

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

IN THE MATTER OF:)	DIA NO. 93DOCRE-2
)	CASE NO. 92-02 & 92-03
JOHN M. MORROW)	
Certificate No. [REDACTED],)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

On September 4, 1992, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Complaint against John M. Morrow (Respondent). The Complaint alleged that two appraisals prepared and communicated by the Respondent contained numerous deficiencies which violated Iowa Code Sections 117B(1)(d), 117B.18(1), 117B.17(1)(e), (f) and 193 IAC 7.5(5), (7) and 7.1.

On March 15, 1993 and April 5, 1993, the Board conducted a disciplinary hearing on the Complaint. The following members of the Board were present for the hearing: Susan D. Albright, Appraiser, Chairperson; Jack L. Felderman, Appraiser; Mary Pat Mitchell, Appraiser; and Pat Hastings, Public Member. The State was represented by Grant Dugdale, Assistant Attorney General. The Respondent appeared in person and was represented by his counsel, Ronald Peeler. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, presided. A certified court reporter recorded the entire proceedings. The hearing was closed to the public at the Respondent's request, in accordance with Iowa Code Section 272C.6(1)(1993). After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code Section 21.5(1)(f)(1993) to deliberate its decision and instructed the Administrative Law Judge to prepare its Findings of Fact, Conclusions of Law, Decision and Order.

THE RECORD

The record includes the Complaint, Order and Re Notice of Hearing, Motion for Dismissal Based Upon Jurisdiction, Resistance to Respondent's Motion for Dismissal Based Upon Jurisdiction, a second Order and Re Notice of Hearing, Ruling on Respondent's Motion for Dismissal Based Upon Jurisdiction, Notice of Continuance, the testimony of the witnesses, and the following exhibits:

- State's Exhibit 1: Appraisal of Single Family Residence, Mount Pleasant, Iowa, April 10, 1992
- State's Exhibit 2: Appraisal of Single Family Residence, Salem, Iowa, April 20, 1992
- State's Exhibit 3: Report of Alan Hummel, SRA, to Board, September 3, 1992

- State's Exhibit 4: Report of Alan Hummel, SRA, to Board, September 3, 1992
- Respondent's Exhibit A: Complaint
- Respondent's Exhibit B: April 10, 1992 Appraisal (Original)
- Respondent's Exhibit C: Letter dated November 20, 1992 (Hawkeye Bank to Respondent)
- Respondent's Exhibit D: Letter dated November 20, 1992 (Firststar Bank to whom it may concern)
- Respondent's Exhibit E: Assessor's Sheet - Salem Property
- Respondent's Exhibit F: Copy of Survey - Mt. Pleasant Property
- Respondent's Exhibit G: Assessor's Sheet - Mt. Pleasant Property

FINDINGS OF FACT

1. Respondent is a Certified General Real Property Appraiser in the State of Iowa and has been issued certificate number 150504715 which is in good standing. (official file)

Mount Pleasant Appraisal

2. The Respondent prepared and communicated an appraisal for property locally known as R.R. 3, Box 290, Mt. Pleasant, Iowa, a single family residence, dated April 10, 1992. (Exhibit 1). Exhibit 1 was prepared and communicated after the date Respondent was issued Iowa Certified Real Property Appraiser Certificate Number 479704715. Exhibit 1 contains numerous deficiencies. (testimony of Alan Hummel, Respondent; Exhibit 1)

3. The property description contained in the deed, which was attached to Exhibit 1, was sufficient. The deed was not included in the copy of the appraisal report that was provided to the Board. (testimony of Alan Hummel, Respondent; Exhibits 1, B)

4. Exhibit 1 was deficient because it failed to discuss or mention whether or not a gravel road on the property constituted an easement for access to buildings. Anything which gives the appearance of an easement must be discussed in the appraisal document. (testimony of Alan Hummel, Respondent; Exhibits 1, 3)

