

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE REAL ESTATE APPRAISERS BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

CARL NICHOLSON,  
RESPONDENT.

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FINAL DECISION AND ORDER

**ORDER 0002300**

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Division of Legal Services and Compliance<sup>1</sup> Case No. 11 APP 055

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Carl Nicholson  
N8116 La Salle Cir.  
Oconomowoc, WI 53066

Wisconsin Real Estate Appraisers Board  
P.O. Box 8935  
Madison, WI 53708-8935

Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 8935  
Madison, WI 53708-8935

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 in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Carl Nicholson (dob October 5, 1937) is licensed in the State of Wisconsin as a Certified General Appraiser and Licensed Appraiser, having license number 10-124, first issued on December 9, 1991, and current through December 14, 2013. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is N8116 La Salle Cir., Oconomowoc, WI 53066.

2. Respondent has not been previously disciplined by the Board.

3. On March 30, 2010, Respondent performed an appraisal of a Comfort Suites Hotel located at 725 Paradise Lane, Johnson Creek, WI. Respondent's appraisal report, dated April 2, 2010, provided a value of \$8,600,000 for the property.

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<sup>1</sup> The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

4. On March 30, 2010, Respondent also performed an appraisal of 7 various zoned land parcels comprising 143.71 acres located at Christberg Road and Spring Lane in Johnson Creek, WI. Respondent's appraisal report, dated April 19, 2010, provided a value of \$2,730,000 for the property.

5. On or about November 23, 2011, the Department received a complaint alleging that the subject appraisals violated the Uniform Standards of Professional Appraisal Practice (USPAP). Division of Legal Services and Compliance Case Number 11 APP 055 was subsequently opened for investigation.

6. Respondent's appraisal for the Comfort Suites property was reviewed by the Division of Legal Services and Compliance and it was determined that the appraisal and appraisal report contained violations of USPAP Rules and/or Standards Rules (SR) including, but not limited to:

- a. The comparable sales used were inappropriate. The subject property is a mid-scale, limited service hotel. However, of the comparables used by Respondent, one was an economy hotel, one was an extended stay hotel and one was a full-service hotel all in different market segments. (SR 1-1(a,b,c), SR 1-4(a), Competency Rule.)
- b. In some instances, no adjustments were considered, incorrect adjustments were made and/or no support for adjustments was provided for value differences between the subject property and the comparable sales. (SR 1-1(a,b,c), SR 1-4(a), Competency Rule, Ethics Rule.)
- c. The land value was not appropriately supported because no rationale or support for the adjustments was provided. No support was provided for the replacement cost (new) of the site improvements. Functional and economic obsolescence that were stated in the property description are different than the amounts applied in the cost approach and were not supported. (SR 1-1(a,b,c), SR 1-4(b), Competency Rule, Ethics Rule.)
- d. Respondent conducted no competitive hotel market analysis in the income approach. Respondent's assumptions about capitalizing NOI, convention revenues and expenses were not supported by market data. (SR 1-1(a,b,c), SR 1-4(c), Competency Rule, Ethics Rule.)
- e. Respondent's reconciliation of data with the approaches used is inadequate and not suitable for the subject property. The income capitalization approach is the best approach for hotel properties. Respondent gave the most weight to the sales approach even though the valuation arrived at is misleading. (SR 1-6(a,b), SR 2-1(a,b), SR 2-2(a,b,c(viii)).)
- f. The certification omits the second and ninth statements required by USPAP. (SR 2-2(a,b,c(xi)), SR 2-3.)

7. Respondent's appraisal for the seven land parcels was reviewed by the Division of Legal Services and Compliance and it was determined that the appraisal and appraisal report contained violations of USPAP Rules and/or SR including, but not limited to:

- a. The value opinion is misleading as it represents the aggregate value of seven  $\pm$  20 acre parcels and not the independent value of the 143.71 acres. Respondent did not disclose that the subject property cannot be sold as seven smaller parcels without significant costs. (SR 1-1(a,b,c), SR 1-4(a), SR 1-6(a,b), SR 2-1(a,b), SR 2-2(a,b,c(viii)), Competency Rule.)
- b. Respondent did not use appropriate larger comparable sales or a discounted sell-off analysis in the sales comparison approach. (SR 1-1(a,b,c), SR 2-1(a))
- c. The subject property's zoning was inconsistently identified. (SR 1-3(a,b), SR 2-1(a,b).)
- d. The costs of making utilities available were not considered. (SR 1-3(a,b), SR 2-1(a,b), Competency Rule, Ethics Rule.)
- e. Respondent states there is no floodplain on the subject property, however, the Jefferson County mapping system indicates that an extensive area on the west side of the property along the creek is within the floodplain. An extensive area in the northeast area is wetlands and environmental corridor; the negative impact of this was not considered in the value of the subject property. (SR 1-3(a,b), SR 2-1(a,b), Competency Rule, Ethics Rule.)
- f. Respondent failed to select and analyze comparable sales similar to the subject property. (SR 1-1(a,b,c), SR 1-4(a), Competency Rule.)
- g. In some instances, no adjustments were considered, incorrect adjustments were made and/or no support for adjustments was provided for value differences between the subject property and the comparable sales. (SR 1-4(a), SR 2-1(a,b).)
- h. No analysis of the subject party's prior sale was provided. (SR 1-5(a,b))
- i. The certification omits the second and ninth statements required by USPAP. (SR 2-2(a,b,c(xi)), SR 2-3)

