

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

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<b>IN THE MATTER OF:</b>	)	<b>CASE NO. 06-65</b>
	)	<b>DIA NO. 07DOCRE012</b>
<b>BYRON WITT</b>	)	
<b>CERTIFICATE NO. CG01022</b>	)	<b>DECISION</b>
	)	
<b>RESPONDENT.</b>	)	

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On August 7, 2007, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Statement of Charges against Byron Witt (Respondent). The Statement of Charges alleged two counts:

Count I: Respondent was charged with repeatedly failing to adhere to appraisal standards, including but not limited to the ethics and competence rules of the Uniform Standards of Professional Appraisal Practice (USPAP), in the development, preparation, and communication of multiple appraisals; failure to exercise reasonable diligence in the development, preparation, and communication of multiple appraisals; negligence or incompetence in the development, preparation, and communication of multiple appraisals; including but not limited to inadequate supervision of an unregistered appraiser over a broad geographic range, and improper advocacy, in violation of Iowa Code section 272C.10(3), 543D.17(1)(d), (e) and (f) and 543D.18.(1), (2) (2005) and 193F IAC 7.1, 7.2(2), (5) and (8).

Count II: Respondent engaged in practices harmful or detrimental to the public and repeatedly demonstrated, through lack of education, negligence, carelessness or omissions, or intentional acts, a lack of qualifications to assure the public a high standard of professional care in violation of Iowa Code section 272C.3(2)(b) and 272C.10(3).

The hearing was held before the Board on January 9, 2008 at 9:00 a.m. The Respondent participated in the hearing and was represented by Attorney John Werner. Pam Griebel, Assistant Attorney General, represented the state of Iowa. The following Board members presided at the hearing: Michael Lara, Chair, Appraiser; Amy Thorne, Appraiser; Judy Zwanziger, Appraiser; James Kesterson, Appraiser; and Greg Morehead, Appraiser. Administrative Law Judge John M. Priester assisted the Board in

conducting the hearing. A certified court reporter recorded the proceedings.

The hearing was closed to the public, pursuant to Iowa Code section 272C.6(1)(2005) and 193 IAC 7.25(2). After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2005) to deliberate its decision. The Board instructed the administrative law judge to prepare these Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

#### **THE RECORD**

The record includes the State's Pre-hearing Conference Report, the testimony of the witnesses, and State Exhibits 1-29 and Respondent's Exhibits A-C.

#### **FINDINGS OF FACT**

1. In 1991, the Respondent was issued Certificate No. CG01022 to practice as a certified general residential real estate appraiser in the state of Iowa. The Respondent's certificate is currently valid and is scheduled to expire on June 30, 2009.
2. On September 25, 2007, the Board charged the Respondent with repeatedly failing to adhere to appraisal standards in the development and communication of appraisals; failure to exercise reasonable diligence in the development, preparation and communication of appraisals; and demonstrating negligence or incompetence in the development, preparation and communication of appraisals; and practices harmful or detrimental to the public and repeatedly demonstrating, through lack of education, negligence, carelessness or omissions, or intentional acts, a lack of qualifications to assure the public a high standard of professional care in violation of Iowa Code sections 543D.17(1)(d), (e) and (f); 543D.18(1); and 272C.3(2)(b)(2005), and 193F IAC 7.2.
3. In August of 2006, the Board received a complaint alleging that an appraisal report signed by the Respondent's employee, Ed Hill, failed to comply with applicable appraisal standards. The Board also received an additional appraisal to review because it was the subject of a review received by the Board. The Board submitted appraisals to a Standard Three USPAP review that revealed significant violations of USPAP standards. The Board requested a log and selected additional appraisals for review.

The Standard Three reviews of the additional appraisals also revealed USPAP violations.

4. The first property in question is located at 1311 Ure Street, Des Moines, Iowa. The appraisal was signed by Ed Hill, trainee, and the Respondent was the supervisory appraiser. The appraisal reported a value of \$75,000.

