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STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JAMES E. COUTTS,
RESPONDENT.

FINAL DECISION AND ORDER
LS9903111APP

The State of Wisconsin, Real Estate Appraisers Board, 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, Department of Regulation and Licensing.

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

Dated this 23rd day of February, 2000.

Paul Vozar

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS
AGAINST

JAMES E. COUTTS,
RESPONDENT.

PROPOSED DECISION
Case No. LS-9903111-APP

SUMMARY

This is a disciplinary action by the Real Estate Appraisers Board against James E. Coutts. Mr. Coutts was alleged to have violated USPAP rules 2-1 and 2-2 in his preparation of an

appraisal report. No violation is found, and the complaint is dismissed.

PARTIES

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

Complainant:

Division of Enforcement

Department of Regulation and Licensing

Madison, WI 53708-8935

Respondent:

James E. Coutts

2433 Skyline Drive

Beloit, WI 53511

Disciplinary Authority:

Real Estate Appraisers Board

1400 East Washington Ave.

Madison, WI 53703

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint (DOE case # 96 APP 003) with the Real Estate Appraisers Board on March 12, 1999. A disciplinary proceeding (hearing) was scheduled for May 3, 1999. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on May 12, 1999 to Mr. Coutts, who received it on March 13, 1999.

B. An answer was filed on March 24, 1999 on behalf of Mr. Coutts by attorney William A. Abbott of Bell, Gierhart & Moore, S.C., 44 East Mifflin St., P.O. Box 1807, Madison, WI 53701.

C. A scheduling conference was held on April 1, 1999, at which time the hearing was rescheduled to June 14, 1999, Mr. Sanders listed his witnesses, and a schedule was set for Mr. Abbott to name his witnesses.

D. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on June 14, 1999, and continued on June 23, 1999. Mr. Coutts appeared in person and represented by Mr. Abbott. The Real Estate Appraisers Board was represented by Attorney Henry Sanders of the Department's Division of Enforcement. The hearing was recorded, and a transcript of the hearing was prepared and delivered on July 19, 1999. The testimony and exhibits entered into evidence at the

hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. The respondent, James E. Coutts, is a Certified General Appraiser in the state of Wisconsin, with certification # 192.
2. On September 16, 1995 Mr. Coutts performed an appraisal of a 48.4 acre vacant parcel of transitional land in the City of Milton, Wisconsin, with an effective date of October 28, 1991, a retrospective value estimate.
3. In his appraisal, Mr. Coutts reached a market value of the subject property, as of October 28, 1991, of \$111,000.00.
4. The complainant in this case, Linn Duesterbeck, performed an appraisal of the same parcel. Both the appraisal date and the effective date were December 3, 1993. Mr. Duesterbeck reached a market value of \$250,000.00.
5. Mr. Duesterbeck and Mr. Coutts performed their appraisals for opposing sides in a lawsuit involving the property. Mr. Coutts prepared his appraisal at the request of, and for use by, an experienced attorney who practices real estate law.
6. After reviewing a copy of Mr. Coutts's appraisal, Mr. Duesterbeck filed a written complaint with the department identifying approximately ten items in the appraisal as violations of USPAP. Mr. Duesterbeck stated, "In summary, these errors and omissions resulted in an inappropriate and very low estimate of market value, by at least 50%."
7. At the time Mr. Coutts filed his appraisal, Mr. Duesterbeck was a member of, and chairman of, the Real Estate Appraisers Board.
8. The board advisor assigned by the Real Estate Appraisers Board to review Mr. Duesterbeck's complaint, Mary Reevy, recommended around September of 1997 that the complaint be closed for insufficient evidence. When Mr. Duesterbeck was informed by the Division of Enforcement investigator, Jack Johnson, that the case was to be closed, Mr. Duesterbeck stated that if the case was closed, he would file another complaint because he "felt so adamant about this case". Faced with the board advisor's recommendation and Mr. Duesterbeck's disagreement with that recommendation, the board decided to obtain the opinion of an outside expert.
9. The board obtained the services of Andrew Kessenich as an expert to review Mr. Coutts's appraisal.
10. Mr. Kessenich identified two items in Mr. Coutts's appraisal as violations of USPAP.:
 - (i) The summary appraisal report violated Standard Rule 2-2 by not discussing zoning in more depth or attaching the relevant zoning regulation.
 - (ii) The appraisal report violated Standard Rule 2-1 by containing potentially misleading ambiguities based on Mr. Coutts's use of the present and past tense.
11. Mr. Coutt's description of access to the subject property in his appraisal was adequate.
12. Mr. Coutts's description of utility service to the subject property in his appraisal was accurate.
13. Mr. Coutts's description in his appraisal of whether the subject site was clear or wooded was not perfect, but it was sufficient.
14. Mr. Coutts's description in his appraisal of the topography of the subject site was not perfect, but it was sufficient.
15. Mr. Coutts's description in his appraisal of comparable 3 as "an older sale of the

