

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

IN THE MATTER OF:)	
John T. Willits)	CASE NO. 99-11
CERTIFICATE NO. CG01275)	STATEMENT OF CHARGES
RESPONDENT)	

COMES NOW, the Complainant, Susan A. Griffel, and states:

1. She is the Executive Secretary of the Iowa Real Estate Appraiser Examining Board and files this Statement of Charges solely in her official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 543D, 272C(1999).
3. On January 10, 1992, John T. Willits, the Respondent, was issued an Iowa Real Estate Appraiser Certificate by the Board.
4. The Certificate No. CG01275 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 a real estate appraisal pursuant to Iowa Code sections 543D.17(1)(d) and 543D.18(1)(1997) and Iowa Administrative Code 193F-7.1(5).

CIRCUMSTANCES

1. The Respondent prepared and communicated three (3) appraisals for real property identified as 4256 31st Street, Bettendorf, IA; 201 Cody Road, Le Claire, IA; 3440-3450 Jersey Ridge Rd., Davenport, IA.

2. The above appraisals were prepared and communicated after the Respondent was issued Iowa Certified General Real Property Appraiser Certificate No. CG01275.

3. The 4256 31st Street, Bettendorf, IA (dated December 17, 1999) appraisal and report contains deficiencies in all or part of a Standards Rule, including, but not limited to the following:


- a. Failure to prominently state the report option used. 2-2.
- b. Failure to consider and identify the intended use and user(s) of the appraisal. 1-2(a), 1-2(b), 2-2(b)(ii), 2-2(b)(iii).
- c. Failure to explain and support the exclusion of the cost approach. 2-2(b)(xi).
- d. Failure to collect, verify, analyze and reconcile comparable sales adequately. 1-4(a), 2-2(b)(ix).
- e. Failure to explain and support the exclusion of the income approach. 2-2(b)(xi).
- f. Committed a substantial error of omission or commission that significantly affected the appraisal. 1-1(b), 2-1(b).

4. The 201 Cody Road, LeClaire, IA (dated November 23, 1999) appraisal and report contains deficiencies in all or part of a Standards Rule, including, but not limited to the following:

- a. Failure to prominently state the report option used. 2-2.

- b. Failure to consider and identify the intended use and user(s) of the appraisal. 1-2(a), 1-2(b), 2-2(b)(ii), 2-2(b)(iii).
 - c. Failure to consider and report the extent of the process of collecting, confirming and reporting data. 1-2(f), 2-2(b)(vii).
 - d. Failure to adequately identify and report the site description. 1-2(e), 2-2(b)(iii).
 - e. Failure to correctly employ recognized methods and techniques. 1.1(a).
 - f. Failure to consider, analyze and report any current sale, option or listing of the property being appraised. 1-5(a), 2-2(b)(ix).
5. The 3440-3450 Jersey Ridge Rd, Davenport, IA (dated November 19, 1999) appraisal and report contains deficiencies in all or part of a Standards Rule, including, but not limited to the following:
- a. Failure to prominently state the report option used. 2-2.
 - b. Failure to consider and identify the intended use and user(s) of the appraisal. 1-2(a), 1-2(b), 2-2(b)(ii), 2-2(b)(iii).
 - c. Failure to appropriately value the site. 1-4 (b)(I), 2-2(b)(ix).
 - d. Failure to collect, verify, analyze and reconcile accrued depreciation. 1-4 (b)(iii), 2-2(b)(ix).
 - e. Failure to consider, analyze and report any current sale, option or listing of the property being appraised. 1-5(a), 2-2(b)(ix).
 - f. Failure to consider, analyze and report any prior sales; 1year 1-4 family, 3 year all others. 1-5 (b), 2-2(b)(ix).
 - g. Failure to clearly and accurately set forth the appraisal in a manner that will not be misleading. 2-1(a).

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.


Susan A Griffel, Executive Secretary
Complainant

On this 24th day of May, 2000, the Iowa Real Estate Appraisal Examining Board found probable cause to file this complaint and to order a hearing in this case.


