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STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST : **FINAL DECISION AND ORDER**
DONALD WERGIN, : ORDER 0000355
RESPONDENT. :

Division of Enforcement case file 08 APP 057

The parties to this action for the purpose of Wis. Stats. sec. 227.53 are:

Donald Wergin
1420 Clark Street
Manitowoc, WI 54220

Wisconsin 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 Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Real Estate Appraisers Board ("Board"). The Board has reviewed this Stipulation and considers it acceptable. Accordingly, the Board adopts the attached Stipulation in this matter and makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Donald Wergin is licensed in the State of Wisconsin as a Real Estate Appraiser and certified as a Certified Residential Appraiser with license number 9-841, first issued on April 21, 1994.
2. Mr. Wergin's most recent address on file with the Department of Regulation and Licensing ("Department") is 1420 Clark Street, Manitowoc, WI 54220.
3. Stacey Wergin submitted an application in February 2008 to become a licensed appraiser. She submitted appraisal reports for properties at

304 North Rapids Road in Manitowoc;
606 Michigan Avenue in West Bend; and
1711 Washington Street in Manitowoc.

Ms. Wergin's application was denied because the appraisal reports failed to be in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).

4. The respondent, Donald Wergin, supervised Stacey Wergin in her appraisal work and as the supervising appraiser who signed her appraisal reports, Mr. Wergin is responsible for their content under USPAP Standards Rule (SR) 2-3.

5. In the appraisal and appraisal report for 304 North Rapids Road in Manitowoc, Mr. Wergin failed to comply with USPAP in the following ways:

Competency Rule and S.R. 2-2

Although the property is a commercial property, the report was prepared on a 2055 residential appraisal short form. A lender's request for a short form appraisal does not excuse USPAP violations.

Scope of Work Rule and S.R. 2-2b(vii)

No scope of work statement. Appraiser must not allow assignment conditions to limit the scope of work.....that assignment results are not credible. 2055 Short form was used for this commercial assignment.

S.R. 1-1(a) (b) (c) Developing an Appraisal and S.R. 2-1 Report Not Misleading

The effective/signature date of report is 8/22/2007, but comparable data included in the work file were printed on 9/17/2007.

S.R. 1-2a Client and Intended User(s) and S.R. 2-2b(i)

The report does not identify the intended user(s). It is not acceptable to require the reader to infer that the intended user is the lender/client.

S.R. 1-2b Intended Use and S.R. 2-2b(ii)

The report does not identify the intended use of the appraisal.

S.R. 1-2e Property Characteristics an S.R. 2-2b(iii)

The report contains an inadequate description of subject improvements, and the parcel number is incorrect.

S.R. 1-2f Scope of Work and S.R. 2-2b(vii)

No scope of work statement.

S.R. 1-2g Hypothetical Condition(s) and S.R. 2-2b(x)

If this was a construction project, a hypothetical condition should have been identified and reported.

S.R. 1-4a Sales Comparison Approach and S.R. 2-2b(viii)

The distance to comparable sale #3 is excessive (40 miles) and the report contains minimal detail to justify rationale for any adjustments.

S.R. 1-4c. Income Approach and S.R. 2-2b(viii)

The Income Approach was not developed yet an apartment unit is indicated on the sketch. The report should have explained whether the unit was leased and, if so, the lease terms.

S.R. 1-5 Subject Listing and Sale Information and S.R. 2-2b(viii)

The report contained no analysis or even comments to explain a value opinion of \$235,500 when it was “purchased in spring for \$123,500”.

S.R. 1-6 Reconciliation and S.R. 2-2b(viii)

No reconciliation provided in the report.

All the analysis and reasoning in the report is boilerplate text which could apply to any property in any location.

The report suffers from a lack of substantiation, gaps in analysis, unsupported statements, text that does not meet the intent of the form, omission of specific data sources, and mistakes and omissions in sales grid adjustments.

The report contains no meaningful analysis, rationale, persuasion or logic which would lead the intended user to agree with the appraiser’s conclusions.