5. Exhibit 1 is deficient because it fails to give the dimensions of the property site and the use of the term "excess acres" is confusing. The deed which was attached to the original report does contain a metes and bounds description of the property. However, the typical reader of the appraisal report would not necessarily be able to determine the site dimensions from the metes and bounds description. (testimony of Alan Hummel, Respondent; Exhibits 1, 3)

6. Exhibit 1 incorrectly identifies certain improvements:

a) Public gas and public water are not available as stated in the report. The reader of the report could conclude that both public and liquid propane gas and both public and well water are available.

b) The dwelling was detached and not attached as stated in the report. The Respondent admitted that he did not understand the difference between attached and detached when he prepared the report.

c) The outbuilding mentioned in the report is wood sided, not metal. (testimony of Alan Hummel, Respondent; Exhibits 1, 3)

7. The appraisal report inconsistently states that the present land use is 100 percent single family; land use change is not likely, and that the area is mainly agricultural and under 25 percent built up. The Respondent admitted that under land use he was describing this particular site, rather than the neighborhood. The Respondent did not fully understand the appraisal form. (testimony of Alan Hummel, Respondent; Exhibits 1, 3)

8. The comparable sales used in the sales comparison analysis have not been adequately identified by either address or legal description. On comparable numbers 2 and 3 no rural route is given; box numbers are not given for any of the comparables. (testimony of Alan Hummel, Respondent; Exhibits 1, 3)

9. The Respondent failed to provide any explanation for the adjustments made in the sales comparison analysis in Exhibit 1, even though the adjustments are not self-explanatory or consistent. Failure to explain the adjustments makes it difficult for a reviewer to adequately determine value.

a) All three comparable properties had a rural location, yet one was given a \$2,500 adjustment, one was given a \$3,500 adjustment and the third was given no adjustment.

b) Under site/view, all of the properties had a different size, but only one received an adjustment.

c) Under condition, two of the properties were listed as "average", but one received a \$2,000 adjustment and the other received a \$2,500 adjustment.

(testimony of Alan Hummel, Respondent; Exhibits 1, 3)

10. The Respondent failed to justify the square footage he supplied for the dwelling (1,544 sq. ft.) or the basement (1,500 sq. ft.). It appears that the Respondent got these numbers from the assessor's sheet. In fact, based on exterior measurements, the dwelling is 1,572 sq. ft. and the basement is even larger, since it extends under the patio. (testimony of Alan Hummel, Respondent; Exhibits 1, 3, G)

11. The Respondent's estimations of the cost to construct the 30' x 70' metal shed (which was wooden) do not seem reasonable even though it was apparently constructed with used telephone poles. The Respondent stated that cost figures were based on Marshall & Swift Cost Service, modified for local requirements and conditions, then rounded appropriately. This was not sufficient explanation of his thought process to allow a reviewer to make an independent assessment of value. (testimony of Alan Hummel, Respondent; Exhibits 1, 3)

12. The Respondent stated that the Cost Approach tends to lend support to his estimated value. However, the Cost Approach value was 32 percent higher than the Respondent's estimated value, and this difference was not reconciled or explained by the Respondent. (testimony of Alan Hummel; Exhibits 1, 3)

13. The Respondent mentioned that the subject property had a contract sale recorded on May 3, 1991, but he failed to analyze the sale or compare the sale price to the estimated value. (testimony of Alan Hummel; Exhibits 1, 3)

14. Due to numerous inconsistencies and omissions in the Cost Approach and Sales Comparison Approach in Exhibit 1, the Board concludes that the Respondent did not fully understand or correctly employ those recognized methods and techniques which are necessary to produce a credible appraisal. (testimony of Alan Hummel, Respondent; Exhibits 1, 3)

15. Exhibit 1 is misleading due to a series of misstated facts, omissions, and negligence in the development of the different approaches to value. (testimony of Alan Hummel; Exhibits 1, 3)