Appraiser Shawna Neal did a desk review of the Ure Street property. The desk review found numerous problems with the appraisal that evidenced a total disregard for USPAP requirements. The appraiser's description of the neighborhood was Polk County and omitted the fact that Interstate 235 is very close to the property. The neighborhood description was generally unhelpful, and the failure to properly address the close interstate was a problem.

Problems were also noted with the zoning listed, the home's features listed, no justification for site value and nearby comparable sales were ignored and farther away sales were used.

The appraisal was listed as unacceptable and the market value estimates were not sufficiently supported and the subject property description was not accurate and/or complete. The appraisal was deemed unacceptable because:

1. lack of details about the neighborhood and the home itself;
2. all sales are near a mile away, in a superior area;
3. the sales are mostly unverifiable and Comparable #1 appears to be in superior condition;
4. there were more comparable homes in the area; and
5. the appraisal does not discuss functional issues with three bedrooms or impact of I-235.

The desk appraiser appraised the Ure Street property at \$57,000. (Ex. 4).

The Board requested that the Respondent forward a copy of the appraisal, as presented to the client, as well as a complete copy of the work file. The Respondent provided the requested information. In the Appraisal Request from Essential Mortgage the owner's estimate of the value of the home was listed at 75k (\$75,000). In the Comments section the mortgage company wrote 75k (\$75,000).

Teresa Selberg conducted a Peer Review of the Ure Street property. She too found numerous problems with the appraisal. Ms. Selberg noted that:

•Appraiser does not give a neighborhood description other than "entire Polk county." This is atypical and incorrect, as it does not define a market area. It appears that the appraiser is not geographically competent.

•Zoning is incorrect. Subject is impacted by I-235 and resulting road noise. Appraiser does not note this and claims the property view is "residential" obviously misleading the reader.

•Appraiser details a partial basement and it is only 60sf. Appraiser does not disclose that the property was on contract to the borrower and whom the contract holder was at the time of the appraisal. He incorrectly states the borrower is titleholder. Appraisal advises the property has had a "complete remodel" yet does not describe this remodeling to allow the reader to understand what "complete" means. Appraiser lists the driveway as gravel in his notes/workfile, yet on the report he has it as concrete.

•Appraiser appears to use inflated figures for the subject's cost information. Site value is above recent sales. Appraiser does not include the subject's external depreciation (I-235). Appraiser advises the property's effective age is 10 years, this is very atypical for a 108 year old home. He also is using a depreciation based on a 50 year life, this is also atypical methodology.

•Appraiser selects comparables that were outside the subject's neighborhood, and they do NOT reflect the subject's external obsolescence (I-235) road noise. According to the local MLS there were approximately 38 sales that were in the same neighborhood and three comps that had I-235 road noise.

•The appraiser submitted his work file and in this file the appraisal requests has two notes that the value should be \$75,000. Which is what the final opinion of value is, it appears the value was given first and he chose comps to attain the value.

•Appraiser does not use similar sales as the subject and it appears was purposely trying to mislead the reader by not disclosing the external obsolescence. He intentionally did not use sales in the subject's neighborhood, or obviously he is geographically incompetent.

(Ex. 6, Selberg testimony).

5. The next appraisal reviewed was for property located at 2224 Dean Avenue, Des Moines, Iowa. The appraisal was performed by Edward Hill under the supervision of the Respondent.

Ms. Selberg was asked to perform a Peer Review of the Dean Avenue property. Ms. Selberg found the following deficiencies:

•Neither the appraiser or supervisory appraiser lists contact information on the signed certification. This is atypical.

•Appraiser does not give a neighborhood description other than the "entire Polk county." This is atypical and incorrect, as it does not define a market area. It appears the appraiser is not geographically competent.

•Zoning is incorrect. Subject overlooks commercial property, railroads etc. Appraiser does not note this and claims the property view is "residential" obviously misleading the reader.

