl (1/14/88); Beryl Jones, R.L.S. (6/5/87); John Cejka, R.L.S. (3/26/87). In this case the Iowa board reviewed seven plats prepared by Brashaw and concluded that each contained violations of several land surveying laws. (See, Exhibit 3, pp. 10-11). The Iowa board further found that although Brashaw had prepared corrective plats in each instance, they "...still contained deficiencies, particularly in the area of monumentation." (Exhibit 3, p. 14). The discipline imposed was a two year revocation of Brashaw's license, with reinstatement thereafter conditioned upon his obtaining education and passing both the seven hour NCEES examination and the one hour Iowa land surveying test.

Given the nature of the violations involved in this case, as well as the educational and examination requirements imposed by the Iowa board for reinstatement, it appears that that board's primary concern was the ability of Brashaw to employ land surveying laws and standards in his practice. It appears that numerous errors were made by Brashaw in several instances, which legitimately suggests that his knowledge of land surveying requirements may be professionally deficient. These are the same concerns which this state must consider, given the impact upon the public that such errors may have and due to the fact that Brashaw does practice land surveying in this state. (See, Tr., p. 22).

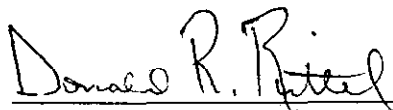
In my opinion, protection of the public necessitates that Brashaw's license as a land surveyor in this state be suspended until such time as he objectively demonstrates that he is minimally competent to practice. The issue here is the mechanism by which Brashaw should be required to make such a showing.

The Iowa board ordered that Brashaw complete a course in land surveying--in which he indicated he was in the process of enrolling (see, Tr., p. 23)--and pass its licensing examination. I have not recommended that Brashaw be ordered by this board to take additional education; however, I believe he should be required to take and pass the Wisconsin land surveying examination before he be permitted to again practice in this state. It seems unnecessary to formally require Brashaw to take additional education; first, because there does not appear to be any substantive reason to duplicate Iowa's order in this regard, and second, because passage of the Wisconsin licensing examination is an adequate indicator of the competency and knowledge possessed by Brashaw to practice land surveying in this state.

Simply stated, if Brashaw passes the examination, he is legally presumed minimally competent to practice. If he does not, he is not. The extent to which Brashaw prepares himself to take the examination should be a matter of his choice.

Dated: September 23, 1991.

Respectfully submitted,



Donald R. Rittel
Administrative Law Judge

BDLS-670

been completed. The Registrant violated various statutes and rules due to professional incompetency, engaging in practice harmful to the public and repeated violations. The Board revokes the Registrant's professional registration for two (2) years.

THE RECORD

The record includes the recorded testimony of witnesses and the following Exhibits:

| | |
|------------------------|--|
| Exhibit A | Plat of CC (3-21-87). |
| Exhibit B | Plat of CC (5-4-83). |
| Exhibit C | Boundary survey (6-5-81). |
| Exhibit D | Plat of GV (11-3-88). |
| Exhibit D-1 | Plat of GV (11-3-88). |
| Exhibit E | Plat of subdivision (8-30-89). |
| Exhibit F | Subdivision plat of BP (3-20-89). |
| Exhibit G | Plat for JP and RM (11-29-89). |
| Exhibit H | Survey for JM (8-30-89). |
| Exhibit I | Plat for DM and MM (9-24-89). |
| Registrant's Exhibit 1 | Corrective plat of CC (6-5-90). |
| Registrant's Exhibit 2 | Correction plat of GV (5-23-90). |
| Registrant's Exhibit 3 | Plat of correction (8-30-89). |
| Registrant's Exhibit 4 | Plat of correction BP (5-25-90). |
| Registrant's Exhibit 5 | Plat of correction for JP and RM (11-29-89). |
| Registrant's Exhibit 6 | Plat of correction for JM (5-25-89). |
| Registrant's Exhibit 7 | Plat of correction for DM and MM (6-5-90). |

FINDINGS OF FACT

1. In 1973, Paul C. Brashaw, the Registrant, earned an associates degree in civil engineering. (Testimony of the Registrant.)
2. Since 1973, the Registrant continuously was employed as a survey technician, a land surveyor in training, and a registered land surveyor. Since 1989, the Registrant had been a sole practitioner and had one full-time assistant who assisted him in the field, drafted certain documents, and assisted him with quality control. (Testimony of the Registrant.)

(Registrant's Exhibit 1; testimony of the Registrant and Mr. Boyer.)

6. As of August 29, 1990, the registrant had not yet set one monument shown on the plat. (Testimony of the Respondent.)

Plat #2

7. On March 20, 1989, the Registrant prepared a plat of BP, a subdivision located in the City of Dubuque, Iowa. The plat contained the following:

- a. in his certification, the registrant omitted the word "personal" from the phrase "under my direct supervision;"
- b. two monuments shown on the plat were not identified; and
- c. data, location and purpose of easements were not specified.

On May 9, 1989, the plat was filed with the county recorder. (Exhibit F; testimony of the Registrant and Mr. Boyer.)

