

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	:	
	:	FINAL DECISION AND ORDER
DAVID R. MASTERJOHN,	:	
RESPONDENT.	:	

0004172

Division of Legal Services and Compliance Case Nos. 13 APP 015, 13 APP 043 and 15 APP 032

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

David R. Masterjohn
P.O. Box 144
Spooner, WI 54801

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 David R. Masterjohn (dob 12/15/1953) is certified in the State of Wisconsin as a Certified General Appraiser, having certificate of licensure and certification number 292-10, first issued on September 3, 1992, and current through December 14, 2015. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is P.O. Box 144, Spooner, Wisconsin 54801.

2. On August 15, 2012, Respondent performed an appraisal of property located at N5406 970th Street, Elk Mound, Wisconsin 54739.

3. On August 15, 2012, Respondent performed an appraisal of property located at S8460 Balsam Road, Eau Claire, Wisconsin 54701.

4. On or about April 5, 2013, the Department received a complaint alleging that the 970th Street and Balsam Road appraisals violated the Uniform Standards of Professional Appraisal Practice (USPAP). Division of Legal Services and Compliance (Division) Case Number 13 APP 015 was subsequently opened for investigation.

5. On March 15, 2013, Respondent performed an appraisal of property located at 5761 Horseshoe Trail, Webster, Wisconsin 54893.

6. On or about July 16, 2013, the Department received a complaint alleging that the Horseshoe Trail appraisal violated USPAP. Division of Legal Services and Compliance Case Number 13 APP 043 was subsequently opened for investigation.

7. Respondent's appraisals for the Horseshoe Trail, Balsam Road and 970th Street properties were reviewed by the Division of Legal Services and Compliance and it determined that the appraisals and appraisal reports violated USPAP Rules and/or Standards Rules (SR) as follows:

5761 HORSESHOE TRAIL (13 APP 043)

a. Respondent's work file does not contain land sale documentation in support of his opinion of value in the Cost Approach, the research or information to support his opinion of the estimated replacement cost of the subject property, and one of the six MLS data sheets for a comparable sale. [Record Keeping Rule.]

b. Respondent failed to provide an adequate description of the multi-use neighborhood, failed to report the oversupply in the neighborhood and the impact on area values, and failed to support his determination of the property values as stable. [SR 1-2(e)(i), Competency Rule.]

c. Respondent failed to accurately report the site dimensions or designate the reported dimensions as estimates and provide the source of the estimate, incorrectly reported the specific zoning as Residential when it is Shore Land, incorrectly reported the subject's street as public, failed to report an easement which made the street private, and failed to report in the site section that the subject property's site has frontage on a lake. [SR 1-2(e)(i), SR 1-3(a), Competency Rule.]

d. Respondent incorrectly reported the age, siding, and type of heating of the subject property and failed to comment on the functional utility of the subject as a one bedroom utility in a predominantly two to four bedroom home neighborhood. [SR 1-1(c), SR 1-3(a), Competency Rule.]

e. Respondent failed to report or incorrectly reported the features in the Comparable Sales and Listings including finished areas, above grade living areas,

age, walk-out basement, existence of personal property in the sale, and made inaccurate and inconsistent adjustments. [SR 1-1(b), SR 1-4, SR 1-4(a), SR 2-2(b)(viii), Scope of Work Rule.]

f. Respondent incorrectly reported the type of sales and type of financing in the Comparable Sales and Listings and made inaccurate and inconsistent adjustments. [SR 1-1(b), SR 1-4, SR 1-4(a), SR 2-2(b)(viii), Scope of Work Rule.]

g. Respondent failed to provide a summary of comparable land sales to support his opinion of value for the subject property's site in the Cost Approach. [SR 1-1(b), SR 1-4(b)(i).]

h. Respondent reported sources of cost data which would not allow the cost figures and calculations to be replicated. [SR 1-4(b)(ii), Scope of Work Rule, Record Keeping Rule.]