•There were pictures of deterioration of the subject's wood siding, dry rot and peeling paint. This would cause to give the subject a below average rating, assessor information also states it is below normal. The appraiser however states it is in overall GOOD condition. This is misleading. Appraiser advises there is a full basement and then uses a partial figure on the cost approach. Appraiser advises there is a garage and there is not. Appraiser lists only a patio on the grid and there is also an enclosed porch. Appraiser does not disclose that the property was on contract to the borrower and whom the contract holder was at the time of the appraisal. He incorrectly states the borrower is titleholder.

•Appraiser appears to use inflated figures for the subject's cost information. Site value is above recent sales. Appraiser does not include the subject's external depreciation (commercial view).

•Appraiser selects comparables that were outside the subject's neighborhood, and do NOT reflect the subject's commercial influence, or inferior condition. According to the local MLS there were approximately 15 sales there were in the same neighborhood. There was also a sale on Dean Ave that would have been available to the appraiser to better reflect the external depreciation.

•Appraiser does not use similar sales as the subject and it appears was purposely trying to mislead the reader by not disclosing the external obsolescence and the condition of the property. He intentionally did not use sales in the subject's neighborhood, or obviously he is geographically incompetent.

Ms. Selberg then received another work file and appraisal for the Dean Avenue property that was slightly different from the initial appraisal. This appraisal indicated it was for a sale,

whereas the original appraisal indicated it was for a refinance.  
(Ex. 10, 12, Selberg testimony)

6. The Board then requested that the Respondent provide a log of the Respondent's appraisals over the prior six months. The Respondent provided the log and the Board picked four properties that were appraised by the Respondent alone. These properties were:

- a. 106 Park Lane, Newton, Iowa.
- b. 3305 Garwin Road, Marshalltown, Iowa.
- c. 7 South Ninth Street, Marshalltown, Iowa.
- d. 1201 State Street, Tama, Iowa.

(Ex. 16).

Ms. Selberg then conducted a Peer Review of the four selected properties.

7. Ms. Selberg's review of the 106 Park Lane, Newton, Iowa, property found the following deficiencies:

•Appraiser can not comment on listing/sales current sales in the subject's market as he does not subscribe to the local MLS, this is atypical methodology. He does not disclose this to the reader which is misleading. He does not fill the information in on the form and leaves it blank.

•Appraiser is appraising in Newton, IA that has had a huge layoff from Maytag Corp., he doesn't mention this and it's impact on the economy.

•Appraiser lists the zoning as "conforming" this is not a zoning. Appraiser lists the subject as Newton, assessors has its address as Lambs Grove.

•Appraiser does not include the subject's sale of 6/29/04, 4/20/05/ 1/27/06, 1/27/06. He does not discuss these transfers, including the fact that they were contracts and not arms length and it appears there were non-standard market arrangements.

•Appraiser includes the subject functional obsolescence with no explanation. As is value of site improvements are not cost figures, \$5,000 is rather high for a gravel driveway. Cost approach appears to make it cheaper to build home rather than buy it, this is atypical methodology.

•Appraiser selects comparables that appear to be the best available, yet in researching properties on the assessor's site, there were comps (10) that had sold within the last 6 months that would better reflect the market information. Assessors valuing of sites appears to need adjustments on C-2 & 3 he gives a blanket adjustment under location, with no explanation. Between the appraisers other reports under review, he is not

consistent with his adjustments (noticeable on bath values and fireplace). Two of the comps he chose were at the top value of sales in Newton, with other sales (10) that appeared more similar to the subject.

•The appraiser's lack of access to the local MLS misleads the reader as to his statements on the listing etc of the property. Appraiser doesn't analyze previous purchase. Assessor information appears to NOT support his value. Appraiser DOES NOT advise the reader about the market conditions in Newton, layoffs, ect.

•Appraiser does not understand the appraisal process, appears to select comps without doing any market research. Does not use a matched pair analysis to determine adjustment values. Misleads reader by not including his lack of using local MLS information.

(Ex. 18, Selberg testimony).

8. Ms. Selberg next submitted a Peer Review of the property at 3305 Garwin Road, Marshalltown, Iowa. The review found the following deficiencies:

•Appraiser gives a neighborhood description as Marshall County. This is atypical and incorrect, as it is he draws comps from several counties. This is a very unique property and it appears the appraiser does need to enlarge his area, and he did limit his search to nearby or convenient comps.