8. In resolution of this matter, Respondent admits no wrongdoing but wishes to surrender his Certified General Appraiser license.

#### CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Appraisers Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 458.26, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent Carl Nicholson violated USPAP SR 1-1(a,b,c) by:

- a. failing to be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

- b. committing a substantial error of omission or commission that significantly affects an appraisal; and
- c. rendering 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 affects the credibility of those results.

3. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-3(a,b) by failing to identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends when developing a market value opinion and developing an opinion of the highest and best use of the real estate.

4. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-4(a,b,c) by:

- a. failing to analyze such comparable sales data as are available to indicate a value conclusion when a sales comparison approach is necessary for credible assignment results;
- b. failing to develop an opinion of site value by an appropriate appraisal method or technique, analyze such comparable cost data as are available to estimate the cost new of the improvements, and analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation) when the cost approach is necessary for credible assignment results; and
- c. failing to analyze such comparable rental data as are available and/or the potential earnings capacity of the property to estimate the gross income potential of the property, analyze such comparable operating expense data as are available to estimate the operating expenses of the property, analyze such comparable data as are available to estimate rates of capitalization and/or rates of discount, and base projections of future rent and/or income potential and expenses on reasonably clear and appropriate evidence when the income approach is necessary for credible assignment results.

5. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-5(a,b) by failing to analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal and failing to analyze all sales of the subject property that occurred within the three years prior to the effective date of the appraisal when developing a market value opinion.

6. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-6(a,b) by failing to reconcile the quality and quantity of data available and analyzed within the approaches used and to reconcile the applicability and relevance of the approaches, methods, and techniques used to arrive at the value conclusion in the real property appraisal.

7. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 2-1(a,b) by failing to clearly and accurately set forth the appraisal in a manner that is not

misleading and failing to include sufficient information to enable the intended users of the appraisal to understand the report properly.

8. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 2-2(a,b,c(viii)) by failing to describe or summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; failing to explain the exclusion of the sales comparison approach, cost approach, or income approach, and failing to state the appraisal methods and techniques employed, the value opinions and conclusions reached, and referencing the workfile.

9. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 2-2(a,b,c(xi)) and SR 2-3 by failing to include a signed certification that:

- a. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are his personal, impartial, and unbiased professional analyses, opinions, and conclusions; and
- b. No one provided significant real property appraisal assistance to the person signing the certifications.

10. By the conduct described in the Findings of Fact, Respondent violated the Competency Rule by failing to have the knowledge and experience to complete the subject assignment competently.

11. By the conduct described in the Findings of Fact, Respondent violated the Ethics Rule by performing an assignment in a grossly negligent manner.

12. As a result of the above violations, Respondent Nicholson has violated Wis. Admin. Code §§ RL (now SPS) 86.01(1) and (2), and is therefore subject to discipline pursuant to Wis. Stat. §§ 458.26(3)(b), (c) and (i).

#### ORDER

1. The attached Stipulation is accepted.
2. The VOLUNTARY SURRENDER of the Certified General Appraiser and Licensed Appraiser license issued to Carl Nicholson (license number 10-124) is hereby ACCEPTED effective May 31, 2013.
3. Mr. Nicholson shall not seek to reinstate his license or apply for any other license or certification as a real estate appraiser with the State of Wisconsin, Department of Safety and Professional Services in the future.
4. Any certificates or evidence of licensure in the State of Wisconsin shall be sent by Respondent to the Department Monitor by June 5, 2013, at the address below:

Department Monitor  
Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 8935, Madison, WI 53708-8935  
Telephone (608) 267-3817; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

5. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare.

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

WISCONSIN REAL ESTATE APPRAISERS BOARD

by:   
A Member of the Board

2/13/2013  
Date