Richard Bruce, Chair
Iowa Real Estate Appraiser Examining Board

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

IN THE MATTER OF:)	CASE NO. 99-11
)	DIA NO. 00DOCRE003
JOHN T. WILLITS)	
CERTIFICATE NO. CGO1275)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On May 24, 2000, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Statement of Charges against John T. Willits (Respondent). The Statement alleged that the Respondent violated the Uniform Standards of Professional Appraisal Practice (USPAP) in connection with the development of a real estate appraisal pursuant to Iowa Code sections 543D.17(1)(d) and 543D.18(1)(1997) and Iowa Administrative Code 193F-7.1(5). Said Statement further alleged that the Respondent in three appraisals and reports failed to follow USPAP standards in the preparation and communication of said appraisals. The Respondent was charged in one count. A Notice of Hearing scheduled a prehearing conference for July 18, 2000 and a hearing for July 31, 2000.

The hearing was held on July 31, 2000 at 10:00 a.m. The Respondent appeared and was represented by his attorney, Michael W. Liebke. The state of Iowa was represented by Pamela Griebel, Assistant Attorney General, and offered as a witness, Alan Hummel, Real Estate Appraiser, and Investigative Consultant to the Board, the Respondent, John Willits. The following Board members were present at the hearing: Richard Bruce, Appraiser, Chairperson; Sharon Chism, Appraiser; Luther Gammon, Appraiser; Jack Seuntjens, Appraiser; Beth Weeks, Appraiser; Sandra Glenn, Public Member, and David Erickson, Public Member. R. L. Stephenson, Administrative Law Judge from the Iowa Department of Inspections and Appeals, Division of Administrative Hearings, presided. A certified court reporter recorded the proceedings.

The hearing was closed to the public, at the Respondent's written request, pursuant to Iowa Code section 272C.6(1)(1997). After hearing the testimony and examining the exhibits, the Board convened in a closed executive session, pursuant to Iowa Code section 21.5(1)(f)(1997) to deliberate its decision. A motion was made and approved by the Board with instructions that the administrative law judge prepares its Findings of Fact, Conclusions of Law, Decision and Order, in conformance with its deliberations.

THE RECORD

The record includes the Statement of Charges, Notice of Hearing, State's Answers to Interrogatories, Motion to Shorten Time to Answer, State's Pre-hearing Conference Report, the testimony of the witness, Alan Hummel, and the following exhibits:

- State Exhibit 1: Proof of Service (6/17/00);
- State Exhibit 2: Complaint (3/2/99);
- State Exhibit 3: Alan Hummel preliminary comments;
- State Exhibit 4: Letter requesting log;
- State Exhibit 5: Letter providing log (12/21/99);
- State Exhibit 6: Review report (1/26/00);
- State Exhibit 7: Alan Hummel vitae;
- State Exhibit 8: Appraisal - 4256 31st Street, Bettendorf;
- State Exhibit 9: Appraisal - LeClaire City Hall;
- State Exhibit 10: Appraisal 3440, 3450 Jersey Rd, Davenport;
- State Exhibit 11: USPAP Standards 1 & 2 (1998);
- State Exhibit 12: USPAP Standards 1 & 2 (1999);
- Respondent Exhibit A: Department of Veteran Affairs letter of January 12, 1994.

FINDINGS OF FACT

1. On January 10, 1992, the Respondent was issued Iowa Real Estate Appraiser Certificate No. CGO1275 by the Board. Certificate No. CGO1275 is currently in good standing. (Board licensing records; Statement of Charges)

2. On March 3, 1999, the Board received a complaint from the Department of Veteran Affairs regarding an appraisal reported by the Respondent. (Testimony of Alan Hummel; State Exhibit 2)

3. The Board responded to the complaint with an initial inquiry of the Respondent, but delayed any further proceedings until December 1999, due to some uncertainty from him, as to whether he intended to renew his license. (Testimony of Alan Hummel; State Exhibit 3) On December 16, 1999, the Board formally advised the Respondent by letter it had reviewed one of his appraisals which contained USPAP violations, and requested him to submit his appraisal log for all engagements in the last three months within ten (10) days of receipt of said letter. (Testimony of Alan Hummel; State Exhibit 4) The Respondent complied with the request by his letter with attached log, which was received by the Board on December 27, 1999 (Testimony of Alan Hummel; State Exhibit 5)

