

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

ALVIN L. COUNARD,
RESPONDENT.

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FINAL DECISION AND ORDER

0003949

Division of Legal Services and Compliance Case No. 13 APP 021

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

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

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 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 Alvin L. Counard (dob 6/13/1943) is certified in the State of Wisconsin as a Certified Residential Appraiser, having certificate of licensure and certification number 1310-9, first issued on November 19, 2003, and current through December 14, 2015. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 2767 Newberry Ave., Green Bay, WI 54302.

2. On October 18, 2006, Respondent was disciplined by the Board for violations of the Uniform Standards of Professional Appraisal Practice (USPAP). Respondent's certification was limited to require that all appraisal reports prepared by Respondent be supervised by, and

bear the signature and license number of, a designated appraiser for a period of one year from the date of the Order. Respondent was further ordered to pay \$500.00 in costs.

3. On February 25, 2009, Respondent was again disciplined by the Board for violations of USPAP. Respondent was reprimanded, ordered to complete sixty (60) hours of education in the areas of appraisal procedures and residential appraisal report case studies and pay costs of \$600.00.

4. On October 7, 2009, the Board entered an Interim Order finding probable cause that Respondent had engaged in conduct which violated USPAP and that he performed an appraisal for commercial property in excess of \$250,000 in violation of Wis. Admin. Code § RL (now SPS) 81.05(2) (2007). Respondent's certification was limited to performing appraisals of 1-4 family residential properties only.

5. On December 30, 2010, the Board suspended Respondent's certification for failure to complete the education required under the February 25, 2009 Final Decision and Order.

6. On March 14, 2011, the Board reinstated Respondent's certification in full following completion of the required education.

7. On February 15, 2013, Respondent performed an appraisal of property located at 3792 Riley's Point Rd., Sturgeon Bay, WI 54125.

8. On or about April 18, 2013, the Department received a complaint alleging that the Sturgeon Bay property appraisal violated USPAP. Division of Legal Services and Compliance Case Number 13 APP 021 was subsequently opened for investigation.

9. Respondent's appraisal report for the Sturgeon Bay property was reviewed by the Division of Legal Services and Compliance and it was determined that the appraisal and appraisal report violated USPAP Rules and/or Standards Rules (SR) as follows:

- a. Respondent indicated that he had completed an appraisal of the subject property on September 7, 2012 but the work file does not contain a copy of the appraisal report and adequate supporting documentation for that report. [Record Keeping Rule.]
- b. Respondent failed to include a 1004D Completion Report and copies of the Marshall and Swift Cost Book or cost work sheets in his work file. [Record Keeping Rule.]
- c. Respondent reported inconsistent assignment types for the appraisal report. [SR 1-1(c).]
- d. The defined neighborhood reported by Respondent does not include all of the comparable sales, Respondent incorrectly reported the price range and the present land use percentage, and Respondent failed to provide support in his commentary for market ratings related to market conditions. [SR 1-1(c), SR 1-3(a).]

- e. Respondent failed to report the site dimensions of the subject property, comment on how the land is configured, report that the subject property is located in a Flood Zone area, and report that the subject property has water frontage on a channel that leads to Green Bay. [SR 1-2(e)(iv), Competency Rule.]
- f. Respondent incorrectly reported the zoning classification as L1-Residential and failed to describe the support and rationale for his opinion of the highest and best use of the subject property. [SR 1-2(e)(iv), SR 2-2(b)(ix).]
- g. Respondent incorrectly identified the design style and failed to report improvements of the subject property including a fireplace and a built-in appliance. [SR 1-1(b,c), SR 1-2(e)(i).]
- h. Respondent prepared an inaccurate sketch of the subject property, incorrectly reported no external obsolescence, failed to report external depreciation due to a commercial property located across the channel from the subject property, and failed to comment on external depreciation due to the potential requirement for flood insurance. [SR 1-1(b,c), SR 1-2(e)(i).]
- i. In the sales comparison approach, Respondent made errors in reporting data for the comparable sales, failed to report relevant features of the comparable sales, selected inappropriate comparables, including comparables which did not have water frontage, and made inaccurate and inconsistent adjustments. [SR 1-1(b), SR 1-4, SR 1-4(a), Competency Rule.]
- j. Respondent did not indicate how the site value was determined in the cost approach. [SR 1-1(b), SR 1-4, SR 1-4(a).]