subject site" was obviously erroneous, but not a problem of any consequence.

16. Mr. Coutts's selection, description and analysis of comparable sales in his appraisal was adequate.

17. Mr. Coutts's discussion of zoning in his appraisal was adequate for the intended audience.

18. Mr. Coutts's use of the present tense in his retrospective appraisal led to statements of uncertain meaning which were potentially confusing, but the statements were accurate and not of great significance in the overall context of the appraisal.

CONCLUSIONS OF LAW

I. The Real Estate Appraisers Board has personal jurisdiction over James E. Coutts, based on his holding a certificate as a general appraiser, and based on notice under sec. 801.04 (2), Stats.

II. The Real Estate Appraisers Board is the legal authority responsible for disciplinary actions against certified appraisers, under ch. 458, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 458.26, Stats., and ch. RL 86, Wis. Admin. Code.

III. Any imperfections in Mr. Coutts's preparation of the retrospective appraisal which is the subject of this proceeding did not rise to the level of actionable violations of either USPAP Standard 2-1 or USPAP Standard 2-2.

ORDER

THEREFORE, IT IS ORDERED that this action be dismissed.

ANALYSIS

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with the Real Estate Appraisers Board alleging that the respondent, James E. Coutts, violated rules regulating the practice of real estate appraisal. The burden of proof is on the Division of Enforcement to prove the allegations of the complaint by a preponderance of the evidence. I conclude that the evidence is insufficient to prove that Mr. Coutts violated USPAP standards as alleged. I find that the complainant in this proceeding, Linn Duesterbeck, was not objective in his complaint, both because he was intimately familiar with the property in question and because he had performed an appraisal of the identical property approximately two years earlier for the opposing side in a lawsuit, reaching an estimate of value more than twice as high as Mr. Coutts.

The disciplinary complaint in this matter alleged that the respondent, James E. Coutts, violated provisions of USPAP in his preparation of an appraisal. Mr. Coutts was engaged in 1995 by one of the parties of a lawsuit to render a retrospective estimate of the value of a parcel of real property in Milton, Wisconsin, as of October 28, 1991, almost four years earlier. Mr. Coutts arrived at a value of \$111,000. Complainant Linn Duesterbeck had performed an appraisal of the same parcel of land for the other party in the lawsuit on December 3, 1993, and arrived at a value, as of December 3, 1993, of \$250,000.

To persons unfamiliar with the science and art of appraisal, the issue might seem to be whether Mr. Coutts's appraisal was accurate in some objective sense. An objective value of property does not exist, however, and it can only be approximated by various measures. If the issue in this case were whether Mr. Coutts's estimate was less accurate than Mr. Duesterbeck's, one might look at two facts which were presented in the hearing. The first

does not favor either party, but the second can be interpreted as evidence that Mr. Coutts's appraisal was actually the more accurate of the two.

(1) It appears that Mr. Coutts's appraisal was requested because the parties to the lawsuit could not agree on the value of the property in question, based in part on Mr. Duesterbeck's appraisal value of \$250,000. Shortly after Mr. Coutts prepared his appraisal containing an estimated value of \$111,000, the case settled with a stipulation between the parties to a value of \$183,822, almost exactly half-way between the two estimates. This "fact" would indicate that Mr. Coutts' appraisal and Mr. Duesterbeck's appraisal were equally far from the mark. In reality, though, this fact carries almost no weight, as it strongly suggests that the parties simply compromised at the middle figure.