Salem Appraisal

16. The Respondent prepared and communicated an appraisal for property locally known as 200 East School Street, Salem, Iowa, a single family residence, dated April 20, 1992. (Exhibit 2). Exhibit 2 was prepared and communicated after the date Respondent

was issued Iowa Certified Real Property Appraiser Certificate number 479704715. Exhibit 2 contains numerous deficiencies. (testimony of Alan Hummel, Respondent; Exhibit 2)

17. Exhibit 2 fails to provide the dimensions of the property site and incorrectly states that it is a corner lot. (testimony of Alan Hummel, Respondent; Exhibits 2, 4)

18. Exhibit 2 was deficient because the stated square footage of the basement (200 sq. ft.) and the percentage of basement (10%) were inconsistent with the square footage of the dwelling as 676 feet, when this was actually the square footage of the first floor. The Respondent estimated the square footage of the second floor to be 300 square feet, but states he was unable to do actual measurements due to the amount of garbage on the second floor. It was misleading for the Respondent to fail to include the square footage of the second floor in the total dwelling square footage. (testimony of Alan Hummel, Respondent; Exhibits 2, 4)

19. The Respondent failed to mention the existence of three outbuildings on the property, in addition to the newer three-car garage. The Respondent testified that he failed to mention them because they were so dilapidated he did not consider them to have any value. The outbuildings should have been mentioned and their effect or value discussed. In particular, the cost of removal should have been discussed. (testimony of Alan Hummel, Respondent; Exhibits 2, 4)

20. The Respondent incorrectly described the particular site under present land use, stating it was 100 percent single family. This area of the form is intended to describe the neighborhood. Respondent admits that he did not understand this when he filled out the form. The Respondent also describes the area as 25 - 75 percent built up which is inconsistent with 100 percent single family; Respondent's description of the neighborhood is both confusing and misleading. (testimony of Alan Hummel, Respondent; Exhibits 2, 4)

21. Exhibit 2 incorrectly states that there is no zoning, when the subject property had recently been zoned residential. (testimony of Alan Hummel, Respondent; Exhibits 2, 4)

22. Exhibit 2 is misleading in that it states that the growth rate is slow, property values are declining, and yet it indicates demand/supply is in balance. (testimony of Alan Hummel; Exhibits 2, 4)

23. Exhibit 2 fails to identify either the address or legal description in the sales comparison analysis. (testimony of Alan Hummel, Respondent; Exhibits 2, 4)

24. The Respondent failed to provide any explanation for the adjustments made in the sales comparison analysis in Exhibit 2, even though the adjustments are not self-explanatory or consistent. Failure to explain the adjustments makes it difficult for a reviewer to adequately determine value.

- a) No explanation is given for the fact that no adjustments are made for substantially different site sizes of sales 1 and 2 when compared to the subject.
- b) Under quality of construction, all three sales are different from the subject. Sales 2 and 3 are reported as the same under quality of construction, but an adjustment was made only for sale 2.
- c) Under condition, both sale 2 and 3 were listed as "average," while the subject was "poor." However, sale 2 received an adjustment of \$5,000, while sale 3 received only an adjustment of \$1,000.
- d) Under garage/carport, sale 1, which had no garage was given an adjustment of \$1,800. Sale 3, which had a one-car garage, was given an even higher adjustment of \$2,000.
- e) Exhibit 2 did properly justify the inapplicability of the income approach on the Multi-Purpose Supplemental Addendum.
- f) Exhibit 2 contains several inaccuracies in the Cost Approach. The incorrect square footage (676 sq. ft.) is used to calculate the new cost. The basement is reported, but no dollar amount is given for excavation or construction. The three outbuildings are not mentioned. No value was given for site improvements, although the property has a new well and a septic system which should have some contributory value.