4. Alan Hummel, a certified general real property appraiser in the states of Iowa and Kansas, has been retained by the Board as a consultant and investigator since 1994. (Testimony of Alan Hummel; State Exhibit 7) Mr. Hummel reviewed three appraisals that were prepared and communicated by the Respondent, one which was the subject of the complaint, and the other two were selected from the log submitted by the Respondent. The review process of the appraisal reports was by a desk review, as no inspection of the subject property was made nor any comparable sales. (Exhibit 6) Mr. Hummel concluded that all three appraisals contained deficiencies and failed to meet certain Uniform Standards of Professional Appraisal Practice, as set forth in State Exhibit #6, and reported to the Board on January 26, 2000. (Testimony of Alan Hummel; State Exhibits 6)

5. The Uniform Standards of Professional Appraisal Practice (USPAP) are promulgated by the Appraisal Standards Board of The Appraisal Foundation. By federal legislation, the Appraisal Standards Board is authorized to write, promulgate, and interpret these standards. The state of Iowa has chosen to adopt these standards of professional practice. The 1998 and 1999 Edition of USPAP were applicable to the appraisals which are the subject of this hearing; Mr. Hummel noted that there were no significant differences as to the USPAP standards for the different years in this case. (Testimony of Alan Hummel; State Exhibits 11 & 12; 193F IAC 7.1(5))

6. Standard 1 of USPAP outlines the analysis that appraisers should go through in developing their methodology, in order to produce an appraisal that is not misleading. An appraiser must communicate whether the appraisal is complete or limited (departure from standards). Standard 2 of USPAP gives the minimum guidelines to the appraiser for reporting the analysis, commonly referred to as the reporting standard. There are three (3) appraisal reporting types, to wit: the self-contained report, summary report, and restricted use report. (Testimony of Alan Hummel; State Exhibits 11 & 12)

7. There are specific guidelines within USPAP which the appraiser and his or her client may determine are not necessary in order for the appraiser to complete the analysis for the particular assignment. If a specific guideline is departed from, the appraisal is called a "limited appraisal." The appraiser must specify the departures from Standard 1 in a limited appraisal. A "complete appraisal" indicates that the appraiser has not invoked the departure provisions of USPAP, and the appraiser has abided by all of the rules under Standard 1. (Testimony of Alan Hummel)

8. Under USPAP Standard 2, the appraiser has three options for reporting: the self-contained report, summary report, and the restricted report.

a) The self-contained report does not require the reader to go outside the document to understand the appraiser's analysis and how conclusions were reached.

b) The summary report is a summarization of the data, some of which may be retained in the appraiser's files. However, if the reader requires clarification, the appraiser must be able to show this information to support his report. The appraiser must be careful that the summary report is not so summarized that it is misleading to the reader. The appraiser has a fair amount of discretion as to what information to put in the report, but once included, the information should be understandable in the form presented.

c) The restricted report is a series of statements which would give the reader conclusions only, with no explanation of how the conclusions were reached.

(Testimony of Alan Hummel)

9. The first appraisal (subject of complaint), which was prepared and communicated by the Respondent on February 17, 1999, was assumed to be a summary report of a single family, residential property, as the Respondent failed to state the reporting option; no departure from USPAP Standard 2-2 is allowed for this requirement. Mr. Hummel identified the following specific deficiencies in the first appraisal:

a) The appraisal report fails to identify intended users other than the client.

b) The appraisal report fails to explain why the cost approach was excluded, although a reporting section was available on the form; no comments as to why it was not developed.

c) The appraisal report fails to explain why the income approach was excluded, although a reporting section was available on the form; no comments as to why it was not developed.

d) In utilizing the sales comparison approach, the appraisal report fails to make proper adjustments and/or comments for differences in the subject property and sales property as to the number of baths and basement finish.

e) The appraisal report failed to make reasonable market adjustments affecting the final estimate of value, because of a lack of information in the sales comparison approach.

