

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JAMES M. GARDNER,
RESPONDENT.

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FINAL DECISION AND ORDER

ORDER 0007909

Division of Legal Services and Compliance Case No. 20 LSR 002

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

James M. Gardner
Birnamwood, WI 54414

Professional Land Surveyor Section of the Wisconsin Examining Board of Architects,
Landscape Architects, Professional Engineers, Designers and Professional Land
Surveyors
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Professional Land Surveyor Section of the Wisconsin Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Professional Land Surveyors (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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent James M. Gardner (Birth Year 1969) is licensed by the State of Wisconsin as a professional land surveyor, having license number 2734-8, first issued on February 25, 2005 and current through January 31, 2022. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Birnamwood, Wisconsin 54414.

2. On February 1, 2020, Respondent's professional land surveyor license expired.

3. On June 30, 2020, the Department received a complaint alleging that Respondent had completed inadequate survey maps. The Division of Legal Services and Compliance (DLSC) subsequently opened Case Number 20 LSR 002 for investigation.

4. On August 11, 2020, the Department emailed Respondent at his email address of record to request a response to the complaint and to inquire about the status of his license. No response was received.

5. On October 13, 2020, the Department mailed a letter to Respondent at his address of record to request a response to the complaint and to inquire about the status of his license. The letter was returned to the Department on October 26, 2020, with the notation, "Not Deliverable as Addressed."

6. On October 27, 2020, the Department sent a letter to Respondent by mail and email to request a response to the complaint and to inquire about the status of his license. The letter was returned to the Department on November 11, 2020, with the notation, "Not Deliverable as Addressed."

7. On October 30, 2020, Respondent renewed his professional land surveyor license.

8. On November 10, 2020, Respondent emailed the Department his response to the complaint. Respondent also explained that his license had expired due to an oversight.

9. Respondent's professional land surveyor license was expired from February 1, 2020 through October 29, 2020. During this time, Respondent continued to practice as a professional land surveyor. Respondent stated he completed eight surveys during this period.

10. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Professional Land Surveyor Section of the Wisconsin Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Professional Land Surveyors has jurisdiction to act in this matter pursuant to Wis. Stat. § 443.12, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent violated Wis. Stat. § 443.02(4) by engaging in the practice of professional land surveying while his license was expired.

3. By the conduct described in the Findings of Fact, Respondent violated Wis. Admin. Code § A-E 8.08(3) by failing to respond in a timely manner to a request by the Department for information in conjunction with an investigation of a complaint filed against Respondent.

4. By the conduct and violations described above, Respondent engaged in misconduct in the practice of professional land surveying pursuant to Wis. Admin. Code § A-E

8.03(3)(a) by violating federal, state laws, local ordinances or administrative rules relating to the practice professional land surveying.

5. As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 443.12(1).

ORDER

1. The attached Stipulation is accepted.
2. Respondent James M. Gardner is REPRIMANDED.
3. Within ninety (90) days from the date of this Order, Respondent James M. Gardner shall pay the COSTS of this matter in the amount of \$776.
4. Payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent to the Department Monitor at the address below:

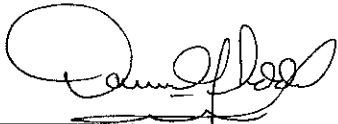
Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

This information may also be submitted online via DSPS' Monitoring Case Management System at: <https://dspsmonitoring.wi.gov/>

5. In the event Respondent violates any term of this Order, Respondent's license (number 2734-8), or Respondent's right to renew his license, may, in the discretion of the Section or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Section may, in addition and/or in the alternative, refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

6. This Order is effective on the date of its signing.

WISCONSIN PROFESSIONAL LAND SURVEYOR SECTION OF THE WISCONSIN
EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL
ENGINEERS, DESIGNERS AND PROFESSIONAL LAND SURVEYORS

by: 
A Member of the Section

3/31/2022
Date

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

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JAMES M. GARDNER,
RESPONDENT.

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STIPULATION

ORDER 0007909

Division of Legal Services and Compliance Case No. 20 LSR 002

Respondent James M. Gardner and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, 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 Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- 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 Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.


4. Respondent agrees to the adoption of the attached Final Decision and Order by the Professional Land Surveyor Section of the Wisconsin Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Professional Land Surveyors (Section). 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. Respondent waives all rights to any appeal of the Section's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Section, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance 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.

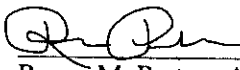
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Section ever assigned as an advisor in this investigation may appear before the Section in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Section may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Section should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Section adopt this Stipulation, the Section's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Legal Services and Compliance joins Respondent in recommending the Section adopt this Stipulation and issue the attached Final Decision and Order.


James M. Gardner, Respondent
Bithamwood, WI 54414
Credential No. 2734-8

Feb 7/22
Date


Renee M. Parton, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

2/7/2022
Date