The Respondent's testimony demonstrated that he did not understand the Cost Approach. He argued that the basement, second floor, well, and septic system had no value due to their condition. Under the Cost Approach, however, he should have listed the value, and then the depreciation. (testimony of Alan Hummel, Respondent; Exhibits 2, 4)

25. Exhibit 2 inconsistently states that the home has a chronological age of 90, an effective age of 90, an estimated remaining economic life of 20 years, and is functionally obsolete. This is also inconsistent with the physical depreciation taken in the Cost Approach. The Respondent testified that he was referring to the garage, when he gave an estimated remaining economic life of 20 years. This was not stated in the report. (testimony of Alan Hummel, Respondent; Exhibits 2, 4)

26. Exhibit 2 states that there is very little value in the subject dwelling and the majority of the value is in the subject site and garage. However, Exhibit 2 fails to adequately indicate how site value was reached. The Respondent pointed out that in the Multi-Purpose Supplemental Addendum, the Respondent checked the box indicating that he relied on his personal knowledge of the local market in determining site value. This is inconsistent with the Respondent's earlier testimony that this was his first appraisal in Salem. Moreover, more discussion is necessary in light of the huge influence of site value on overall value. (testimony of Alan Hummel, Respondent; Exhibits 2, 4)

27. Due to the numerous inconsistencies and omissions in the Cost Approach and in the Sales Comparison Approach, the Board concludes that the Respondent did not fully understand or correctly employ those recognized methods and techniques which are necessary to produce a credible appraisal. (testimony of Alan Hummel, Respondent; Exhibits 2, 4)

28. Exhibit 2 is misleading due to a series of misstated facts, omissions, and negligence in the development of the different approaches to value. (testimony of Alan Hummel; Exhibits 2, 4)

29. The Respondent submitted letters from officers of the banks who hired him to prepare Exhibits 1 and 2. The officers wrote that they were satisfied with the appraisal reports. With respect to Exhibit 2, the officer stated that after discussing the appraisal with Respondent, he was satisfied with the appraised value. It is Respondent's custom to orally discuss the report with his client. The Respondent further stated that he knew that these appraisal reports were for "in house use" only and would not be sold on the open market. (testimony of Respondent; Exhibits C, D)

CONCLUSIONS OF LAW

1. Iowa Code Chapter 117B establishes standards for real estate appraisals and a procedure for the voluntary certification of real estate appraisers. A person who is not a certified real estate appraiser may appraise real estate for compensation if certification is not required by Chapter 117B, or by federal or state law, rule, or policy. Iowa Code section 117B.3(1991).

A "certified appraisal" or "certified appraisal report" is defined as an appraisal or appraisal report given or signed and certified as an appraisal or appraisal report by an Iowa certified real estate appraiser. Iowa Code section 117B.2(7).

2. The Iowa Real Estate Appraiser Board was established pursuant to Iowa Code section 117B.4(1991) and was authorized to promulgate rules establishing uniform appraisal standards and appraiser certification requirements as well as other rules necessary to

administer and enforce Iowa Code Chapters 117B and 258A (now 272C). The Board has promulgated such rules at Iowa Administrative Code Chapter 193F.

3. Iowa Code section 117B.18(1)(1991) provides that a certified real estate appraiser shall comply with the adopted uniform appraisal standards.

193F IAC 7.1(5) provides:

The grounds for revocation and suspension of certificates, licenses, and associate registrations and other disciplinary action against appraisers are set out in Iowa Code section 117B.17 in both specific and general terms. The general terms of that provision of the Code include the following particular grounds for such disciplinary action:

• • •

7.1(5) Failure to comply with the uniform standards of professional appraisal practice in the development and communication of a real estate appraisal.

The uniform standards are commonly referred to as USPAP.

4. The USPAP standards establish the procedures to be followed in performing an appraisal, review or consulting service and the manner in which an appraisal, review or consulting service is communicated. Standards 1 and 2 relate to the development and communication of a real property appraisal. Standard 1 provides, in relevant part:

Standards Rule 1-1

In developing a real property appraisal, an appraiser must:

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

• • •

(c) not render appraisal services in a careless or negligent manner, such as a series of errors that, considered individually, may not significantly affect the results of an appraisal, but which, when considered in the aggregate, would be misleading.

