

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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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 :

MATTHEW E WEST,
RESPONDENT.

FINAL DECISION AND ORDER
96 LSR 003

LS 9711182LSR

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Matthew E. West, RLS
405 Whippletree Lane
P.O. Box 327
Waterford, WI 53185

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

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Section. The Section has reviewed this Stipulation and considers it acceptable.

Accordingly, the Section in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Matthew E. West (D.O.B. 1/19/53), Respondent herein, is duly licensed in the state of Wisconsin as a Land Surveyor (license #1854). This license was first granted on 9/12/85.
2. Matthew E. West's latest address on file with the Department of Regulation and Licensing is 405 Whippletree Lane, Waterford, WI 53185.
3. At all times relevant to this matter, Respondent West was an employee of Nienow Engineering Associates, 5555 North Port Washington Road, Glendale, WI 53217. Respondent West is not currently a Nienow Engineering Associates employee.

4. Matthew E. West prepared a certified survey map for two lots at 7710 North Club Circle in Fox Point, WI. The final map was dated September 10, 1993 and recorded on September 27, 1993 as CSM number 5885. A copy of the September 10, 1993 map is attached as Exhibit 1 and is incorporated herein by reference.

5. The Respondent's map indicates an iron pipe set at the southern corner of the boundary between the two lots. Iron pipes are also indicated as set at the northern boundary corner and at a boundary corner part way along the lot line. The pre-existing driveway on lot 2 is not shown on the map.

6. A plat of survey of lot 1 prepared by Daniel E. Mack, RLS, in May of 1995 indicates a driveway encroachment from lot 2 onto lot 1 at the southern boundary. The plat of survey indicates a PK nail was set into the driveway at the southern corner of the boundary. There was no iron pipe found at that location as indicated on the West survey map. The Mack plat of survey also indicates iron pipes were set at the northern boundary corner and at the midway boundary corner. There were no preexisting iron pipes found at these locations. The driveway was not three feet from an abutting property line as required by Fox Point Village Code. A copy of Daniel Mack's plat of survey is attached as Exhibit 2 and is incorporated herein by reference. A copy of the applicable Fox Point Village Code is attached as Exhibit 3 and is incorporated herein by reference.

CONCLUSIONS OF LAW

1. The Land Surveyors Section has jurisdiction over this matter pursuant to Wis. Stats. section 443.12.

2. The Land Surveyors Section is authorized to enter into the attached Stipulation pursuant to Wis. Stats. section 227.44(5).

3. By the conduct described above, Matthew E. West is subject to disciplinary action against his license to practice as a Land Surveyor in the state of Wisconsin, pursuant to Wis. Stats. sec. 443.12(1), and Wis. Admin. Code Chapters A-E 7 and A-E 8.

4. Respondent Matthew E. West has violated Wis. Admin. Code sec A-E 7.03 by failing to insure that monuments were set marking the corners of the parcel and violated Wis. Admin. Code sec A-E 8.09(1) by failing to insure compliance with Fox Point Village Code secs. 15.03 and 14.07(b)(2) pertaining to a drive not being permitted closer than three feet to an abutting property line.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Stipulation of the parties is accepted.

IT IS FURTHER ORDERED that Respondent Matthew E. West be, and hereby is REPRIMANDED.

IT IS FURTHER ORDERED, that Respondent Matthew E. West pay partial costs of this matter in the amount of \$300.00 within 30 days of the date of this Order by making payment of the same to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED, that in the event Respondent Matthew E. West fails to pay the \$300.00 costs within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent Matthew E. West, his land surveyor's license shall be immediately suspended without further hearing and without further Order of the Section, and said suspension shall continue until the full amount of said costs have been paid to the Department of Regulation and Licensing and his failure to pay the costs shall be considered a violation of this Order by the Section.

IT IS FURTHER ORDERED, that file 96 LSR 003 be, and hereby is closed.

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

This Order shall become effective ten (10) days following the date of its signing.