(2) Mr. Duesterbeck's higher evaluation was based in part on his opinion that the property in question was a desirable site for residential development, whereas Mr. Coutts' lower estimate was based in part on his opinion that the market for new residential housing in the Milton area would not support development of the land in question. In the four years since the lawsuit settled and the property became available, it has not been developed, and other vacant lots are still available in the Milton area. This fact would – in hindsight -- favor Mr. Coutts' lower evaluation.

Nevertheless, the accuracy or objective value of Mr. Coutts's appraisal is not the issue for decision here. What is at issue is the process by which Mr. Coutts arrived at his estimate of value, and whether he followed USPAP standards in that process.

Mr. Duesterbeck's complaint identified the following problems with Mr. Coutts appraisal:

(a) The appraisal erroneously stated that there is current access to the subject property off of St. Johns Drive, which was not installed as of the effective date of the appraisal. Nor did the appraisal mention access to the property from four streets (St. Mary's Drive, St. Mary's Lane, Ash Lane, and Evergreen Lane) which terminate at the edge of the property and are shown on the map attached to Mr. Coutts' report.

(b) The appraisal did not mention the sewer and water lines which terminated at the property on St. Mary's Drive, Ash Lane and Evergreen Lane.

(c) The appraisal erroneously stated that the 48.4 acre property was "clear" when it contained approximately 9 heavily wooded acres, including many mature hardwood trees, some over 100 years old.

(d) The appraisal misrepresented the topography of the property by saying it was "mostly level" when it is one of the highest areas in Milton and contains a 25 foot difference in elevation.

(e) Comparable 3 in the appraisal was erroneously described as "an older sale of the subject site".

(f) All the comparable sales were inappropriate or misleading:

Sale 1 – The appraisal did not mention that the sale was between relatives, based on a binding option from the 1980s to buy at a certain price. Also, the appraisal relied on the non-development of this adjoining parcel as evidence of the limited marketability of the subject, but did not mention that the reason it was not developed was that the subject property had been in litigation for two years.

Sale 2 – The appraisal referred to this property as "superior to the subject property due to location" when it was actually very similar but lacked any wooded acreage.

Sale 3 – The property was on the north side of Janesville rather than on

the south side of Milton, the property is at best similar, and the appraisal omitted many details of the sale.

Sale 5 –The property was referred to as 35 acres with no mention that it included a 10-acre pond, nor that a road would need to be extended approximately ¼ mile to the parcel.

Sale 6 – The appraisal did not address the need to extend sewer and water. The sale was adjusted 30% for time without support.

(g) Mr. Coutts did not perform a complete summary report. Specifically, with regard to zoning, instead of complying with standard 1-2c which says that an appraiser must "consider easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature", Mr. Coutts only reported "official zoning regulation, R-2 residential districts" and did not include or append a copy of the actual regulation, which would have provided better insight into allowable uses.

Mr. Duesterbeck testified that he is "extremely familiar" with the property in question. He said, *"I am very familiar with that property and I'll tell you why. First of all, I live north of Milton a ways. I drive -- I have driven back and forth within -- either in front of this property, within a quarter mile of this property, for the last 26 years of my life. Not every day, but sometimes two or three times a day. I went to college in Milton College and we used to play football in the field right contiguous with this property, where it borders on St. Marys Drive, and provides access to the property. I have appraised literally hundreds of single family residences in Milton. I have appraised nearly every commercial property in Milton at one time or another. I have appraised approximately three major tracts of potential development land or subdivision land within the corporate limits of Milton. I have appraised at least three proposed subdivisions in Milton, over the period of my career. My office is less than three miles away from the subject property which is within the corporate city limits of Janesville. Since Milton and Janesville are essentially twin cities to this point, they are separated only approximately two and a half miles by numerous types of mixed use property which is highly becoming urbanized. The two cities are currently in discussion about the extraterritorial limits, boundaries, at this time; they are so close. Yes, I can say I'm extremely familiar with this property."* [transcript, p. 18].