6. In the appraisal and appraisal report for 606 Michigan Avenue in West Bend, Mr. Wergin failed to comply with USPAP in the following ways:

Ethics Rule, Conduct and S.R. 2-2 (b)

The workfile contains an email request (11/26/2007) from the lender (homeowner?) “to change the name on the report, **again**.” Altering a report in a manner that conceals the original client or intended users in the assignment is misleading and it would violate the Conduct section. Accommodating the client’s request to readdress the appraisal report violates the Ethics Rule.

Ethics Rule, Record Keeping and S.R. 2-2 (b)

The material in the workfile raises issues of whether the comparable sales documentation was compiled at the time of the report preparation, whether the documents are true copies (the borrower, owner and lender have been obscured), and public record data.

Competency Rule and S.R. 2-2 xxxxx

Mr. Wergin is based in Manitowoc. The supervisee was based in De Pere. This raises an issue of geographic competence, especially for the West Bend property which is located

two counties away.

S.R. 1-2a Client and Intended User(s) and S.R. 2-2b(i)

The report does not identify the intended user(s). It is not acceptable to require the reader to infer that the intended user is the lender/client.

S.R. 1-2b Intended Use and S.R. 2-2b(ii)

The report does not identify the intended use of the appraisal.

S.R. 1-2e Property Characteristics an S.R. 2-2b(iii)

A legal description is not provided.

S.R. 1-2f Scope of Work and S.R. 2-2b(vii)

No scope of work statement. The scope of work statement is incomplete.

S.R. 1-4a Sales Comparison Approach and S.R. 2-2b(viii)

Clearly, the sales selected are superior to the subject property and would not be a market substitute. Marshall & Swift would classify this property as low-quality while the comparables would be classified as average or good.

S.R. 1-4b Cost Approach and S.R. 2-2b(viii)

The cost approach was incorrectly completed. It includes personal property.

S.R. 1-4g Personal Property, etc. and S.R. 2-2b(iii and viii)

Grid adjustments were made for an above ground pool.

The report suffers from a lack of substantiation, gaps in analysis, unsupported statements, text that does not meet the intent of the form, omission of specific data sources, and mistakes and omissions in sales grid adjustments.

The report comments that “due to the lack of interior lot sales within the area, the estimated land value was based on market information pertaining to the location.” This statement is confusing and circular and does not meet the intent of the requirement to support the estimated site value. It emphasizes the appraiser’s lack of understanding of fundamental appraisal concepts. Another confusing statement in the sales comparison comments: “due to the value range, the average of the three sales is considered market at present time.” In the appraiser’s favor, this is an attempt at reconciling the adjusted values in the market approach. However, the lack of further analysis or support for averaging and the boilerplate style imply the appraiser does not understand the intent of the USPAP requirement to reconcile estimated values with each approach and for a value conclusion.

The report contains no meaningful analysis, rationale, persuasion or logic which would lead the intended user to agree with the appraiser’s conclusions.

The report does not reconcile the approaches to value.

A lender's request does not excuse USPAP violations.

7. In the appraisal and appraisal report for 1711 Washington Street in Manitowoc. Mr. Wergin failed to comply with USPAP in the following ways:

Ethics Rule, Record Keeping and S.R. 2-2 (b)

The workfile must contain true copies of any written reports. The borrower, owner and lender have been obscured. The workfile copy of the report is signed by Donald Wergin as the appraiser, not Stacey Wergin.

Scope of Work Rule and S.R. 2-2b(vii)

No scope of work statement is provided.

S.R. 1-1(b) (c) Developing an Appraisal and S.R. 2-1 Report Not Misleading

The owner is listed as the only occupant of this 4 unit building. The report is listed as a refinance, not a sale. The report was signed (completed) on 10/16/2007, yet the comparable sale data in the workfile was printed on 10/18/2007. The site map may be for incorrect as it is addressed for a different property.

