

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	INTERIM DECISION AND ORDER
	:	
ALVIN L. COUNARD,	:	LS0910073APP
	:	
RESPONDENT.	:	

Division of Enforcement Case File # 08 APP 112

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

Alvin L. Counard
2767 Newberry Avenue
Green Bay, WI 54302

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

PROCEDURAL HISTORY

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

FINDINGS OF FACT

1. Respondent Alvin L. Counard (Counard), whose last known address of record with the Department of Regulation and Licensing (Department) is 2767 Newberry Avenue, Green Bay, WI 54302, and whose date of birth is June 13, 1943, possesses a certificate of certification and a certificate of licensure as a certified residential appraiser (#9-1310). The license was first granted on November 19, 2003, and will expire on December 15, 2009.

2. On or about October 11, 2007, Mr. Counard completed an appraisal of real property located at 4688 Golden Pond Court, Green Bay, WI 54115 (subject property). On December 17, 2007, Mr. Counard modified the report. The modified report included a fourth comparable sale. The subject property was identified as consisting of five parcels totaling 40.085 acres. The largest of the five lots located within the subject property as defined by Mr. Counard is HB-551, which consists of over 26.274 acres per Mr. Counard.

3. Mr. Counard reported that the highest and best use of the subject property was for "Commercial Use." Mr. Counard opined that the property had a market value of \$8,550,000. Mr. Counard's report was conveyed to the landowner, T.J. Subsequently, T.J. developed the property into an office park, and is currently leasing 22,000 square feet of commercial space on the subject property. There is probable cause to believe that T.J.'s investments in developing the property exceeded \$250,000.

4. Mr. Counard arrived at his opinion of market value by reviewing comparable vacant land sales. Mr. Counard concluded that these sales supported a value of \$210,000 per acre. Mr. Counard then multiplied this amount by the number of acres contained in the subject property (40.085), and concluded that the market value of the subject property was \$8,550,000. Using Mr. Counard's data, 40.085 multiplied by \$210,000 would yield \$8,417,859; it is unclear how the figure of \$8,550,000 was arrived at by Mr. Counard.

5. A review of the Mr. Counard's report shows several potential violations of the applicable USPAP Standards

Rules, including, but not limited to, the following:

- a. 2-2(b)(ii), which requires appraisers to, “state the intended use of the appraisal;” by not including any statement regarding the intended use of the appraisal.
- b. 2-2(b)(iii), which requires appraisers to, “summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment... (which must include) comments about the legal, physical and economic attributes of the real estate relevant to the type and definition of value...” The subject property was valued on a per acre basis as if all 40 acres were available for development. In fact, substantial portions of the subject property were encumbered by a Conservation Easement to, “assure... that the Property will be perpetually preserved in its predominantly natural, scenic, historic, agricultural, forested and open space condition.” This easement was recorded with the Brown County Register of Deeds in 2006, and a corrected version was recorded on February 16, 2007, over six months prior to the effective date of the appraisal report. Per the corrected Conservation Easement, the easement restricts use of more than 26 acres of land, including 13.51 acres located in parcel HB-551 (or, over half of the area of HB-551, per Mr. Counard), which is part of the subject property. Additionally, there is probable cause to believe that other portions of the subject property are ponds and wetlands, and, therefore are subject to state and local restrictions upon development. None of these issues were noted or discussed by Mr. Counard in his report. Using Mr. Counard’s own methodology, accounting for the 13.51 acres which could not be developed would have reduced the value of the subject property by at least \$2,730,000.
- c. 2-2(b)(vii), which requires appraisers to, “summarize the scope of work used to develop the appraisal;” by failing to include a scope of work statement in the report which complies with the scope of work rule by identifying the problem to be solved.
- d. 2-2(b)(viii) and 1-5(b), which requires appraisers to, “analyze all sales of the subject property that occurred within three (3) years prior to the effective date of the appraisal...” and, in the report to, “summarize information analyzed... and the reasoning that supports the analyses, opinions and conclusions...” failing to report and analyze the purchase of HB-551, consisting of 26.274 acres per Mr. Counard, by the current owner for \$750,000 on October 31, 2006, which was less than one year prior to the effective date of the appraisal. The prior sale of a portion of the subject property was at a price per acre of approximately \$28,545 per acre; substantially less than the \$210,000 per acre market value conclusion reached by Mr. Counard. Mr. Counard reported no explanation for a seven-fold increase in the value of the property in the intervening 50-week period.