S8460 BALSAM ROAD (13 APP 015)

i. Respondent failed to provide sufficient information in the report to allow intended users to understand the scope of work and failed to adequately support the decision to exclude any method or technique that would appear relevant to the intended user. [Scope of Work Rule, SR 2-1(a,b).]

j. Respondent failed to provide sufficient support and analysis for the approaches to value utilized in the report, failed to reconcile the quality and quantity of the data available within the report and failed to reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at a conclusion of value. [SR 1-1(b), SR 1-6(a), SR 2-2(b)(viii).]

k. Respondent failed to develop an opinion of highest and best use with regard to the subject property's legal and permitted uses and failed to identify any physical and economic factors that support the highest and best use conclusions. [SR 1-3(b), SR 2-2(b).]

l. Respondent established the Cost Approach in the appraisal report but failed to use adequate sources to determine costs, failed to support the depreciation amount within the report and failed to indicate if any functional or external depreciation is present or warranted resulting in a Cost Approach conclusion which is not credible. [SR 1-4(b), SR 2-2(b)(viii).]

m. Respondent failed to analyze comparable rental data of similar type properties and used income based on the profit of the commodity, not the potential income derived from the improvements, failed to analyze all operating expenses data, and failed to analyze comparable data to estimate a capitalization rate and/or failed to adequately support the capitalization rate applied in the Income Approach. [SR 1-4(c), SR 2-2(b)(viii).]

- n. Respondent selected inappropriate comparable sales. [SR 1-1(b), SR 1-2(e)(i).]
- o. Respondent failed to provide the source of definition of value, properly disclose prior services, and state the purpose of the appraisal. [SR 2-2(b)(i).]
- p. Respondent failed to produce a credible Self-Contained Appraisal report as required by the client. [Scope of Work Rule, SR 2-2(a).]
- q. Respondent failed to cite the source of the definition of value, failed to clearly state the effective date of the appraisal, failed to describe the scope of work used to develop the appraisal and failed to describe his support and analysis for the opinions and conclusions in his appraisal report. [SR 2-2(a,b).]
- r. Respondent failed to include a sketch of the improvements in the appraisal report contrary to his remarks in the Statement of Limiting Conditions. [Scope of Work Rule.]

- 8. The appraisal report for N5406 970th St., Elk Mound, WI 54739 contains violations of USPAP which are similar in nature to those set forth in paragraph 7(i) through 7(r) above.
- 9. Division Case Number 15 APP 032 involves an appraisal of property located at 11921 S. Ossmann Road, Solon Springs, WI 54873. The appraisal contains violations of USPAP which are similar in nature to those set forth in paragraph 7(a) through 7(h) above.
- 10. 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 retain in his work file all other data, information and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with USPAP.
- 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 the USPAP Scope of Work Rule by failing to determine and perform the scope of work necessary to develop credible assignment results.

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

- 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, 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.

6. By the conduct described in the Findings of Fact, Respondent 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.

7. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-3(a,b) by failing to:

- a. 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; and
- b. develop an opinion of highest and best use of the real estate when necessary for credible assignment results in developing a market value opinion.

8. 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.

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

- a. 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. (i) develop an opinion of site value by an appropriate method or technique; (ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and (iii) 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 a cost approach is necessary for credible assignment results; and
- c. (i) 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; (ii) analyze such comparable operating expense data as are available to estimate the operating expenses of the property; (iii) analyze such

comparable data as are available to estimate rates of capitalization and/or rates of discount; and (iv) base projections of future rent and/or income potential and expenses on reasonably clear and appropriate evidence when an income approach is necessary for credible assignment results.

10. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 1-6(a) by failing to reconcile the quality and quantity of data available and analyzed within the approaches used.

11. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 2-1(a,b) by failing to:

- a. clearly and accurately set forth the appraisal in a manner that will not be misleading; and
- b. contain sufficient information in the appraisal report to enable the intended users of the appraisal to understand the report properly.

12. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 2-2(a,b) by failing to:

- a. have the content of a Self-Contained Appraisal Report, be consistent with the intended use of the appraisal; and
- b. have the content of a Summary Appraisal Report, be consistent with the intended use of the appraisal.

13. By the conduct described in the Findings of Fact, Respondent violated USPAP SR 2-2(b)(i,viii) by failing to:

- a. state the identity of the client and any intended users, by name or type;
- b. summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusion.

14. As a result of the above violations, Respondent David R. Masterjohn 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. Respondent David R. Masterjohn is REPRIMANDED.
- 3. The Certified General Appraiser certificate of licensure and certification issued to Respondent David R. Masterjohn (number 292-10) is LIMITED as follows:

a. Within ninety (90) days of the date of this Order, Respondent shall successfully complete seventy five (75) 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. National USPAP (15 hours),
- ii. General Appraiser Site Valuation and Cost Approach (30 hours), and
- iii. General Appraiser Writing and Case Studies (30 hours).

b. The USPAP 15 hour course must be taken in person in a classroom setting. All other courses may be taken in person or online.

c. All examinations must be completed at a proctored examination site.

d. Respondent shall submit proof of successful completion of the ordered education and passage of any examination 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 satisfying the Board or its designee of successful completion of all of the education, including passage of all examinations.

