

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN RE DISCIPLINARY PROCEEDINGS :
AGAINST : FINAL DECISION AND ORDER
: AS TO RESPONDENT
TIMOTHY A. FIEREK and : TIMOTHY A. FIEREK
JEFFREY A. CONNER, :
: LS0607124APP
RESPONDENTS. :

Division of Enforcement Case No. 04 APP 025

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

Timothy A. Fierek
W7029 Old Lake Road
Shawano, WI 54166

Jeffrey A. Conner
13525 Cathers Cove Lane
P.O. Box 991
Minocqua, WI 54548

Real Estate Appraisers Board
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 these matters agree to the terms and conditions of the attached Stipulation as the final decision of the matter(s), subject to the approval of the Real Estate Appraisers Board. The Board has reviewed the Stipulation agreement annexed to this Final Decision and Order, and considers it acceptable. Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Timothy A. Fierek ("Fierek"), whose last known address of record with the Department of Regulation and Licensing ("Department") is W7029 Old Lake Road, Shawano, Wisconsin 54166, and whose date of birth is June 27, 1971, possesses a certificate of licensure and a certificate of certification to practice as a licensed appraiser (#4-1113). The license was first granted on May 22, 1998, and will expire on December 14, 2007.
2. Respondent Jeffrey A. Conner ("Conner"), whose last known address of record with the Department is 13525 Cathers Cove Lane, P.O. Box 991, Minocqua, Wisconsin 54548, and whose date of birth is March 10, 1960, possesses a certificate of licensure and a certificate of certification to practice as a licensed appraiser (#4-1575). The license was first granted on June 9, 2003, and will expire on December 14, 2007.
3. On December 29, 2003, Mr. Fierek signed an appraisal of real estate located at 5094 Evergreen Court, Rhinelander, Wisconsin, 54501-8716, as well as the certification statement for the appraisal.

Count I: Failure to Disclose Significant Assistance

4. The appraisal described in paragraph 3, above, was conducted by, and the report was written by, Mr. Conner. The report was not signed by Mr. Conner. Nowhere in the report does it state that Mr. Conner made significant contributions to the appraisal and appraisal report was provided to the Department.

4. Per Wis. Admin. Code § RL 86.01(1), “Certified and licensed appraisers shall comply with... the standards set forth in Appendix I. A violation of any provision of this chapter may result in disciplinary action under s. 458.26, Stats.

5. Per Wis. Admin. Code § RL 86.01(2), “All appraisals performed in conjunction with federally related transactions and non-federally related transactions shall conform to the uniform standards of professional appraisal practice set forth in Appendix I.”

6. Per Wis. Stat. § 458.26(3)(b), an appraiser is subject to discipline if he or she has, “Engaged in unprofessional or unethical conduct in violation of rules promulgated under s. 458.24.”

Count II: Data Collection and Reporting Errors

7. Mr. Conner failed to identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal, including, but not limited to: (a) failing to identify the township, section, town or range in which the property is located; (b) inadequate description of the physical characteristics of the land, specifically, describing the land as simply 21.3 acres with 345 frontage feet, when over 80% of the land is wetland and not buildable; (c) failing to report that over 80% of the land is located in a flood-plain per Wisconsin Department of Natural Resources Wetland Inventory maps; and (d) incorrectly identified the zoning as “residential,” when, in fact, the correct zoning was “recreation.”

8. Per USPAP Standards Rule 1-2, “In developing a real property appraisal, an appraiser must: (e) identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal, including: (i) its location and physical, legal and economic attributes; ... (iv) any known... ordinances or other items of a similar nature;”

9. Mr. Conner failed to identify and analyze the effect on use and value of existing land use regulations by inaccurately identifying the zoning category, failing to identify over 80% of the land as being classified as wetland by the Wisconsin Department of Natural Resources, and failing to analyze and comment on the impact on value and use of these applicable legal classifications.

10. Per USPAP Standards Rule 1-3, “... an appraiser must: (a) identify and analyze the effect on use and value of existing land use regulations...”