It is understandable that when Mr. Duesterbeck saw an appraisal of \$111,000 for a property which he himself had appraised at \$250,000 (and even though the appraisals were two years apart, no dramatic changes had occurred in the property or the surrounding area during that time), he should look with keen interest to see what caused the differences. In identifying the reasons for any differences, Mr. Duesterbeck naturally characterized every way in which Mr. Coutts' report differed from his own as a deficiency, and he referred to "numerous omissions in the report, numerous misleading comments, incorrect data in the report" [transcript, p. 15]. Because of his intimate knowledge of the subject property and the Milton area in general, Mr. Duesterbeck knew a lot of details which Mr. Coutts either did not pick up or did not choose to include in his analysis. Mr. Duesterbeck also performed a self-contained report of a complete appraisal, whereas Mr. Coutts performed a summary report of a complete appraisal, and a self-contained report is expected and required to contain more detail than a summary report. This appears to be a case of Mr. Duesterbeck's not being able to see the forest for the trees, or perhaps intentionally cataloging every tree that Mr. Coutts failed to mention. Mr. Coutts's summary report of his appraisal is not inadequate. Mr. Coutts' appraisal was significantly lower than Mr. Duesterbeck's, but it was supported. In fact, as already mentioned, Mr. Coutts's appraisal seems in retrospect to have been, if anything, more accurate than Mr. Duesterbeck's.

Mr. Duesterbeck has testified before me on other occasions and I have been impressed by his professionalism. He is dedicated to the improvement of the Real Estate Appraisal profession, and he believes that high standards should be set, maintained and followed. Because of my prior experiences with Mr. Duesterbeck, it took some time to come to the conclusion that he was not as objective in this case as he has been in others. He is too close to this case, he is emotionally involved, and he has confused his usual professional

pursuit of perfection with personal disagreement and defense of his own appraisal.

Mr. Coutts responded at length to Mr. Duesterbeck's allegations, both in written documents provided to department investigators and in his oral testimony. Those responses are summarized very briefly here:

(a) Access. Most of my observations of the vacant site are current as of 1995 as no inspection was possible in 1991. It should be noted that St. John's Avenue was a platted street and access was not considered an issue adverse to the property. I assume in this report and do not state otherwise that the property has access both for roads and utilities. E. High Street is the obvious avenue for eventual access. The point I was making was that this access if not present in 1991 would be there prior to development. There is no disagreement that the site is physically available for development.

(b) Utilities. I clearly state in my report regarding utility availability "none in but are in adjoining sites" i.e. the site is not improved with utilities but they are and were available. No negative adjustments were made in the sales comparison approach for lack of utilities or access as I am in agreement that those were present.

(c) Trees. The issue over the wooded acreage I believe does not have a significant impact on value. There is a small amount of wooded area on the subject's east side. Its impact on value is negligible. The rest of the site has cash crops and are producing income which is important for an interim use. The land did appear suitable for eventual subdivision development which I state in the Highest and Best Use section will be the use when financially feasible. The trees make up a small portion of the site. A number of them would need to come down for road access. After you take out the trees for road access, site development, there'd be a fraction of the trees that are there now. I feel it had minimal impact on the value.

(d) Topography. From every vantage point looked at for the most part, it's pretty flat. For residential development, you don't want it too sloping. It makes the engineering of the site much easier and better, and the road layout and the site development. And I think it's a very develop-able site. So I think that's a positive.

(e) Mr. Coutts stated that the wording of "older sale of the subject's site" was inadvertently carried forward from another appraisal. He agreed that the language should have been removed. In referring to a comparable sale, it was so obviously erroneous, however, that it had no significant impact on the value of the appraisal.

(f) Comparables

Sale 1 was an adjoining parcel, the Grantor/Grantees were related but it appeared to be a market transaction/value and the estate of the Grantor and the Grantee were now involved in litigation over the subject property. The property was available for development for two years prior to the start of the litigation. The property was not developed in 1991 due to lack of demand. I consider it market information which I would have been guilty of an omission not to consider. It was not considered by Mr. Duesterbeck.

Sale 2 was located in the City of Milton, considered superior due to being located adjoining another development which was being sold out and developed by the same company. It was smaller in size and could be developed in a shorter period of time. It was not considered by Mr. Duesterbeck. In fact, no sales in or around Milton were used in Mr. Duesterbeck's appraisal which in my opinion was a potentially misleading omission.