• • •

Standards Rule 1-2

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines:

- (a) adequately identify the real estate, identify the real property interest, consider the purpose and intended use of the appraisal, consider the extent of the data collection process, identify any special limiting conditions, and identify the effective date of the appraisal;

• • •

- (c) consider easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature;

• • •

Standards Rule 1-3

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines:

- (a) consider the effect on use and value of the following factors: existing land use regulations, reasonably probable modifications of such land use regulations, economic demand, the physical adaptability of the real estate, neighborhood trends, and the highest and best use of the real estate;
- (b) recognize that land is appraised as though vacant and available for development to its highest and best use and that the appraisal of improvement is based on their actual contribution to the site.

Standards Rule 1-4

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines, when applicable:

• • •

- (b) collect, verify, analyze, and reconcile:
 - (i) such comparable cost data as are available to estimate the cost new of the improvements (if any);

- (ii) such comparable data as are available to estimate the difference between cost new and the present worth of the improvements (accrued depreciation);
- (iii) such comparable sales data, adequately identified and described, as are available to indicate a value conclusion;

• • •

- (g) identify and consider the appropriate procedures and market information required to perform the appraisal, including all physical, functional, and external market factors as they may affect the appraisal.

• • •

Standard 2 provides, in relevant part:

Standards Rule 2-1

Each written or oral real property appraisal report must:

- (a) clearly and accurately set forth the appraisal in a manner that will not be misleading;

Comment: Departure from this binding requirement is not permitted. Since most reports are used and relied upon by third parties, communications considered adequate by the appraiser's client may not be sufficient. An appraiser must take extreme care to make certain that his or her reports will not be misleading in the marketplace or to the public.

- (b) contain sufficient information to enable the person(s) who receive or rely on the report to understand it properly:

• • •

Standards Rule 2-2

Each written real property appraisal report must:

- (a) identify and describe the real estate being appraised;

• • •

- (h) set forth the information considered, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions:

• • •

- (i) set forth the appraiser's opinion of the highest and best use of the real estate, when such opinion is necessary and appropriate;

• • •

- (j) explain and support the exclusion of any of the usual valuation approaches;
USPAP, 1992 Edition.

The Respondent argued that the complaint incorrectly alleged violations of Standard 1 for his written appraisal reports. He contends that for the written reports, only Standard 2 applies. The Board rejects this argument. Standards 1 and 2 relate to the development and communication of a real property appraisal. These two functions go hand in hand. The appraisal report must be self-contained and should not require oral explanations. The report must document that the appraiser understood and correctly employed recognized methods and techniques. If this is not apparent from the report, then the reader does not know if the appraisal was properly developed.

The Respondent states that these reports were for in-house use only and the mortgages would not be sold in the marketplace. The Respondent cannot control whether the resulting mortgages are eventually sold in the marketplace. He cannot rely on such representations to justify deficiencies in his appraisal report. It is always possible that the mortgages could be sold and any purchasers would be misled by these inaccurate and deficient reports. See Rule 2-1(a) and (b).

The preponderance of the evidence established that Exhibits 1 and 2 violated USPAP Standards 1-1(a)(c), 1-2(a)(c), 1-3(a)(b), 1-4(b)(i)(ii) and (iii) and (g) and 2-1(a)(b), and 2-2(a)(h)(i) and (j) due to the deficiencies stated in Findings of Fact 4-15 and 17-28. Therefore, the Respondent has violated Iowa Code section 117B.18(1)(1991) and 193F IAC 7.1(5).

5. Notice.

During the hearing and in a post hearing Memorandum of Law, the Respondent argued that due process of law precluded the Board from considering any deficiencies in Exhibits 1 and 2, which were not specifically listed in the Complaint. With respect to both Exhibits 1 and 2, the complaint alleged that there were "numerous

deficiencies including, but not limited to, the following: . . ." after which a detailed list of deficiencies appeared.

The Respondent was given notice in the Complaint that there were numerous deficiencies in Exhibits 1 and 2, all of which were not specifically listed. The Respondent could have requested a more definite statement, pursuant to Iowa Code section 17A.12(2)(d), but this was not done. There was informal discovery, and the Respondent received copies of both Exhibits 3 and 4, the reports of the expert, which included deficiencies not specifically listed in the Complaint.