11. Mr. Conner failed to adequately collect comparable sales data, as evidenced by his claim to the Department that there was a, “lack of sales on the Wisconsin River,” when, in fact, there comparable sales located on the same flowage that were no more dissimilar from the comparables selected by Mr. Conner, and had occurred within 10 months of the date of Mr. Conner’s appraisal. Use of comparables located on the same flowage as the subject property would have significantly affected the results of the appraisal.

12. Mr. Conner failed to adequately analyze and adjust comparable sales data, as evidence by his claim to the Department that, “... some of the comparables (used by Mr. Conner) were on superior inland type lakes.” Yet the “Comments on Sales Comparisons” states that the “sales chosen are similar to the subject in... appeal, amenities, and location,” and that adjustments were, “due to acreage differences.” Further, all adjustments made to the comparables were in favor of increasing the value of the subject property based on acreage, and no adjustments were made due to the fact that the some of the comparable sales were located on “superior inland type lakes.” No negative adjustments appear in the report based upon comparison of the subject property to those on “superior inland type lakes.”

13. Per USPAP Standards Rule 1-1(a), “In developing a real property appraisal an appraiser must: (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal; (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affect the credibility of those results.”

14. Per USPAP Standards Rule 1-4, “In developing a real property appraisal, an appraiser must collect, verify, and analyze all information applicable to the appraisal problem... (a) When a sales comparison approach is applicable an appraiser must analyze such comparables sales data as are available to indicate a value conclusion.”

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Appraisers Board has jurisdiction to act in these matters pursuant to Wis. Stat. § 458.26.

2. The Wisconsin Real Estate Appraisers Board has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

3. By failing to ensure the copy of the appraisal report disclosed significant assistance provided in the conduct of the appraisal and the creation of the appraisal report by Mr. Conner, **Mr. Fierek** violated USPAP Standards Rules 2-2 and 2-3, which constitute violations of Wis. Admin. Code §§ RL 86.01(1) and (2), thereby subjecting himself to discipline per

Wis. Stat.
§ 458.26(3)(b).

4. By signing an appraisal report that failed to adequately identify the location of the property, the physical characteristics of the property, that a majority of the property is located within a flood plain, and incorrectly identifying the zoning classification of the property, **Mr. Fierek** committed one or more violations of USPAP Standards Rule 2-2(e), which constitute violations of Wis. Admin. Code §§ RL 86.01(1) and (2), thereby subjecting himself to discipline per Wis. Stat. § 458.26(3)(b).

5. By signing an appraisal report that failed to identify and analyze the effect on use and value of existing land use regulations, specifically, the proper zoning category and the fact that most of the parcel is designated as wetlands by the Wisconsin Department of Natural Resources, **Mr. Fierek** committed one or more violations of USPAP Standards Rule 1-3, which constitute violations of Wis. Admin. Code §§ RL 86.01(1) and (2), thereby subjecting himself to discipline per Wis. Stat. § 458.26(3)(b).

6. By failing to adequately collect, select, analyze and adjust comparable sales data, **Jeffrey A. Conner** committed one or more violations of USPAP Standards Rule 1-1(a) and (b), and USPAP Standards Rule 1-4, which constitute violations of Wis. Admin. Code §§ RL 86.01(1) and (2), thereby subjecting himself to discipline per Wis. Stat. § 458.26(3)(b).

7. By signing an appraisal report that contained a series of errors, as noted above in paragraphs 3-6 of these conclusions of law, above, **Mr. Fierek** has committed one or more violations of USPAP Standards Rule 1-1(c), which constitute violations of Wis. Admin. Code §§ RL 86.01(1) and (2), thereby subjecting himself to discipline per Wis. Stat. § 458.26(3)(b).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license and certification of **Timothy A. Fierek** is hereby **LIMITED**, as follows:
(a) Respondent may not sign any appraisal as a supervisory appraiser; (b) Respondent may not rely upon substantial appraisal performed by another; (c) Respondent may only sign appraisals of real estate with water access rights or water frontage located the following counties: Shawano, Oconto, Menominee, and Waupaca; and (d) Respondent shall not sign more than fifty (50) appraisals in any calendar month. When conducting mass appraisals of lots for a new development, every ten (10) lots appraised shall count as one appraisal towards the monthly limit of fifty, unless approval for a different ratio is received in advance from the Board's monitoring liaison. Proof of compliance with the limitation on number of appraisals shall be provided to the Department Monitor each month by having a certified public accountant review his records and certify that Respondent is complying with the limitation. These limitations may be removed no sooner than one (1) year after the date of signing of this Order, and only if all terms and conditions of this Order that are applicable to Respondent have been complied with.