Sale 3 was the only sale I used in Janesville, a city six miles south. This site

was a property I subsequently appraised and it adjoined a successfully developing property on Janesville's northeast side. This property was not given much weight in my analysis due to its location in another city and school district and its immediacy of development.

Sale 5 did have a pond/lake on the site which added to the value of lots being subsequently developed on or overlooking it but that was offset by the narrow road needed to access the area to be developed. The location away from city utilities made the property inferior to the subject.

Sale 6 was the only sale used that sold after the effective date of the value estimate. USPAP Statement on Appraisal Standards No. 3 (SMT-3) states "Data subsequent to the effective date may be considered in estimating a retrospective value as a confirmation of trends." Three sales occurred in 1991 and two in 1990 which provided a good indication of the market in 1991. This property like the subject would have a future highest and best use to be developed into a residential subdivision. Due to limited sales my estimate of a time adjustment is backed by the statistics laid out on page 7 of my report. These statistics were needed to understand the market for development land in the City of Milton on October 28, 1991, the value estimate date. The time adjustment is supported by the three fold increase in city building permits issued, 11 in all of 1991 and 36 in 1993, additionally mortgage interest rates decreased over that period from 8.78% in October 1991 to 6.59% in October 1993. It was a different market.

(g) Zoning. Mr. Coutts identified his appraisal as a "complete summary report", guidelines for which are published by the Appraisal Standards Board [exhibit 12]. Zoning is not specifically addressed in Standard 2 of USPAP and a comment in a recent Appraisal Institute publication states in regard to "summarizing the information considered" that "Each item must be addressed in the depth and detail required by its significance to the appraisal". Mr. Coutts reported that zoning is as a residential district with the Highest and Best Use having a future use as a residential subdivision. There was no argument over the future legal use of the property thus zoning was addressed in the detail necessary.

Not all of the charges by Mr. Duesterbeck can be lined up point by point with responses by Mr. Coutts, but most of Mr. Duesterbeck's charges are factual disagreements over Mr. Coutts's choice of comparable sales and his inclusion or exclusion of various details which Mr. Duesterbeck considered important. It almost appears as if Mr. Duesterbeck deliberately misinterpreted anything which could possibly be misinterpreted in Mr. Coutts's report. An example is Mr. Coutts's statement regarding utility availability to the subject site that "none in but are in adjoining sites", which Mr. Duesterbeck claimed was a violation of USPAP because "The appraiser says no utility extensions. An inaccurate statement. Sewer and water is right up to the lines." Mr. Duesterbeck's criticism is meritless and it is frankly difficult to accept it as a serious criticism. This is simply not the level and quality of scrutiny which the Real Estate Appraisers Board should be applying to its licensee's appraisals.

The board engaged the services of Andrew Kessenich as an independent expert witness to review Mr. Coutts' appraisal. Mr. Kessenich gave the impression of having performed his review earnestly and conscientiously. Although retained by and paid by the board, his written and oral testimony gave no indication that he was attempting to prove the board's position or to be other than totally objective. Mr. Kessenich agreed with Mr. Duesterbeck that Mr. Coutts's appraisal violated USPAP, but he identified only two violations. Mr. Kessenich opined that

- (i) the summary appraisal report violated Standard Rule 2-2 by not discussing zoning in more depth or attaching the relevant zoning regulation, and
- (ii) the appraisal report violated Standard Rule 2-1 by containing potentially misleading ambiguities based on Mr. Coutts's use of the present and past tense.

