

BEFORE THE IOWA REAL ESTATE APPRAISER EXAMINING BOARD
OF THE STATE OF IOWA

IN THE MATTER OF:
JAMES P. KESTERSEN

CERTIFICATE NO. CG01605

RESPONDENT

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CASE NO. 96-06

COMPLAINT

COMES NOW, the Complainant William M. Schroeder, and states:

1. He is the Executive Secretary of the Iowa Real Estate Appraiser Examining Board and files this Complaint solely in his official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 543D, 272C (1995).
3. On January 1, 1993, James P. Kestersen, the Respondent, was issued an Iowa Real Estate Appraiser Certificate by the Board.
4. The Certificate No. CG01605 is currently in good standing.

COUNT I

The Respondent is charged with violation of the Uniform Standards of Professional Appraisal Practice (USPAP) in connection with the development of two real estate appraisals pursuant to Iowa Code Sections 543D.17(1)(d) and 543D.18(1)(1995) and Iowa Administrative Code 193F-7.1(5).

COUNT II


The Respondent is charged with failing to exercise reasonable diligence in the preparation and communication of two real estate appraisals in violation of Iowa Code Section 543D.17(1)(e)(1995).

CIRCUMSTANCES

1. The Respondent prepared and communicated two (2) appraisals for real property identified as 200 North 10th Street, Fort Dodge, Iowa dated November 2, 1995 and Wubby's Lounge, 1115 First Avenue North, Fort Dodge, Iowa dated April 30, 1996.
2. The above appraisals were prepared and communicated after the Respondent was issued Iowa Certified General Real Property Certificate No. CG 01605.
3. The 200 North 10th Street (dated November 2, 1995) report contains deficiencies including but not limited to the following violations of the Uniform Standards of Professional Appraisal Practice:
 - a. Failure to correctly employ recognized methods. 1-1(a), 1-1(b) and 1-1(c)
 - b. Failure to adequately identify the real estate being appraised. 1-2(a)
 - c. Failure to consider leases. 1-2(c)
 - d. Failure to analyze and verify data to estimate accrued depreciation. 1-4(b)(ii)
 - e. When estimating the value of a leased fee estate, failure to consider and analyze the effect on value of the leases. 1-4(d)
 - f. Failure to clearly and accurately set forth the appraisal in a manner that will not be misleading. 2-1(a)
 - g. Failure to summarize the information, procedures and reasoning that supports the analyses, opinions and conclusions. 2-2(b)(viii)
 - h. Failure to summarize any additional information to show compliance with Standard 1, 2-2(b)(xi).
4. The Respondent issued a revised report on property identified as 200 North 10th Street, Fort Dodge, correcting only the violation of Standard 1-2(a) failure to adequately identify the real estate being appraised.
5. The Wubby's Lounge (dated April 30, 1996) report contains deficiencies including but not limited to the following violations of the Uniform Standards of Professional Appraisal Practice:
 - a. Failure to correctly employ recognized methods. 1-1(a), 1-1(b) and 1-1(c)
 - b. Failure to consider effect on value of personal property. 1-2(e)
 - c. Failure to value site by an appropriate appraisal method. 1-4(a)
 - d. Failure to analyze and verify data to estimate accrued depreciation. 1-4(b)(ii)

- e. Failure to analyze and reconcile sales comparison data to indicate a value conclusion. 1-4(b)(iii)
- f. Failure to analyze and reconcile data to estimate market rent and capitalization rate. 1-4(b)(iv) and 1-4(b)(vi)
- g. Failure to clearly and accurately set forth the appraisal in a manner that will not be misleading. 2-1(a)
- h. Failure to summarize the information, procedures and reasoning that supports the analyses, opinions and conclusions. 2-2(b)(viii)
- i. Failure to summarize any additional information to show compliance with Standard 1, 2-2(b)(xi)

WHEREAS, the Complainant prays that a hearing be held in this matter and that the Board take such action as it deems appropriate under the law.


WILLIAM M. SCHROEDER, EXECUTIVE SECRETARY
COMPLAINANT

On this 13TH day of December, 1996 the Iowa Real Estate Appraisal Examining Board found probable cause to file this statement of charges and to order a hearing in this case.