8. On May 25, 1990, the Registrant prepared a corrective plat of BP. (Registrant's Exhibit 4 and testimony of the Registrant.)

Plat #3

9. On August 30, 1989, the Registrant prepared a plat of a subdivision located in Dubuque County, Iowa. The plat contained the following:

- a. the plat did not contain a description of the survey;
- b. the date the plat was drawn and the date it was certified to are different;
- c. certain monuments either were not identified or set;
- d. an acreage number (10.9) was not substantiated;
- e. two bearings and a distance for boundary lines were missing;
- f. the sum of two distances did not equal the sum shown; and
- g. The plat contained a note that was irrelevant.

- a. the plat did not contain a description of the survey;
- b. certain monuments either were not identified or set;
- c. the type(s) of iron monuments found were not identified;
- d. a corner was designated incorrectly;
- e. a distance for a boundary was missing;
- f. acreage numbers (23.349 and 9.461) were not substantiated;
- g. in his certification, the Registrant used the word "survey" instead of "surveyor"; and
- h. a lot, due to a missing distance, had an error of closure of 1 in 51.

On January 29, 1990, the plat was recorded with the county recorder. (Exhibit I; testimony of the Registrant and Mr. Boyer.)

15. On June 5, 1990, the Registrant prepared a corrective plat. Certain monuments have not yet been set. (Exhibit 7 and testimony of the Registrant.)

Plat #6

16. On November 11, 1989, the Registrant prepared a plat of GV, a subdivision located in Dubuque County, Iowa. The plat exhibited the following:

- a. the plat was approximately 29" x 42" in size;
- b. the Registrant failed to obtain the written permission of the local governing body before filing a plat with a scale greater than 1" = 100' (1" = 200');
- c. the plat did not contain a description of the survey;
- d. certain monuments either were not identified or set;
- e. the type(s) of iron monuments found were not identified;
- f. the plat did not identify adjoining properties;
- g. two corners were designated as the same corner;

derives its legal authority under the provisions of Iowa Code Chapters 114 and 258A. SS 443.15
AxE 8

1. Whether the Registrant violated Iowa Code sections 114.21(2) and 258A.10(2):

The Board shall have the power . . . to suspend . . . or to revoke . . . or to reprimand any registrant who is found guilty of the following actions or offenses: AxE 8.03(2)
Professional incompetency.

Iowa Code §114.21(2) 43.12

A licensing board . . . shall by rule include provisions for the revocation or suspension of a license which shall include but is not limited to the following:
Professional incompetency.

Iowa Code § 258A.10(2). AxE 8.02

. . . The plat shall make reference to monuments of record or permanent control monuments . . . The plat shall accurately describe each part of the subdivision by giving its dimensions, length and breadth and shall number the parts by progressive number . . .

Iowa Code §409.1 AxE 1.01
7.07
SS 236.20

Prior to the offering of the plat . . . for record, the registered land surveyor shall confirm the prior establishment of permanent control monuments . . . additional monuments shall be constructed and embedded . . .

Iowa Code §409.30(1),(3) AxE 7.01
7.02
7.08
SS 236.

(1) The size of each sheet . . . shall be no greater than eighteen inches by twenty-four inches . . . SS 236.20(1)(a)
22" x 30"

(2) A maximum scale of one hundred feet to one inch shall be used unless permission to use a different scale is obtained in writing from the local governing body . . . 236.20(1)(a)
NOT MORE THAN 100':1"

(4) . . . subdivision shall be designated in bold letters . . . 236.20(3)

(5) All monuments to be of record shall be adequately described and clearly identified on the plat . . .

236.15
AxE 7.07

Descriptions defining land boundaries . . . shall be complete, providing definite and unequivocal identification of lines or boundaries . . .

193C IAC 2.4 A&E 7.04
236.21(b)

A plat shall [include] . . . the following elements:

- (1) . . . a convenient scale; 236.20(1)(2)
- (2) The plat shall show the length and bearing of the boundaries of the parcels surveyed . . . A&E 7.03(3)
236.20(2)(2)
- (3) The plat shall show and identify the monuments necessary for the location of the parcel and shall indicate whether such monuments were found or placed; A&E 7.05(4)
236.20(2)(b)
- (5) The plat shall bear a statement certifying that the work was done by the surveyor or under the surveyor's direct personal supervision . . . A&E 7.04(1)
236.21(1)(2)

193 IAC 2.5

The unadjusted closure for all surveying shall not be greater than 1 in 5000. A&E 7.06(2)
1:3000

193C IAC 2.6(3)

Permanent monuments shall be constructed . . .

193C IAC 2.7

A&E 7.07
236.15(1)

During the course of its investigation of the Registrant, the peer review committee discovered seven plats prepared by the Registrant and filed in the State of Iowa. The following table summarizes how the Registrant violated or failed to conform to statutes and/or rules governing the practice of land surveying:

| | <u>1</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>5</u> | <u>6</u> | <u>7</u> |
|--|----------|----------|----------|----------|----------|----------|----------|
| 1. Lack of description of survey. [Iowa Code §409.31(5),(15); and 193C IAC 2.3.] | x | | x | x | x | x | x |

A&E 7.04
236.21(b)

fraudulent representations in the practice of the registrant's profession or engaging in unethical conduct or practice harmful to the public. Proof of actual injury need not be established.