4. The Certified General Appraiser certificate of licensure and certification issued to Respondent David R. Masterjohn (number 292-10) is further LIMITED as follows:

a. At ninety (90) day intervals, for a period of one (1) year from the date of this Order, Respondent shall submit to the Department Monitor, a log of all appraisals he completed in the previous ninety (90) days. Each log entry must specify:

- i. The specific location of each appraised property,
- ii. The type and description of the appraised property,
- iii. The name and contact information for the client of each appraised property,
- iv. The approaches to value considered for each appraised property, and

- v. The approaches to value completed for each appraised property.
 - b. The Board or its designee may select one (1) appraisal at random from each log for review.
 - c. Within fifteen (15) days after the Board or its designee informs Respondent of any appraisal selected for review, Respondent shall submit the appraisal report and the complete workfile for the selected appraisal.
 - d. Respondent shall promptly reply to any questions the Board or its designee may have concerning any of Respondent's submissions within fifteen (15) days of a request by the Board or its designee.
 - e. The Board or its designee shall review the selected appraisals to determine if they are minimally competent as deemed satisfactory by the Board or its designee. If the appraisals initially selected are found not to be minimally competent by the Board or its designee, additional appraisals may be selected from each log for review.
 - f. This limitation shall be removed after Respondent has submitted one (1) minimally competent report in each ninety (90) day period, as determined by the Board or its designee. Whether to remove this limitation shall be at the discretion of the Board or its designee. The period of limitation may be continued on the terms set forth above for an additional ninety (90) day period if the Board or its designee does not find four (4) minimally competent reports. If, after the additional ninety (90) day period, the Board or its designee has not found four (4) minimally competent reports, this limitation shall end and Respondent may be referred to the Division for additional action.
5. Respondent shall not apply for or be granted another appraiser credential during the term of the limited credential.
6. Respondent shall be responsible for all costs of complying with the terms of the limitations on his credential.
7. Within ninety (90) days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$1,507.00.
8. Proof of successful course completion, including passage of any examinations, submission of the logs of appraisals, submission of selected appraisals, 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

9. 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 complete the ordered education, including passage of any examination, fails to submit the required logs of appraisals as required by the Order, fails to submit the selected appraisals, or fails to submit payment of the costs as ordered, Respondent's certificate of licensure and certification (number 292-10) 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, completion of the education and submission of the required information and documents.

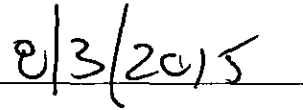
10. This Order is effective on the date of its signing.

WISCONSIN REAL ESTATE APPRAISERS BOARD

by:


A Member of the Board

Date



STATE OF WISCONSIN
BEFORE THE REAL ESTATE APPRAISERS BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DAVID R. MASTERJOHN,
RESPONDENT.

:
:
:
:
:

STIPULATION

0004172

Division of Legal Services and Compliance Case Nos. 13 APP 015, 13 APP 043 and 15 APP 032

Respondent David R. Masterjohn 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 John J. Gelshenen, Jr.

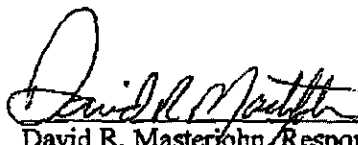
4. Respondent agrees to the adoption of the attached Final Decision and Order by
the Wisconsin Real Estate Appraisers Board (Board). The parties to the Stipulation consent to
the entry of the attached Final Decision and Order without further notice, pleading, appearance
or consent of the parties. Respondent 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.

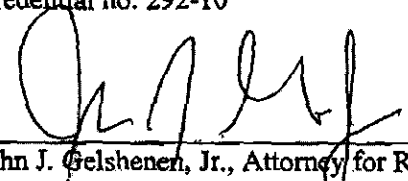
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes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

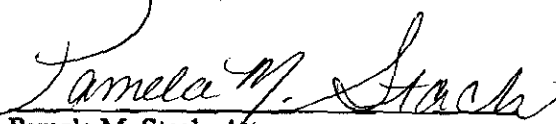
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


David R. Masterjohn, Respondent
P.O. Box 144
Spooner, WI 54801
Credential no. 292-10

07/27/2015
Date


John J. Gelshenen, Jr., Attorney for Respondent
Davis & Gelshenen LLP
735 N. Water Street, Ste. 1440
Milwaukee, WI 53202

7/27/15
Date


Pamela M. Stach, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

7/27/15
Date