The areas which Mr. Duesterbeck identified as problems but which Mr. Kessenich did not are significant, because they suggest the extent to which Mr. Duesterbeck was overly involved in the minutiae of the property in question. Mr. Kessenich addressed these issues as follow:

- (a) Access. The discrepancy may arise from the lack of detail contained in the Coutts appraisal. With respect to street improvements, the Coutts appraisal is very brief and states only that there is currently access to the site off of St. John's Avenue, a two lane residential street. One of the problems with this description, as well as a recurring problem throughout the report, is that it is written in the present tense although the valuation date was almost four full years earlier.
- (b) Utilities. The same general problem, a lack of clarity and detail, is likely the reason behind the claim that the appraisal misrepresents the location of utility services relative to the site. If the appraisal had been written with more detail and better clarity, Mr. Duesterbeck would not have misread the report. If Mr. Duesterbeck, who is an experienced reader of appraisals, cannot understand the content of the report, or the context in which it is presented, then the intended reader, who presumably is less experienced in real estate report reading, would also likely find the information confusing.
- (c) Trees and (d) Topography. There appears to be disagreement as to the topography and ground cover. Both appraisers are correct in their observations. Hardwoods covering 9 acres out of 48 still yields a site that is mostly clear. The site is generally level, although at a high elevation relative to surrounding parcels. An abundance of hardwood trees on a residential development site can add value to the property. Whether 9 acres out of 48 in hardwoods would have increased the value of the entire property significantly cannot be confirmed with the data available. The same holds true with respect to elevation. The site does, from the data available, appear buildable in terms of topography. This is an important feature and is not contested by either report.

The two violations which Mr. Kessenich did find in Mr. Coutts's appraisal were as follow:

- (g) Zoning. Complaint point 4 regarding zoning data is justifiable The report states only that the official zoning designation is R-2, Residential District. What is the R-2 Residential District, what sort of land uses are permitted there, what are the restrictions on land uses in this district, what is the process for development of improvements in this district, what are the set-backs etc. A Restricted Appraisal Report allows the appraiser to "state" certain pertinent information considered relevant to the value conclusion such as the zoning of the property. A Summary Appraisal Report requires the appraiser to "summarize" this type of information. Clearly, the Coutts appraisal merely stated the property's zoning. Including a copy of the zoning regulations as an exhibit for the reader's review would have satisfied the requirement of summarizing the information considered. Mr. Kessenich referred to Advisory Opinion G-11 [exhibit 12], which gives an example of a summary of zoning, containing more detail than Mr. Coutts put in his report.
- (h) Use of Present Tense. A recurring problem throughout the report is that it is written in the present tense although the evaluation date was almost four full years earlier. An example is under **Site Data:** "7) Site Improvements: This parcel is vacant land and there are no improvements yet." The reader does not know whether this statement is true as of the effective date of the appraisal, 1991, or as of the date the report was written in 1995.

I agree that Mr. Coutts's use of the present tense creates some ambiguous statements, and he could be more careful in the future to be extremely explicit about time in any retrospective appraisal. However, the statements which concerned Mr. Kessenich were all in the present tense, which Mr. Coutts testified was the proper tense, as he intended those particular statements to reflect conditions as of the report date in 1995. Also, in the example above, if the site was unimproved in 1995, it was safe to assume that it was

unimproved in 1991, and this was true of most of the statements which concerned Mr. Kessenich. It is my impression that taken as a whole and taken in context, the ambiguities in the report are relatively minor.

With regard to the seriousness of any ambiguities which he found in Mr. Coutts's report, I respectfully disagree with Mr. Kessenich. As stated, I believe that Mr. Kessenich performed his review conscientiously and that he presented his findings objectively. However, I think he was nevertheless influenced in a subtle way by the very fact that Mr. Duesterbeck filed the complaint. He said "If the appraisal had been written with more detail and better clarity, Mr. Duesterbeck would not have misread the report. If Mr. Duesterbeck, who is an experienced reader of appraisals, cannot understand the content of the report, or the context in which it is presented, then the intended reader, who presumably is less experienced in real estate report reading, would also likely find the information confusing." This is a reasonable conclusion by Mr. Kessenich, and it is important to his finding that Mr. Coutts's appraisal violated USPAP Standard Rule 2-1 by containing potentially misleading statements, but it presumes that Mr. Duesterbeck did not deliberately misunderstand Mr. Coutts's report whenever possible. As I stated above, when I read Mr. Duesterbeck's claim that Mr. Coutts did not mention utilities terminating at the edge of the property when Mr. Coutts actually said "none in but are in adjoining sites", I can reach no other conclusion but that Mr. Duesterbeck deliberately misunderstood whenever possible.