LIL PERRY, CHAIR
IOWA REAL ESTATE APPRAISER EXAMINING BOARD

BEFORE THE IOWA REAL ESTATE APPRAISER EXAMINING BOARD

IN THE MATTER OF:)	
)	CASE NO. 96-06
JAMES P. KESTERSON)	
CERTIFICATE NUMBER CG01605)	SETTLEMENT AGREEMENT AND
)	CONSENT ORDER
RESPONDENT)	

The Iowa Real Estate Appraiser Examining Board (Board) and James P. Kesterson (Respondent) enter into this Settlement Agreement and Consent Order (Agreement), pursuant to Iowa Code sections 17A.10 and 272C.3(4) (1995) and 193F IAC 8.6:

1. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 272C, and 543D (1995).
2. Respondent is a certified general real estate appraiser.
3. A Notice of Hearing and Statement of Charges was filed against the Respondent on December 13, 1996.
4. Respondent has a right to a hearing on the charges, but waives his right to hearing and all attendant rights by freely and voluntarily entering into this Agreement. Respondent has denied the allegations of Counts I and II in the Statement of Charges, but agrees to this Consent Order to fully resolve all issues in the case.
5. Respondent agrees the State's counsel may present this Agreement to the Board and may have ex parte communications with the Board while presenting it.

6. This Agreement shall be part of the permanent record of Respondent and may be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of any future violations, if reasonably related.

7. This Agreement and the Statement of Charges are public records available for inspection and copying in accordance with the requirements of Iowa Code chapter 22 and section 272C.3(4).

8. Failure to comply with the provisions of this Agreement shall be grounds for disciplinary action pursuant to Iowa Code section 272C.3(2)(a) (1995). However, no action may be taken against Respondent for violations of these provisions without a hearing or waiver of right to hearing.

9. This Agreement is subject to approval of the Board:

(a) If the Board fails to approve this Agreement, it shall be of no force or effect on either party, and it shall not be admissible for any purpose in further proceedings in this matter.

(b) If the Board approves this Agreement, it shall fully dispose of all issues in this case.

IT IS THEREFORE ORDERED:

A. Respondent shall successfully complete the following educational courses within one year of the date the Board accepts this Consent Order, all of which may be counted toward continuing education requirements for certification renewal:

(a) A fifteen-hour tested course on the Uniform Standards of Professional Appraisal Practice.

(b) Fifteen hours in one or more courses on non-residential report writing. Respondent shall submit possible courses for pre-approval.

(c) Fifteen tested hours on the income approach. The Board accepts the tested course work Respondent successfully completed in November, 1996, as satisfying this fifteen-hour requirement (Income Capitalization Method, sponsored by Iowa Association of Realtors).

B. Documentation of completed education shall be provided within ten days of completion.

C. Respondent shall select one of the following provisions and let the Board know which has been selected at the time he documents completion of the education:

(a) Respondent shall submit a log of all non-residential appraisal reports completed in the first six months following successful completion of the education described above. The log shall be submitted seven months after the education is completed and the Board may select one or more appraisals for review.

OR

(b) Respondent shall develop a desk review consultation agreement with an Iowa certified general real property appraiser in good standing and pre-approved by the Board. Respondent shall submit for pre-release review the first non-residential appraisal report he prepares after successful completion of the

education described above. An executed copy of the agreement shall be submitted to the Board prior to implementation of the agreement. The reviewer's recommended changes or amendments, if any, shall be incorporated into the appraisal prior to the release of the appraisal. A copy of the reviewer's comments shall be submitted directly to the Board from the reviewer. The comments do not need to be received by the Board prior to the release of the appraisal. Consistent with USPAP, the appraisal report shall disclose any significant professional input by the desk reviewer. If the desk review comments do not disclose serious deviations from USPAP, the terms of this Consent Order shall be fully complied with and desk review shall cease. If the desk review comments reveal serious deviations from the Uniform Standards of Professional Appraisal Practice, the desk review process shall continue for the next three non-residential appraisals. Respondent can then petition the Board to cease pre-release review. The Board will grant the petition if the review comments do not reveal serious deviations from the Uniform Standards of Professional Appraisal Practice.

D. Respondent shall in the future adhere to all statutes and administrative rules in the practice of real property appraising.

AGREED AND ACCEPTED:

The Respondent



James P. Kesterson

2-2-97
Date

**The Iowa Real Estate Appraiser
Examining Board**



By: Lil M. Perry

2-12-97
Date