193 IAC 8.8 provides that the notice of hearing shall set forth the acts or omissions with which the Respondent is charged including the statute(s) and rule(s) which are alleged to have been violated, and shall be in sufficient detail to enable the preparation of the Respondent's defense." The Complaint more than satisfied this standard and due process of law. The Respondent was on notice that the focus of the hearing was the deficiencies in two appraisal reports. The types of deficiencies were specifically alleged in the Complaint, a few additional examples were contained in the expert's report which was made available to the Respondent through discovery. The Respondent had adequate notice of the charges against him.

6. Iowa Codes section 117B.17(1)(e) and (f)(1991) provide:

1. The rights of a holder of a certificate as a certified real estate appraiser may be revoked or suspended, or the holder may be otherwise disciplined in accordance with this chapter. The board may investigate the actions of a certified real estate appraiser and may revoke or suspend the rights of a holder or otherwise discipline a holder for violation of a provision of this chapter, or chapter 258A, or of a rule adopted under this chapter or commission of any of the following acts or omissions:

. . .

e. Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

f. Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal.

The preponderance of the evidence established that the Respondent violated Iowa Code section 117B.17(1)(e) and (f)(1991) by his

failure to exercise reasonable diligence and by his negligence and incompetence in developing and preparing two appraisal reports.

7. 193F IAC 7.1(2) provides in relevant part:

The grounds for revocation and suspension of certificates, licenses and associate registrations and other disciplinary action against appraisers are set out in Iowa Code section 117B.17 in both specific and general terms. The general terms of that provision of the Code include the following particular grounds for such disciplinary action:

• • •

7.1(2) Dishonesty, fraud or gross negligence in the development of an appraisal within the meaning of Iowa Code section 117B.17(1)"f," includes making misleading, deceptive or untrue representations in preparing or in communicating an appraisal.

The preponderance of the evidence established that the Respondent violated 193F IAC 7.1(2) by his misleading and untrue representations in communicating two appraisal reports.

DECISION AND ORDER

It is therefore the ORDER of the Iowa Real Estate Appraiser Examining Board that Certificate Number [REDACTED], issued to Certified General Real Property Appraiser John M. Morrow, is hereby SUSPENDED for a period of six (6) months, effective upon service of this final decision.

During this period of suspension, the Respondent must successfully complete forty-five (45) tested hours of continuing education, specifically to include:

- 1) A fifteen (15) hour tested course in the Uniform Standards of Professional Appraisal Practice (USPAP).
- 2) Course(s) which include coverage of the following topics:
 - a) valuation process
 - b) sales comparison approach
 - c) cost approach
 - d) income approach
 - e) site value

Prior to the end of the six-month suspension the Respondent shall submit to the Board office written documentation of his successful completion of the 45 hours of continuing education. Failure to

comply as specified in this order will result in the continuation of the suspension period until proof of compliance is submitted and accepted by the Board. All expenses shall be the sole responsibility of the Respondent.

Following the period of suspension, the Respondent's certificate will be placed on PROBATION for a period of six months, subject to the following terms and conditions:

- 1) During the period of probation, the Respondent must have another Iowa certified general real property appraiser review and sign his appraisals. This reviewing appraiser must be preapproved by the Board.
- 2) The Respondent will be subject to periodic, random audits of his appraiser files by the Board or a designee of the Board.
- 3) The Respondent shall obey all laws and regulations relating to the practice of a certified general real property appraiser in the State of Iowa.

Any violation of the terms of this Order is grounds for further disciplinary action, upon notice and opportunity for hearing, for failure to comply with an Order of the Board, in accordance with Iowa Code Section 272C.3(2)(a).

Dated this 30TH day of April, 1993.


Susan D. Albright, Chairperson
Iowa Real Estate Appraiser Examining Board

ML/jmm

Copies to:

Grant Dugdale
Ronald Peeler