

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE REAL ESTATE APPRAISERS BOARD

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IN RE DISCIPLINARY PROCEEDINGS :  
AGAINST :  
: FINAL DECISION AND ORDER  
JAY R. LUNIAK, :  
: LS0702286APP  
RESPONDENT. :

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Division of Enforcement Case No. 05 APP 071

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

Jay R. Luniak  
719 West Spencer Street  
Appleton, WI 54914

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

PROCECURAL HISTORY

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 Jay R. Luniak (“Luniak”), whose last known address of record with the Department of Regulation and Licensing (“Department”) is 719 West Spencer Street, Appleton, WI 54914, and whose date of birth is August 11, 1980, possesses a certificate of licensure and a certificate of certification to practice as a certified residential appraiser and licensed appraiser (#9-1251). The certificate and license were first granted on March 15, 2002, and will expire on December 14, 2007.
2. On January 22, 2004, Respondent signed an appraisal of real property located at 503 North Garfield Place, Appleton, Wisconsin.
3. Respondent has violated 2004 Uniform Standards of Professional Appraisal Practice (USPAP) by:
  - a. Failing to have the knowledge of the local market and geographic area necessary to perform the appraisal assignment competently, or to take necessary steps to complete the assignment competently, as reflected by the selection of comparable properties from neighborhoods with character and amenities completely different from the subject property and without making appropriate adjustments for same, contrary to USPAP’s Competency Rule;
  - b. Failing to be aware of, understand and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal, as evidenced by the issues noted in sub-paragraph a., above, contrary to USPAP Standards Rule 1-1(a);
  - c. Failing to explicitly identify the client and other intended users of the report, and failing to explicitly identify the intended use of the report, contrary to USPAP Standards Rule 1-2(a) and (b);

- d. Failing to correctly note characteristics of the property, including, but not limited to, and failing to note that the lot size is non-conforming; and incorrectly identifying the “subject’s site (as) relatively typical of residential sites in this area...” when, in fact, the site was an undersized corner lot bordering on a street with heavy traffic, contrary to USPAP Standards Rule 1-2(e); and
- e. Failing to identify the characteristics noted above, and to analyze their effect on the use and value of the property, contrary to USPAP Standards Rule 1-3(a).

The errors noted above resulted in Mr. Luniak producing a market value opinion of \$120,000, with an effective date of January 22, 2004. Since that date the subject has had expired listed for sale with the dates and listing prices as follows: 05/05, \$93,900; 06/05, \$89,900; 10/05, \$75,900; 06/06, \$74,900; listing agreement expired without sale; 07/06, \$69,900; 08/06, \$66,405; and 09/06, \$49,350; subject is currently being offered for sale at \$47,869. Although the subsequent sales prices may have been affected by factors such as poor maintenance, etc., the fact that all list prices were significantly lower than the Mr. Luniak’s opinion of market value suggests that the market value opinion was unsupported.

4. Prior to September 27, 2006, Mr. Luniak offered to provide other samples of his work to demonstrate that the appraisal referred to above in paragraph 3 does not represent his typical work. On September 27, 2006, the Department received Mr. Luniak’s 2006 roster, and requested via telephone message three specific appraisal files. The request was renewed on October 18, 2006. In response to a faxed letter sent on November 6, 2006, Mr. Luniak called the Department and admitted that he had been attempting to delay the processing of the complaint.

5. On November 9, 2006, the Department received the three appraisal files requested. A cursory review of the appraisal files by Department staff, who are not licensed as appraisers, showed that two of the three appraisals cited the cost approach as support for the opinion of market value, yet no cost approach was developed. Other issues may or may not be present in the appraisals. USPAP Standards Rule 1-1 (b) requires an appraiser to not commit a substantial error or omission that significantly affects an appraisal...”

6. Per Wis. Admin. Code § RL 86.01(2), “All appraisals... shall conform to the uniform standards of professional appraisal practice...” Per Wis. Admin. Code § RL 86.01(1), “Certified and licensed appraisers shall comply with the standards of practice established by ch. 458, Stats., and chs. RL 80 to 86 and the standards set forth in Appendix I” (Appendix I contains the Uniform Standards of Professional Appraisal Practice).

7. Per Wis. Admin. Code § RL 86.01(10), “After request for information is made by the board, failing to cooperate in a timely manner with the board’s investigation of complaints filed against the licensed or certified appraiser. There is a rebuttable presumption that a licensed or certified appraiser who takes longer than 30 days to respond to a request for information by the board has not acted in a timely manner under this subsection.”

#### 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 comply with the 2004 Uniform Standards of Professional Appraisal Practice, as set forth in paragraphs 3 and 5 of the findings of fact, and failing to comply with Wis. Admin. Code § RL 86.01 (10), as set forth in paragraph 4 of the findings of fact, Respondent has subjected himself to discipline per Wis. Stat. § 458.26(3)(b).

#### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license and certification of Respondent **Jay R. Luniak** (#9-1251) shall be and hereby is **REPRIMAND** **SUSPENDED** for a period of seventy-five (75) days, beginning fifteen (15) days after the date of signing of this Order.

IT IS FURTHER ORDERED that:

2. Respondent shall take and successfully complete the following as remedial education, which shall not count towards his continuing education requirements, within one year of the date of signing of this Order: (a) Basic Appraisal Principles conducted by the Appraisal Institute, to include the testing component, if available; and (b) a seminar on the subject

of Mortgage Fraud, offered by the Appraisal Institute.

3. Respondent shall pay costs of this investigation in the amount of seven hundred (\$700.00) dollars within six months of the date of signing of this Order.
4. Respondent shall pay a forfeiture in the amount of two-hundred and fifty (\$250.00) dollars within one year of the date of signing of this Order.
5. All payments and proof of completion of education required by this order to be submitted to the Department M 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

6. Case number 05 APP 071 is hereby closed.
7. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and well and may result in a summary suspension of Respondent's license and certification. The Real Estate Appraisers Board in its disc may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms Order. In the event that Respondent fails to timely submit any payment of costs as set forth above, or fails to comply with the c education the Respondent's license and certification (#9-1251) SHALL BE SUSPENDED, without further notice or hearing, u 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

2/28/07  
Date

**STATE OF WISCONSIN  
BEFORE THE REAL ESTATE APPRAISERS BOARD**

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**IN RE DISCIPLINARY PROCEEDINGS** :  
**AGAINST** :  
 : **STIPULATION**  
**JAY R. LUNIAK,** :  
 :  
 : **LS** \_\_\_\_\_  
**RESPONDENT.** :

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Division of Enforcement Case No. 05 APP 071

It is hereby stipulated and agreed, by and between Jay R. Luniak, 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 Respondent's licensure by the Division of Enforcement (05 APP 071). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Respondent 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 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. Respondent has been provided with the opportunity to obtain legal counsel prior to signing this Stipulation.
4. Respondent 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. Respondent 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. Respondent 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 Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

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**JAY R. LUNIAK**

Respondent

719 West Spencer Street

Appleton, WI 54914

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Date

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**MARK A. HERMAN**

Attorney, Division of Enforcement

1400 East Washington Avenue

Madison, WI 53708-8935

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Date