S.R. 1-2a Client and Intended User(s) and S.R. 2-2b(i)

The report does not identify the intended user(s). It is not acceptable to require the reader to infer that the intended user is the lender/client.

S.R. 1-2b Intended Use and S.R. 2-2b(ii)

The report does not identify the intended use of the appraisal.

S.R. 1-2e Property Characteristics and S.R. 2-2b(iii)

Property rights are incorrectly reported as Fee Simple rather than leased fee for this 4-unit building.

S.R. 1-2f Scope of Work and S.R. 2-2b(vii)

No scope of work statement. The scope of work statement is incomplete.

S.R. 1-3b Highest and Best Use and S. R. 2-2b(ix)

No highest and best use analysis provided.

The cost approach is completed incorrectly. The value developed in this report is market value. However, the appraiser states that the assessed value of the site is used to complete the cost approach.

The appraised value of the property is \$2,500 higher than the sale price but the appraiser does not explain or analyze the value differential.

The report does not reconcile the approaches to value.

All the analysis and reasoning in the report is boilerplate text which could apply to any property in any location.

The report suffers from a lack of substantiation, gaps in analysis, unsupported statements, text that does not meet the intent of the form, omission of specific data sources, and mistakes and omissions in sales grid adjustments.

The report contains no meaningful analysis, rationale, persuasion or logic which would lead the intended user to agree with the appraiser's conclusions.

A lender's request does not excuse USPAP violations.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Appraisers Board has jurisdiction to act in this matter pursuant to section 458.26 (3) of the Wisconsin Statutes and is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.

2. By failing to comply with USPAP in the appraisal and the appraisal report for property at 22 Scranton Court in Madison, Wisconsin, Respondent Donald Wergin violated sections RL 86.01 (1) and (2) of the Wisconsin Administrative Code, and is subject to discipline under section 458.26 (3), Wis. Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED as follows:

1. The attached Stipulation is hereby accepted.
2. Within six months of the date of this Order, the respondent, Donald Wergin, must successfully complete the following courses from the Appraisal Institute or equivalent courses taken from any educational institution approved by the Department of Regulation and Licensing and approved in advance through the Department Monitor (below):
 - a. Basic Appraisal Principles;
 - b. Basic Appraisal Procedure; and
 - c. USPAP Ethics.

None of the education completed pursuant to this order may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing. Mr. Wergin shall submit proof of successful completion in the form of verification from the institution providing the education to the following address:

Department Monitor
Department of Regulation and Licensing,
PO Box 8935, Madison, WI 53708-8935.
Fax (608) 266-2264
Tel. (608) 267-3817

3. Mr. Wergin's Real Estate Appraiser's license is hereby limited, as follows:

a. Mr. Wergin shall not train or supervise other appraisers or other individuals obtaining appraisal experience; and

b. Mr. Wergin shall limit his appraisal practice to the counties of Brown, Outagamie, Door, Manitowoc and Sheboygan.

At any time after one year following the completion of the education ordered above, Mr. Wergin may petition the Board for removal of either or both of these limitations by sending a written request along with a roster of appraisals completed following the education to the Department Monitor, and then supplying the reports and workfiles for three appraisals selected by the Monitor, for the Board's review and consideration of his request for removal of the limitation(s).


4. Mr. Wergin shall pay the Department's costs of this matter in the amount of **\$441.00** within 60 days of the date of this Order. Payment shall be made by certified check or money order, payable to the Wisconsin Department of Regulation and Licensing and sent to the Department Monitor.

5. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The 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 Respondent fails to timely submit payment of the costs or payment of the forfeiture as ordered, or fails to comply with the ordered continuing education as set forth above, the Respondent's license may, in the discretion of the board or its designee, be **SUSPENDED**, without further notice or hearing, until Respondent has complied with payment of the costs or forfeiture or completion of the continuing education.

6. File 08 APP 057 shall be closed.

Dated this 25 day of AUGUST, 2010.

WISCONSIN REAL ESTATE APPRAISERS BOARD

By: 
Marla Britton, Board Chair, or another member of the Board