IT IS FURTHER ORDERED that:

2. Respondent **Timothy A. Fierek** shall pay partial costs of this investigation to date, with the total amount of one thousand (\$1,000.00) dollars, within one (1) year of the signing of this Order.

3. Respondent **Timothy A. Fierek** shall complete no less than sixteen (16) credit hours of continuing education, the topics of which shall include the selection of comparables and location adjustments. Specific courses shall be proposed by Respondent and approved in advance by the Board's Monitoring Liaison. The education required by this Order may not be credited towards Respondent's continuing education obligations. Proof of completion shall be provided to the Department Monitor.

4. All payments and proof of completion of education required by this order to be submitted to the Department Monitor shall be mailed, faxed or delivered to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 261-7904, Fax (608) 266-2264

5. Case number 04 APP 025 is hereby closed as to Respondent **Timothy A. Fierek** only.

6. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and well-being and may result in a summary suspension of Respondent's license and certification. The Real Estate Appraisers Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event that Respondent fails to timely submit any payment of costs as set forth above, or fails to comply with the conditions of this Order, or fails to complete the required continuing education the Respondent's license and certification (#4-1113) SHALL BE SUSPENDED, without further notice or hearing, unless Respondent has complied with the terms of this Order.

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

REAL ESTATE APPRAISERS BOARD

By: Mark P. Kowbel
A Member of the Board

July 12, 2006
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN RE DISCIPLINARY PROCEEDINGS :
AGAINST :
TIMOTHY A. FIEREK and : STIPULATION AS TO RESPONDENT
JEFFREY A. CONNER, : TIMOTHY A. FIEREK
: LS _____
RESPONDENTS. :

Division of Enforcement Case No. 04 APP 025

It is hereby stipulated and agreed, by and between Timothy A. Fierek, Respondent (Fierek); William Pharis Horton, attorney for Respondent; and Mark A. Herman, attorney for Complainant, State of Wisconsin, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation resolves a pending investigation of Mr. Fierek's licensure by the Division of Enforcement (04 APP 025). Mr. Fierek consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Mr. Fierek understands that by signing 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, the Wisconsin Administrative Code, and any other provisions of state or federal law.
3. Mr. Fierek has obtained the assistance of legal counsel prior to signing this Stipulation.
4. Mr. Fierek agrees to the adoption of the attached Final Decision and Order by the Real Estate Appraisers Board ("Board"). 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. Mr. Fierek waives all rights to any appeal of the Board's order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board 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 Enforcement and any member of the Real Estate Appraisers Board ever assigned as an advisor in this investigation may appear before the Board, without the presence of Respondent or his attorney, for purposes of speaking in support of this agreement and answering questions that any person may have in connection with the Board's deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
7. Mr. Fierek is informed that should the Board adopt this Stipulation, the Board's final decision and order is a public record and will be published in accordance with standard Department procedure.
8. The Division of Enforcement joins Mr. Fierek in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

TIMOTHY A. FIEREK

Respondent
W7029 Old Lake Road
Shawano, WI 54166

Date

WM. PHARIS HORTON

Attorney for Respondent
Horton Law Office, S.C.
222 North Midvale Blvd. Suite 7
Madison, WI 53705

Date

MARK A. HERMAN

Attorney, Division of Enforcement
1400 East Washington Avenue
Madison, WI 53708-8935

Date

[Case No. 04 APP 025 (Respondent Fierek Only): Limitation, Education and \$1000 Costs.]