

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DONALD J. WERGIN,
RESPONDENT.

:
:
: FINAL DECISION AND ORDER
:
: **0003525**

Division of Legal Services and Compliance Case No. 12 APP 062

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

Donald J. Wergin
1402 Clark Street
Manitowoc, WI 54220

Wisconsin Real Estate Appraisers Board
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

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 Donald J. Wergin (dob February 11, 1949) is certified in the State of Wisconsin as a Certified Residential Appraiser, having certificate of licensure and certification number 841-9, first issued on April 21, 1994 and suspended on March 22, 2012. Donald J. Wergin's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 1402 Clark Street, Manitowoc, WI 54220.

2. On August 25, 2010, the Board found Respondent violated Wis. Admin. Code §§ RL 86.01(1) and (2) (now SPS 86.01(1) and (2)) by signing as a supervising appraiser on appraisals which contained multiple violations of the Uniform Standards of Professional Appraisal Practice (USPAP). The Board's Order:

- a. Required Respondent to successfully complete the following three courses within six months: Basic Appraisal Principles, Basic Appraisal Procedure and USPAP Ethics;
- b. Limited Respondent's license to prohibit him from training or supervising any appraisers and to restrict Respondent's appraisal practice to Brown, Outagamie, Door, Manitowoc and Sheboygan counties;
- c. Allowed Respondent to petition the Board for removal of the above limitations at any time after one year following the completion of the ordered education; and
- d. Specified that violation of any terms of the Order may result in a suspension of Respondent's license.

3. On or about February 25, 2011, the Department Monitor notified Respondent that he had failed to timely complete the ordered education. After discussion, the Board granted Respondent an extension to complete the required education by September 15, 2011.

4. On March 22, 2012, the Board suspended Respondent's license for failure to complete the ordered education by the extended deadline of September 15, 2011. The Board issued a second Order, which specified that the terms and conditions of the August 25, 2010 Order were to remain in effect and that a petition for the removal of the suspension would not be considered without:

- a. Proof of successful completion of the following courses: Basic Appraisal Principles and Basic Appraisal Procedure and
- b. A roster of all appraisals completed from August 2010 through the date of the petition.

5. On or about May 23, 2012, Respondent submitted a petition for removal of the suspension.

6. On September 10, 2012, the Board denied Respondent's petition for removal of the suspension. The Board found Respondent (1) failed to successfully complete the ordered education, (2) failed to submit a legible roster of all appraisals completed from August 2010 through the date of his petition, and (3) submitted a petition prior to the Board's requirement of one year following the completion of the ordered education.

7. On September 10, 2012, the Board also ordered it would not consider a petition for removal of Respondent's suspension without a legible roster of all appraisals completed from August 2010 through the date of the submission of the roster and reports and workfiles for three appraisals for the Board's review.

8. Respondent practiced as an appraiser and certified on appraisal reports dated April 13, June 4, June 12 and July 9, 2012 that he was Wisconsin certified while his license was suspended.

9. While suspended, Respondent completed appraisals outside of the county limitation imposed in the Board's Order.

10. On September 24, 2012, pursuant to the September 10, 2012 Order, Respondent submitted reports and workfiles for three appraisals completed. All of the appraisals were received by the Division of Legal Services and Compliance and it was determined that the appraisals and appraisal reports violated USPAP Rules and/or Standards Rules.

11. Respondent's appraisal of a property located at 2917 School Street, Two Rivers, WI, dated April 13, 2012, contained the following violations:

- a. Respondent failed to properly support the estimate of site value in the cost approach. [Competency Rule, Scope of Work Rule, SR 1-1(a,b), SR 1-4(b)(i).]
- b. Respondent failed to correctly identify and analyze the subject's zoning classification and conformance. [Competency Rule, Scope of Work Rule, SR 1-1(b,c), SR 1-2(e)(i), SR 1-3(a), SR 2-1(a,b).]