Iowa Code §114.21(3)

A licensing board . . . shall by rule include provisions for the revocation or suspension of a license which shall include but is not limited to the following: Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

443.12

Iowa Code §258A.10(3)

. . . All engineering documents and land surveying documents shall be dated and shall contain the following: . . . a certificate that the work was done by such a registrant or under the registrant's direct personal supervision . . . Violation of this section by a registrant shall be deemed fraud and deceit in the registrant's practice.

A&E 2.02(4)

Iowa Code §114.16

In order to establish and maintain a high standard of integrity, skills and practice in the professions of engineering and land surveying, and to safeguard the life, health, property and welfare of the public, the following code of professional conduct is promulgated and shall be binding upon every person holding a certificate of registration as a professional engineer or land surveyor in this state.

A&E 8

The code of professional conduct as promulgated herein is an exercise of the police power vested in the board by virtue of the acts of the legislature, and as such the board is authorized to establish conduct, policy and practices in accordance with the powers hereinabove stated.

All persons registered under Iowa Code chapter 114 are charged with having knowledge of the existence of this code of professional conduct and shall be deemed to be familiar with its several provisions and to understand them. Such knowledge shall encompass the understanding that the practices of engineering and the land surveying are a privilege, as opposed to a right, and the registrant shall be forthright and candid in statements

114.21(3) and 258A.10(3) by engaging in practice harmful to the public.

The "corrective" plats (Registrant's Exhibits 1 through 7) submitted to the Board by the Registrant still contained deficiencies, particularly in the area of monumentation. The Registrant, during his direct examination, did not state that the corrective plats were not complete. The Registrant failed to note on the corrective plats that he had not completed the land survey reflected on the plats. The Board finds that the failure of the Registrant to disclose these facts either on the corrective plats or upon direct examination necessitates disciplinary action against the Registrant.

ANE 7.01

3. Whether the Registrant violated Iowa Code §114.21(8) and 258A.10(8).

The Board shall have the power . . . to suspend . . . or to revoke . . . or to reprimand any registrant who is found guilty of the following acts or offenses: Willful or repeated violations of the provisions of this Act.

443.12

ALB 8

Iowa Code §114.21(8)

A licensing board . . . shall by rule include provisions for the revocation or suspension of a license which shall include but is not limited to the following: Willful or repeated violations of the provisions of this chapter.

Iowa Code §258A.10(8)

The Registrant violated Iowa Code §114.21(8) and 258A.10(8) through repeated violations of Iowa Code §114.21(2), (3) and Iowa Code §258A.10(2), (3).

ORDER

It is the ORDER of the Iowa Engineering and Land Surveying Examining Board that the Professional Registration of Paul C. Brashaw be revoked for a period of two (2) years. Prior to reinstatement of this professional registration, the Registrant must:

- 1) Enroll in and successfully complete the Hawkeye Institute of Technology CET-215 course in land surveying, or a comparable course approved by the Board;

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

IN THE MATTER OF DISCIPLINARY :
 PROCEEDINGS AGAINST :
 : AFFIDAVIT OF COSTS OF
 : OFFICE OF BOARD LEGAL SERVICES
 PAUL C. BRASHAW, R.L.S., : (Case No. LS9107113LSR)
 RESPONDENT. :

STATE OF WISCONSIN)
) ss.
 COUNTY OF DANE)

Donald R. Rittel, being first duly sworn on oath, deposes and states as follows:

1. Your affiant is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.

2. In the course of his employment, your affiant was assigned as the administrative law judge in the above-captioned matter.

3. Set out below are the actual costs of proceeding for the Office of Board Legal Services in this matter:

ADMINISTRATIVE LAW JUDGE EXPENSE

Donald R. Rittel

| <u>DATE</u> | <u>ACTIVITY</u> | <u>TIME SPENT</u> |
|-------------|--|-------------------|
| 8/8/91 | Preparing for and conduction hearing | 1.50 hours |
| | <u>Reviewing transcript, exhibits and preparing decision</u> | <u>7.00 hours</u> |
| | TOTAL TIME SPENT | 8.50 hours |

Total administrative law judge expense for Donald R. Rittel:
 (8.50 hours @ \$34.03/hr., salary and benefits) \$289.25

REPORTER EXPENSE

Magne-Script
 112 Lathrop Street
 Madison, WI 53705

| <u>ACTIVITY</u> | <u>COST</u> |
|---|-----------------|
| Attending and transcribing 8/8/91 hearing (Invoice #5181) | \$155.60 |
| Total reporter expense for Magne-Script: | <u>\$155.60</u> |

TOTAL ASSESSABLE COSTS FOR OFFICE OF BOARD LEGAL SERVICES \$444.85

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)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Examining Board of Architects, Professional Engineers, Designers and Land Surveyors.

The date of mailing of this decision is October 22, 1991.