5. 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, Respondent violated the USPAP Record Keeping Rule by failing to include all data, information and documentation necessary to support the appraiser's opinions and conclusions.

3. By the conduct described in the Findings of Fact, Respondent violated the USPAP Competency Rule by failing to be competent to perform the assignment.

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

- a. committing a substantial error of omission or commission that significantly affects an appraisal; and
- b. 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.

5. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-2(e)(i,iv) 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:

- a. its location and physical, legal and economic attributes.
- b. any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments or other items of a similar nature.

6. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-3(a) 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, and the physical adaptability of the real estate, and market area trends when necessary for credible assignment results in developing a market value opinion.

7. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-4 by failing to collect, verify, and analyze all information necessary for credible assignment results.

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

9. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 2-2(b)(ix) by failing to summarize the support and rationale for the appraiser's opinion of the highest and best use of the subject property.

10. As a result of the above violations, Respondent has violated Wis. Admin. Code §§ 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 Certified Residential Appraiser certificate of licensure and certification issued to Alvin L. Counard (number 1310-9) is **SUSPENDED** for a period of sixty (60) days commencing fifteen (15) days from the date of this Order.

3. The Certified Residential Appraiser certificate of licensure and certification issued to Alvin L. Counard (number 1310-9) is further LIMITED as follows:

- a. Within fifty (50) days of the date of the Order, Respondent shall successfully complete the 15 hour USPAP course offered by the Appraisal Institute, or another provider pre-approved by the Board's monitoring liaison, including taking and passing any examination offered for the course.
- b. Within one hundred and twenty days (120) of the date of this Order, Respondent shall successfully complete sixty (60) hours of education consisting of the following courses offered by the Appraisal Institute, or equivalent courses offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any examinations offered for the courses:
 - i. Residential Sales Comparison and Income Approach (30 hours),
 - ii. Advanced Residential Applications and Case Studies (15 hours), and
 - iii. Residential Site Comparison and Cost Approach (15 hours).
- c. All courses may be taken online or in a classroom setting.
- d. Respondent shall submit proof of successful completion of the ordered education in the form of verification from the institution providing the education to the Department Monitor at the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or the Department, and also may not be used in future attempts to upgrade a credential in Wisconsin.
- e. This limitation shall be removed from Respondent's certification after Respondent satisfies the Board or its designee that he has successfully complied with the requirements of this Order.

4. Within ninety (90) days from the date of this Order, Respondent shall pay COSTS in this matter in the amount of \$1,318.00.

5. Examination results, proof of successful course completion and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be 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

6. 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 certificate of licensure and certification. 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 as ordered or fails to comply with the ordered education and examinations as set forth above, Respondent's certificate of licensure and certification (no. 1310-9) 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 and completion of the education and examinations.

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

WISCONSIN REAL ESTATE APPRAISERS BOARD

by: Lauren Nicholson
A Member of the Board

5/6/2015
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

ALVIN L. COUNARD,
RESPONDENT.

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STIPULATION

0003949

Division of Legal Services and Compliance¹ Case No. 13 APP 021

Respondent Alvin L. Counard 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 Sara Jordan.
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.

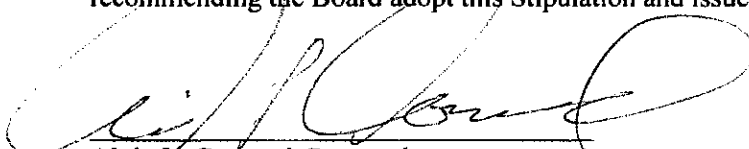
¹ The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

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.

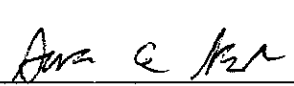
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes 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.


Alvin L. Counard, Respondent
2767 Newberry Ave.
Green Bay, WI 54302
Credential no. 1310-9

5-1-15
Date


Sara Jordan, Attorney for Respondent
Roels, Keidatz, Fronsee & Danen, LLP
515 George Street
P.O. Box 5065
De Pere, WI 54115-5065

5-1-15
Date


Pamela M. Stack, Attorney
Division of Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708-8935

5-1-15
Date