12. Respondent's appraisal of a property located at 1837 North Rapids Road, Manitowoc, WI, dated June 12, 2012, contained the following violations:

- a. Respondent failed to properly support the estimate of site value in the cost approach. [Competency Rule, Scope of Work Rule, SR 1-1(a,b), SR 1-4(b)(i).]
- b. Respondent failed to correctly identify and analyze the subject's site size, flood map data, zoning classification and zoning compliance. [Competency Rule, Scope of Work Rule, SR 1-1(b,c), SR 1-2(e)(i), SR 1-3(a), SR 2-1(a,b).]
- c. Respondent incorrectly included a basement half bath in the above grade room counts of Comparable Sales 2 and 4 and incorrectly made a negative adjustment for Comparable Sale 3's half bath which should have been positive because the subject is superior to the comparable sale. [Competency Rule, SR 1-1(c), SR 2-1(a).]
- d. Respondent failed to identify a foreclosure transfer of Comparable Sale 1 in the prior year and a quit claim transfer of Comparable 2 in the prior year. [Scope of Work Rule, SR 1-1(c), SR 2-1(a).]

13. Respondent's appraisal of a property located at 2909 Newberry Avenue, Green Bay, WI dated April 21, 2012, contained the following violations:

- a. Respondent failed to correctly identify and analyze the subject's size, age, below grade living area, flood map data, zoning classification and zoning compliance. [Competency Rule, Scope of Work Rule, SR 1-1(b,c), SR 1-2(e)(i), SR 1-3(a), SR 2-1(a,b).]

- b. Respondent failed to make an adjustment to the comparable sales for the subject's in-ground swimming pool in the sales comparison approach. [SR 1-1(c), SR 2-1(a).]

14. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

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, Donald J. Wergin violated Wis. Stat. § 458.055(1) by using the title "Wisconsin certified appraiser" or any similar title while his certificate was suspended.
3. By the conduct described in the Findings of Fact, Donald J. Wergin violated Wis. Admin. Code § SPS 86.01(5) by knowingly omitting, understating, misrepresenting or concealing material facts in his appraisals.
4. By the conduct described in the Findings of Fact, Donald J. Wergin violated Wis. Admin. Code § SPS 86.01(13) by engaging in conduct which reflects adversely on his fitness to practice as a real estate appraiser.
5. By the conduct described in the Findings of Fact, Donald J. Wergin violated USPAP Scope of Work Rule by failing to determine and perform the scope of work necessary to develop credible assignment results.
6. By the conduct described in the Findings of Fact, Donald J. Wergin violated USPAP Competency Rule by failing to be competent to perform assignments.
7. By the conduct described in the Findings of Fact, Donald J. Wergin 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 affected 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.
8. By the conduct described in the Findings of Fact, Donald J. Wergin violated USPAP SR 1-2(e)(i) by failing to identify the characteristics of the property that are relevant to

the type and definition of value and intended use of the appraisal, including its location and physical, legal, and economic attributes.

9. By the conduct described in the Findings of Fact, Donald J. Wergin violated USPAP SR 1-3(a) by failing, when necessary for credible assignment results in developing a market value opinion, 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.

10. By the conduct described in the Findings of Fact, Donald J. Wergin violated USPAP SR 1-4(b)(i) by failing to develop an opinion of site value by an appropriate appraisal method or technique when a cost approach was necessary for credible assignment results.

11. By the conduct described in the Findings of Fact, Donald J. Wergin violated USPAP SR 2-1(a,b) by:

a. failing to clearly and accurately set forth the appraisal in a manner that will not be misleading and

b. failing to clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.

12. As a result of the violations noted in the Conclusions of Law, above, Donald J. Wergin violated Wis. Admin. Code § SPS 86.01(1) and (2) by failing to comply with the Uniform Standards of Professional Appraisal Practice (USPAP).