Land Surveyor Section

By: M. Robert Sheffer / a.g.h.
A Member of the Section

18th November 97
Date

BAW/GMS

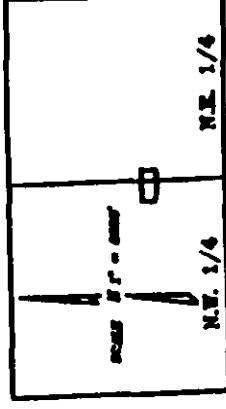
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CERTIFIED SURVEY MAP NO. 5885

BEING A PART OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 16, TOWN 8 NORTH, RANGE 22 EAST, AND THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 16, TOWN 8 NORTH, RANGE 22 EAST, IN THE VILLAGE OF FOX POINT, MILWAUKEE COUNTY, WISCONSIN.

NOTES

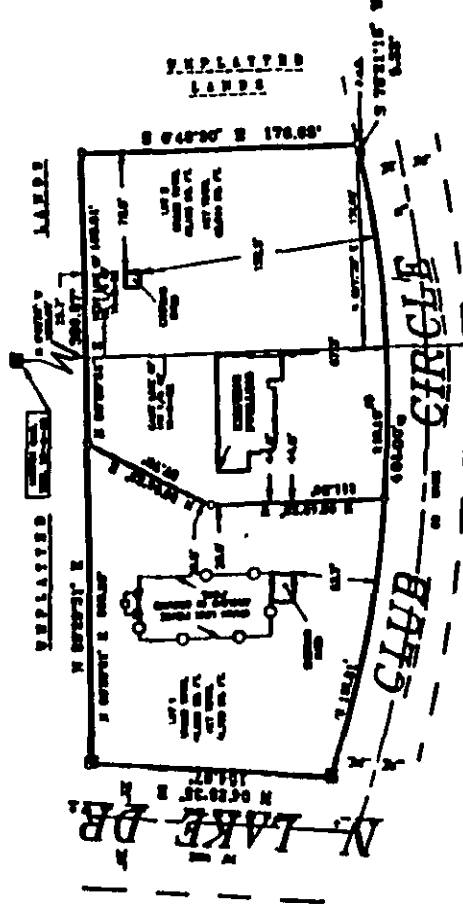
- 1) O - INDICATE 1" IRON PIPE WT. 1.13 LBS PER LINEAL FOOT. 34" IS LENGTH - SEE.
- 2) SE - INDICATED STICKS MONUMENT - FOUND
- 3) ALL DIMENSIONS MEASURED AND SHOWN TO NEAREST HUNDREDTH OF A FOOT.
- 4) BEARINGS REFERENCED TO THE VINCENNES STATE PLANS COORDINATE SYSTEM, SOUTH ZONE.
- 5) CROSS AREAS ARE TO CENTERLINE OF STREET.
- 6) NET AREAS ARE THE CROSS AREAS MINUS THE EXISTING BUILDING AREAS.



VICINITY MAP

N. 1/2 SEC. 16-8-22

CURVE	RADIUS	LENGTH	CHORD	BEARING	DELTA
G1	788.75'	401.00'	398.70'	N 87°03'58.5" W	28°05'31"
G2	788.75'	181.81'	181.41'	S 79°18'53" E	13°11'24"
G3	788.75'	219.19'	218.49'	N 86°16'11.5" E	15°34'07"



REEL 3127 IMAG 1921

CERTIFIED SURVEY MAP NO. 5885

BEING A PART OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 16, TOWN 9 NORTH, RANGE 22 EAST, AND THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 16, TOWN 8 NORTH, RANGE 22 EAST, IN THE VILLAGE OF FOX POINT, MILWAUKEE COUNTY, WISCONSIN.

SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN)
MILWAUKEE COUNTY)

I, Matthew E. West, Registered Land Surveyor, do hereby certify: That I have surveyed, divided and mapped a part of the Southeast 1/4 of the Northwest 1/4 of Section 16, Town 9 North, Range 22 East, and the Southwest 1/4 of the Northeast 1/4 of Section 16, Town 8 North, Range 22 East, in the Village of Fox Point, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the North corner of said Section; thence S 00° 48' 30" E along the east line of the Northeast 1/4 of said Section 1800.85 feet; thence N 89° 11' 30" E 132.00 feet to the point of beginning, said point also being on the Northerly right-of-way line of Club Circle; thence S 78° 21' 18" W along the Northerly right-of-way line of said Club Circle 5.33 feet to a point of curvature; thence Westerly along and arc of a curve and the Northerly right-of-way line of said Club Circle, whose center lies to the North, whose radius is 789.75 feet, whose chord bears N 87° 05' 56.5" W 396.70 feet, a distance of 401.00 feet to a point in the Easterly right-of-way line of N. Lake Drive; thence N 04° 28' 35" E along the Easterly right-of-way line of said N. Lake Drive 154.67 feet; thence N 89° 29' 31" E 386.87 feet; thence S 00° 48' 30" E 176.65 feet to the point of beginning.

That I have made such survey and map by the direction of JOHN EMIL BRENNAN.

That such plat is a correct representation of the exterior boundaries of the land surveyed and the map thereof made.

That I have fully complied with the provision of Chapter 236 of the Wisconsin Statutes and Chapter 15 of the Fox Point Village Code in surveying, dividing and mapping the same.

Dated this 10TH day of September 1993



Matthew E. West
Wisconsin Registered Land Surveyor
Matthew E. West S-1854

Exhibit
1

Fox Point - 11, 000
10-8

Fox Point Village Code

Attacher

CHAPTER 15

SUBDIVISIONS

15.01 PURPOSE OF REGULATIONS. In addition to the purposes stated in Section 236.43 of the Wisconsin Statutes this chapter is further intended specifically to insure that building sites within the Village of Fox Point shall be in conformity with the standards as prescribed by the zoning regulation of the Village.

15.02 APPLICATION OF CHAPTER. The provision of this chapter shall apply to:

(a) Any division of land which results in a subdivision as defined by chapter 236, Wisconsin Statutes.

(b) Any other division of land except:

1. Transfers of interest in land by will or pursuant to court order.

2. Leases for a term not to exceed 10 years, mortgages or easements.

3. The sale or exchange of parcels of land between owners of adjoining property if additional lots are not thereby created and the lots resulting are not less than the minimum sizes required by this chapter or other applicable laws or ordinances.

(c) Recorded lots existing on June 25, 1957 which do not conform to the zoning regulations of the Village.

15.03 COMPLIANCE WITH ZONING REGULATIONS. No lot shall be created, by the division of land for the purpose of sale or building development, which does not conform to the zoning regulations of the Village.

see
301
4

15.04 SUBDIVISION REQUIREMENTS. No subdivision as defined by Chapter 236 of the Wisconsin Statutes shall be recorded pursuant to the provision of Chapter 236 and the following regulations:

(a) General Procedure.

1. The plat shall not be accepted by the Clerk for filing until it has been cleared by the Village Engineer as being in compliance with all applicable regulations and otherwise in order. The minimum fee shall be set by the Village Board from time to time. (Ordinance 91-579, adopted May 28, 1991).

(next page begins with "2. The date of filing shall ...)

Exhibit

For permanent buildings in excess of 100 square feet in ground area, may be modified in their specific application to a given situation with the approval of the Village Manager where in his opinion the strict application of the requirement would be unnecessarily burdensome or would not in fact achieve the actual intent of the requirement; or where modification would more effectively achieve such intent; provided in all cases such modification is consistent with the basic spirit and intent of this chapter. Appeal from the determination of the Village Manager may be made to the Building Board provided such appeal is filed with the Village Manager within 30 days from the date of his action.

(b) Permanent Structures.