(Testimony of Alan Hummel; State Exhibits 6 & 8)

10. The second appraisal, which was prepared and communicated by the Respondent on November 23, 1999, was assumed to be a summary report of a commercial building, as the Respondent failed to state the reporting option. Mr. Hummel identified the following deficiencies in this appraisal:

a) The appraisal report contains a contradiction as to the intended use, as it is prepared for the City of LeClaire, but stated as a basis for mortgage loan purposes; no intended users were identified.

b) The appraisal report makes a disclosure of the process as to the scope of the appraisal (using the traditional methods of cost, sales comparison, and income), and then disregards these approaches without explaining the basis used for the estimate of value.

c) The appraisal report errs in stating the site dimension is 4,290 SqFt, when it is 3900 (50' by 78").

d) As to valuation, the report disregards the standard approaches (cost, sales comparison, income), and relies upon the experience of the appraiser without setting forth sufficient criteria to put any user on notice as to how the valuation was actually determined. An arbitrary figure of \$2,500 for improvements was added to land value which is inconsistent with the experience approach, and a math error as to valuation (\$6,200 versus \$7,200).

e) As to the reporting standards, the Respondent failed to consider and report any current sale, option or listing of the property being appraised.

(Testimony of Alan Hummel; Respondent; State Exhibits 6 & 9)

11. The third appraisal, which was prepared and communicated by the Respondent on November 19, 1999, identified it as a "self-contained appraisal" of a multi-family residential property, but did not specify this as a reporting type or complete appraisal; the appraisal appears to be more of a summary report, which could cause the reader confusion based on USPAP standards. Mr. Hummel identified the following deficiencies in the appraisal report:

- a) The intended users are not identified;
- b) As to the issue of the highest and best use of the property, the subject property has C-O office Shop district zoning, while the comparable sales comparison uses R-5 properties; this would cause the reader to question whether the best use of the property has been fully developed. The best, comparable sale property (#3, as to date, and square footage) was given the least weight in the analysis.
- c) As to the cost approach, there is a significant inconsistency as to the physical depreciation of 15% as stated in the narrative versus a reference to 10% in the calculations. The appraiser reasons that the cost to build exceeds what is reasonable for the market, yet there is no offset or deduction for functional obsolescence or explanation thereto.
- d) The appraisal fails to state whether there is or is not any current sale, option or listing of the property being appraised or that the information was not available.
- e) The above stated inconsistencies would cause any reader to lack confidence and even be misled by the appraisal.

(Testimony of Alan Hummel; State Exhibits 6 & 10)

13. Mr. Hummel expressed concern for both the manner in which these three appraisals were both developed and reported to the point he questioned the Respondent's familiarity with USPAP standards, and referenced educational courses that are available.

(Testimony of Alan Hummel)

14. While the Veterans Administration does not require a cost approach method to be used in the appraisal report, the Respondent should have explained this to be in compliance with USPAP.

(Testimony of Alan Hummel)

15. During the hearing, the Respondent was asked to identify the (appraisal) reporting options, and he was unable to do so: his answer was what are you appraising this for, and who are you doing this for.

(Testimony of Respondent)

CONCLUSIONS OF LAW

COUNT I

1. Iowa Code sections 543D.17(1)(d) and 543D.18(1) provide, in relevant part:

543D.17 Disciplinary proceedings.

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 provisions of this chapter, or chapter 272C, or of a rule adopted under this chapter or commission of any of the following acts or offenses:

d. Violation of any of the standards for the development or communication of real estate appraisals as provided in this chapter.

543D.18 Standards of Practice

1. A certified real estate appraiser shall comply with the uniform appraisal standards adopted under this chapter.

2. 193F IAC 7.1(5) provides, in relevant part:

193F-7.1(543D) Grounds for disciplinary actions against certificates, licenses, and associates. 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 543D.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 USPAP applicable at the time of the development and communication of the real estate appraisal.

3. **The 1998 and 1999 USPAP contained the following standards:**

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;
- (b) not commit a substantial error of omission or commission that significantly affects an appraisal.

Standards Rule 1-2

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

- (a) identify the client and other intended users;
- (b) identify the intended use of the appraiser's opinions and inclusions;
- (e) identify the characteristics of the property that are relevant to the intended use and purpose of the intended appraisal;
- (f) identify the scope necessary to complete the assignment.

Standards Rule 1-4

In developing a real property appraisal, an appraiser must collect, verify and analyze all information applicable to the appraisal problem, given the scope of work identified in accordance with Standards Rule 1-2(f).