13. As a result of the above violations, Donald J. Wergin is 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 Residential Appraiser certificate of licensure and certification of Donald J. Wergin (number 841-9) is hereby ACCEPTED.

3. Respondent Wergin shall not re-apply for licensure for a period of five (5) years following the date of this Order.

4. Should Respondent Wergin re-apply for licensure:

a. Respondent Wergin shall pay the COSTS of this matter in the amount of \$1,600, before any such application may be considered. Payment of costs shall be made payable to the Wisconsin Department of Safety and Professional Services and sent by Respondent to the Department Monitor at the address below:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

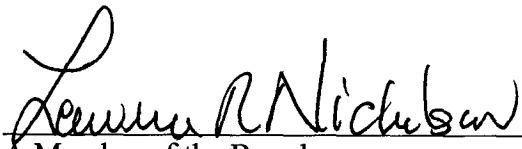
b. Respondent Wergin shall submit a new application for licensure and meet all requirements for licensure or certification existing at the time of the application.

c. The Board may determine whether and under what terms and conditions such licensure may be granted.

5. Violation of any terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a revocation of Respondent Wergin's right to re-apply for a license. In its discretion the Board may, in the alternative, impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order.

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

WISCONSIN REAL ESTATE APPRAISERS BOARD

by: 
A Member of the Board

11/12/2014
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DONALD J. WERGIN,
RESPONDENT.

:
:
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:
:

STIPULATION

0003525

Division of Legal Services and Compliance Case No. 12 APP 062

Respondent Donald J. Wergin and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, 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 Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- 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 Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondent is represented by Attorney Terence P. Fox.

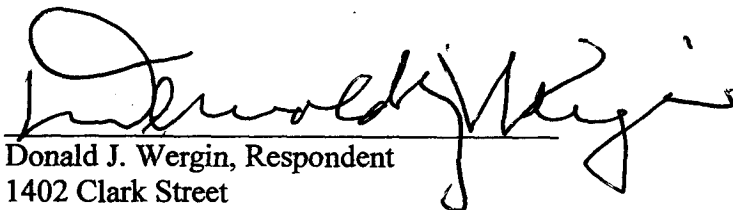
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Real Estate Appraisers Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

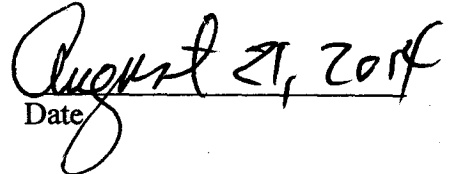
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by 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.

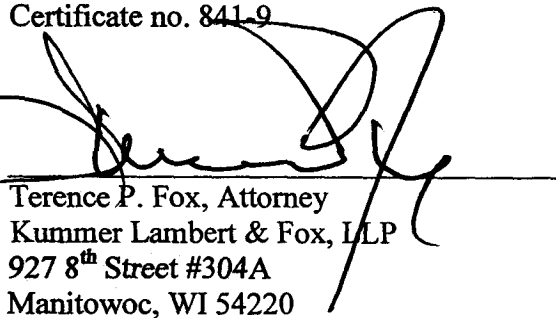
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

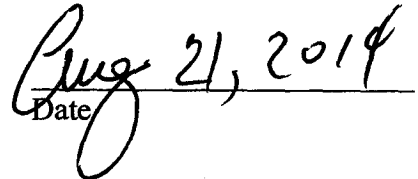
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.


8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

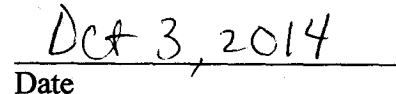

Donald J. Wergin, Respondent
1402 Clark Street
Manitowoc, WI 54220
Certificate no. 841-9


Date


Terence P. Fox, Attorney
Kummer Lambert & Fox, LLP
927 8th Street #304A
Manitowoc, WI 54220


Date


Andrea E. Brauer, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190


Date