1. Any permanent roofed structure serving an accessory use if attached to the principal building shall be considered a part of such principal building for all regulatory purposes. If such structure is a building and is not attached to the principal building, no roofed or enclosed portion shall be closer than 10 feet to any roofed or enclosed part of the principal building and shall conform to the open area, height, front, side, or rear setback requirements of the district in which such building is located except as permitted by section 30.43 of this code. (Am.Ord.409, pub.1/18/73)
2. Walks, drives, paved terraces and purely decorative garden accessories such as pools, fountains, statuary, flag poles, etc., where subject to "permanent structure" classification shall not be permitted closer than 3 feet to an abutting property line other than a street line.
- 3.

This section was repealed by Ordinance No. 94-607, adopted 9/13/93

Fences, walls, and other architectural screening devices shall be considered permanent structures and shall be subject to the following:

we have
a 13.5'
encroachment!

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 THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
MATTHEW E WEST	:	96 LSR 003
RESPONDENT	:	

The parties in this matter agree and stipulate as follows:

1. This Stipulation is entered into for the purpose of resolving this matter known as investigative file 96 LSR 003. Matthew E. West ("Respondent") consents to the resolution of this matter by this Stipulation and the attached Final Decision and Order.

2. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the State has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of his right to seek legal representation regarding these matters and the legal implications of this Stipulation and has been provided the opportunity to seek legal advice prior to signing this Stipulation.

4. Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Land Surveyors Section ("Section").

5. With respect to the attached Final Decision and Order, Respondent neither admits nor denies the facts as set forth in the Findings of Fact, however, Respondent agrees that the Section may make the Findings of Fact and may reach the Conclusions set forth in the Conclusions of Law and may enter the Order attached hereto.

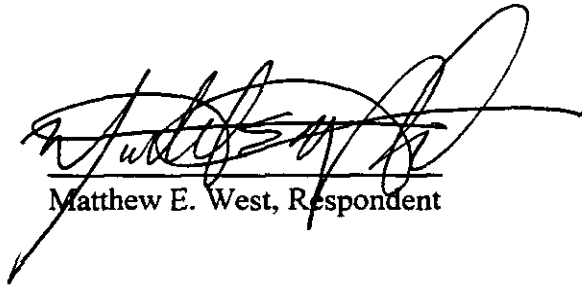
6. If the terms of this Stipulation are not acceptable to the Section, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order. The matter shall then be returned to the Division of Enforcement for further proceedings. In the event that the Stipulation is not accepted by the Section, the parties agree not to contend that the

Section has been prejudiced or biased in any manner by the consideration of this attempted resolution.


7. If the Section accepts the terms of this Stipulation, the parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

8. Respondent agrees that Complainant's attorney, Gerald M. Scanlan, may appear at any meeting of the Section with respect to the Stipulation and that his appearance is limited to statements in support of the Stipulation and to answer any questions the Section may have regarding the Stipulation. Respondent waives any right he may have to have notice of that meeting and to be present at the meeting of the Section.

9. The Division of Enforcement joins Respondent in recommending that the Section adopt this Stipulation and issue the attached Final Decision and Order.


Matthew E. West, Respondent

NOVEMBER 5TH 1997
Date


Gerald M. Scanlan, Attorney
Division of Enforcement

November 10 1997
Date

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

Matthew E. West,

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 November 19, 1997, I served the Final Decision and Order dated November 18, 1997, LS9711182LSR, upon the Respondent Matthew E. West 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 221 157 483.
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:

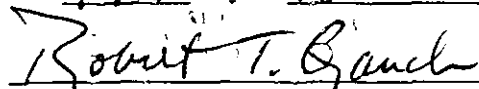
Matthew E. West
405 Whippletree Lane
P.O. Box 327
Waterford WI 53185



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 19th day of Nov., 1997.



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,
PROFESSIONAL GEOLOGISTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS
(LAND SURVEYOR SECTION)
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

November 19, 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.)