- (a) When a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.
- (b) When a cost approach is applicable, an appraiser must:
 - (i) develop and opinion of site value by an appropriate appraisal method or technique.

Standards Rule 1-5

In developing a real property appraisal, an appraiser must:

- (a) analyze any current Agreement of Sale, option, or listing of the property, if such information is available to the appraiser in the normal course of business;
- (b) analyze any prior sales of the property that occurred within the following minimum time periods: (i) one year for one-to-four-family residential property; and (ii) three years for all other property types.

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;
- (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly.

Standards Rule 2-2

Each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Appraisal Report.

- (a) The copy of a Self-contained or (b) Summary Appraisal Report must be consistent with the intended use of the appraisal, and at a minimum:
 - (ii) state the intended use of the appraisal;
 - (iii) describe information to be sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment;
 - (vii) describe sufficient information to disclose to the client and any intended users of the appraisal the scope of work used to develop the appraisal;

(ix) describe the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;

(xi) state and explain any permitted departures from specific requirements of STANDARD 1, and the reason for excluding any of the usual valuation approaches.

4. The Board agrees with the analysis and conclusions of the expert witness who reviewed these (3) appraisals. The preponderance of the evidence established that the Respondent violated Iowa Code sections 543D.17(1)(d) and 543D.18(1) and 193F IAC 7.1(5) when he prepared and communicated these real estate appraisals which violated USPAP STANDARDS. Specifically, the following STANDARDS were violated, to wit: 1-1(a), 1-1(b), 1-2(a), 1-2(b), 1-2(e), 1-2(f), 1-4(a), 1-4(b)(i); 1-5 (a), 1-5(b); 2-1(a), 2-1(b), 2-2(a)(ii), 2-2(a)(iii), 2-2(a)(vii), 2-2(a)(ix), 2-2(a)(xi).

5. The Board recognizes its primary obligation is to protect the public, especially any user of an appraisal who would rely upon the Respondent's certification, as a belief that his work product would be in conformity with recognized, USPAP Standards. The number and repetition of USPAP violations as found in Count I establish that the Respondent is exhibiting difficulty in translating his rich appraisal experience with the required industry standards.

SUMMARY

While the Board does not believe the issue is one of competency, it rejects the contention of the Appellant that the problem is limited to a matter of form versus substance. While a suspension and/or revocation of license is not warranted by reason of the Appellant's standard violations, an educational approach to rehabilitate him combined with a review to monitor his progress, is merited. The fact that the Appellant could not identify the appraisal reporting options by name when asked during the hearing, is a matter of something more than form, but an issue which will hopefully, be resolved by further education.

DECISION AND ORDER

IT IS THEREFORE ORDERED, that John T. Willits, Certificate No. CG01275, shall:

1. No later than June 1, 2001, complete an educational course in appraisal report writing and provide verification of completion to the Board. This course must be at least 7 hours in length and must be pre-approved by the continuing education committee of the Board. This course may be used by the Respondent to fulfill his continuing education requirements for renewal of his certificate.

2. No later than June 1, 2001, complete the full USPAP educational course, and successfully pass the test upon completion thereof; said course must be at least 15 hours in length and must be pre-approved by the continuing education committee of the Board. The Respondent must provide to the Board, verification of completion and testing. The course may be used by the Respondent to fulfill his continuing education requirement for renewal of his certificate.

3. Upon satisfaction of the requirements set forth in paragraphs 1 & 2, submit to the Board or its designee, three (3) appraisal reports for review, which were reported after the completion date of the above stated requirements, but not later than sixty days (60) thereafter, unless otherwise extended and approved by the Board.

4. Pay a disciplinary hearing fee of \$75.00 (272C.6(6)).

5. If the Respondent violates the terms of this Order and/or fails to satisfy the requirements as set forth above, in any respect, the Board may institute further disciplinary proceedings.

Entered this 8th day of November, 2000.


Richard Bruce, Appraiser
Chairperson
Iowa Real Estate Appraiser Examining Board

cc: Pamela Griebel
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Judicial review of the Board's decision may be sought in accordance with the terms of Iowa Code Chapter 17A.