6. Per Wis. Stat. § 458.26 (3), “... the board may limit, suspend or revoke any certificate under this chapter... if the... board finds that the... holder of the certificate has done any of the following: (b) Engaged in unprofessional... conduct in violation of rules promulgated under s. 458.24.”

7. Per Wis. Admin. Code § RL 86.01(1), “Certified and licensed appraisers shall comply with the standards of practice established by ch. 458, Stats., chs. RL 80 to 86 and the uniform standards of professional appraisal practice (USPAP).”

8. Per Wis. Admin. Code § RL 81.05(2), “A certified residential appraiser may conduct appraisals... of commercial real estate having a transaction value of not more than \$250,000.” “Transaction value” is defined, in part as, “...investments in... real property...” per Wis. Admin. Code § RL 80.03(15)(b).

9. Per Wis. Admin. Code RL 6.06, the Board has the authority to issue a summary suspension order.

10. Mr. Counard’s license is currently subject to a requirement to complete education regarding the topics of Residential Appraisal Report Case Studies and Appraisal Procedures.

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 interim resolution of this matter pursuant to Wis. Stat. § 227.44 (5).

3. There is probable cause to believe that **Alvin L. Counard** has conducted an appraisal and report which was used to support investments in commercial property exceeding \$250,000, as set forth more fully above in paragraph 3 of the Findings of Fact, which is in violation of Wis. Admin. Code § RL 81.05 (2), thereby subjecting him to discipline per Wis. Stat. § 458.26 (3) (b).

4. There is probable cause to believe that **Alvin L. Counard** has committed four or more violations of the applicable Uniform Standards of Professional Appraisal Practice, which resulted in the substantial over-valuation of the subject property by a sum of greater than \$2,000,000, and by more than 20% of the value of the property.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. **Alvin L. Counard's** license (license # 9-1310), shall be and hereby is **LIMITED** to the appraisal of existing 1-4 family residential properties. This limitation may be terminated by the Board upon the request of Mr. Counard and with no less than thirty (30) days advance notice to the Division of Enforcement.

IT IS FURTHER ORDERED that:

2. Case number 08 APP 112 shall remain open.
3. This Order is effective on the date of its signing.

REAL ESTATE APPRAISERS BOARD

By: Marla Britton
A Member of the Board

10/7/09
Date

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	INTERIM STIPULATION
	:	
ALVIN L. COUNARD,	:	LS _____
	:	
RESPONDENT.	:	

Division of Enforcement Case File # 08 APP 112

It is hereby stipulated and agreed, by and between Alvin L. Counard, Respondent; Thomas L. Keidatz, 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 Interim Stipulation creates an interim order concerning a pending investigation against Respondent’s licensure by the Division of Enforcement (08 APP 112). Respondent consents to the issuance of this Interim Decision and Order in lieu of presentation of a summary suspension petition to the Real Estate Appraisers Board (Board).
2. Respondent understands that by signing this Interim 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 themselves; the right to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for termination of the summary suspension; the right to have a formal complaint issued against him within ten (10) days of the issuance of this Interim Order; 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. This waiver shall not bar him from exercising any such rights following the issuance of a Formal Complaint in these matters.
3. Respondent has obtained legal counsel prior to signing this Interim Stipulation.
4. Respondent agrees to the adoption of the attached Interim Decision and Order by the Board. The parties to the Interim Stipulation consent to the entry of the attached Interim 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 Interim Order, if adopted in the form as attached.
5. If the terms of this Interim Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Interim Stipulation, and the matter shall then be returned to the Division of Enforcement for further proceedings. The parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this Interim Decision and Order, either for now, or at the time of consideration of any final resolution of these investigations.
6. The parties to this Interim 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 Interim Stipulation and issue the attached Interim Decision and Order.
7. Respondent is informed that should the Board adopt this Interim Stipulation, the Board’s Interim Decision and Order is a public record and may be published in accordance with standard Department procedure.

8. The Division of Enforcement joins Respondent in recommending the Board adopt this Interim Stipulation and issue the attached Interim Decision and Order.

Alvin L. Counard, Respondent
2767 Newberry Avenue
Green Bay, WI 54302

Date

Thomas L. Keidatz, Roels, Keidatz
et. al., Attorneys for Respondent
515 George Street
P.O. Box 5065
De Pere, WI 54115-5065

Date

Mark A. Herman, Attorney
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

Date