Mr. Kessenich's analysis of the requirements of USPAP Standard Rule 2-2 with regard to zoning is well reasoned. An appraiser is allowed to "state" certain information in a Restricted Appraisal Report but is supposed to "summarize" information in a Summary Appraisal Report, which is what Mr. Coutts performed. The issue is whether Mr. Coutts sufficiently summarized the zoning issue by stating "official zoning regulation, R-2 residential districts". For four reasons, I disagree with Mr. Kessenich and find that Mr. Coutts adequately "summarized" the subject property's zoning. First, the intended audience for the appraisal report was an experienced attorney who practices real estate law and who, it may safely be assumed, needed no explanation of an R-2 designation. Second, a statement that zoning is R-2 is in a certain sense a complete statement; in other words, although more words may be used to explain what R-2 means, those words are fixed; it is not the same as saying that certain property is "subject to a restrictive covenant"; such a statement would require further explanation to convey its complete meaning. Third, although Advisory Opinion G-11 [exhibit 12] explains the difference between "describe, summarize, and state" using zoning as an example, the opinion specifically and repeatedly says that the purpose of the opinion is "to show one view of the difference between the application of the terms *describe*, *summarize* and *state*", and that the examples given should not be elevated to the status of rules or requirements. Fourth, I give some small consideration to the fact that the word "zoning" is not actually mentioned in Standard Rule 2-2.

Testimony was also received from two other expert witnesses, Timothy Anderson and Max Weber. The qualifications of all of the witnesses are as follow:

- James E. Coutts is a Certified General Appraiser in Wisconsin and a certified residential appraiser in Illinois, with an office in Beloit. He is a member of the Appraisal Institute and is a Senior Residential Appraiser (SRA) as well as a candidate for MAI designation. He has taught Real Estate Appraisal at Blackhawk Technical College since 1991.
- Linn A. Duesterbeck is a Certified General Appraiser in Wisconsin, with an office in Janesville. He has performed appraisals since 1973, mostly in the Janesville area. He is a member of the Appraisal Institute and has been a Senior Residential Appraiser (SRA) since 1973 as well as an MAI. He was a member of the Wisconsin Real Estate Appraisers Board from 1990 to 1998 and was chairperson from 1994 to 1995.
- Andrew Kessenich is a Certified General Appraiser in Wisconsin and president of D. L. Evans Real Estate Company in Madison.
- Timothy S. Anderson is a Certified General Appraiser in Wisconsin, with an office in

Janesville. He has performed appraisals since 1987, mostly in south-central Wisconsin. He is a member of the Appraisal Institute and is a Senior Residential Appraiser (SRA). He was associated with Mr. Coutts from 1987 to 1992.

- Max Weber is a Certified General Appraiser in Wisconsin, with an office in Madison. He has performed appraisals since 1982.

Mr. Anderson performed a desk review of Mr. Coutts's appraisal and testified that in his professional opinion it met USPAP standards for a summary report of a complete appraisal. Attorney Sanders with assistance from Mr. Duesterbeck spent much more time challenging Mr. Anderson regarding whether his desk review satisfied USPAP standards than attacking his conclusions regarding Mr. Coutts's appraisal.

Mr. Weber reviewed Mr. Coutts's appraisal and testified that he did not find it to be misleading in the way Mr. Kessenich found it potentially to be, and certainly not in the way Mr. Duesterbeck found it to be.

Based on all the documents and testimony in this case, the evidence is not sufficient to prove that Mr. Coutts violated either Standard 2-1 or Standard 2-2 of USPAP in the preparation of his retrospective appraisal dated September 16, 1995.

As a footnote, the parties during the hearing argued over whether certain witnesses had followed USPAP in reviewing each others' reports. Mr. Coutts complained that by expressing his opinion that Mr. Coutts's appraisal was too low, Mr. Duesterbeck expressed an estimate of value of the subject property as of 1991 without either performing an appraisal as of that date or undertaking a formal review of Mr. Coutts's appraisal. Mr. Anderson was also challenged at length regarding whether his desk review satisfied USPAP standards. Those issues cannot properly be decided on the evidence in this case.

Dated and signed: January 9, 2000.

John N. Schweitzer

Administrative Law Judge

Department of Regulation and Licensing