•Appraiser furnished the work file, assessor's information. The property is a duplex and appears to be configured as a duplex according to appraiser notes and assessor information. He does indicate in the appraisal that there maybe functional obsolescence due to 2 kitchens, 2 living rooms. This is the main reason the square footage is as excessive.

•Subject is a duplex, which may or may not have been converted to one unit, appraiser did not explain this. Appraiser lists two kitchen and two living rooms which would also give it functional obsolescence. The appraiser did not give functional obsolescence for the excessive square footage even though he makes a reference to this several times in communication to the lender. This is atypical and demonstrates the appraiser does not understand appraisal methodology. In the event that this property should be considered a single unit and unique, the market needs to expand for this, maybe the entire state. Appraiser doesn't appear to consider this. The form is not entirely filled out, he lists material and does not include condition.

•Appraiser selects comparables that appear to be the best available, yet due to his limited area on such a unique property theses comps are potentially inaccurate. Due to the appraiser's

lack of applying functional obsolescence, adjustments are not relevant.

•Due to the misidentifying of the subject, its functional obsolescence, potentially larger market area, the report lacks any merit.

•Appraiser does not understand the appraisal process, appears to need additional help on completing the appraisal and sought this from lender, with communications on what comps to select, how much square footage to apply to the house. He received comparable selections from the lender which is atypical. Ultimately the lender requested some type of adjustments that the appraiser complied with, that were not documented in the file.

(Ex. 20, Selberg testimony).

9. The third property that Ms. Selberg performed a Peer Review on was at 7 South 9<sup>th</sup> Street, Marshalltown, Iowa. The deficiencies found in the Respondent's appraisal included:

•APPRAISER COMPLETES AN INCOME PROPERTY ON A SINGLE FAMILY FORM. Appraiser cannot comment on listing/sales current sales in the subject's market as he does not subscribe to the MLS, this is atypical methodology. He does not disclose this to the reader which is misleading. He does not fill the information in on the form and leaves it blank.

•APPRAISER IS COMMENTING ON A SINGLE FAMILY MARKET RATHER THAN INCOME PROPERTIES.

•APPRAISER DOESN'T COMMENT ON CURRENT USE VS. HOW HE IS APPRAISING IT AND WHETHER THERE IS A BETTER USE.

•Relevant characteristics of the property have been ignored, it is an income property and the appraiser doesn't include all the market research needed to determine value. He doesn't include any of the details of an income producing property: rents, expenses, reserves, etc.

•Appraiser includes the subject functional obsolescence with no explanation. Appraiser doesn't include any of the potential appliances, furnishings, etc., that may be included in an income property.

•APPRAISER IS USING THE INCORRECT FORM, COMPS ARE NOT CORRECTLY DISPLAYED TO DETERMINE USEFULNESS.

•Appraiser includes a gross rent multiplier without any support, or documentation in the work file, no reasoning as to ANY type of income approach support etc. ATYPICAL to USE A SINGLE FAMILY FORM FOR INCOME PRODUCING PROPERTY.

•The appraiser's lack of access to the local MLS misleads the reader as to his statements on the listing etc of the property. APPRAISER IS INCOMPETENT AND LACKS THE KNOWLEDGE TO DETERMINE THE TYPE OF FORM HE SHOULD BE USING, NO DOCUMENTATION



IN THE FILE WORKFILE FOR A GRM. If the intended user had instructed him to make the hypothetical assumption that it should be valued as a SF, he has also failed, as he has used other income producing properties as comps.

**·Appraiser does not understand the appraisal process, is incompetent in problem identification.**

(Ex. 22, emphasis in original, Selberg testimony).

10. The fourth and final property that Ms. Selberg performed a Peer Review on was at 1201 State Street, Tama, Iowa. Ms. Selberg found the following deficiencies:

·Appraiser cannot comment on listing/sales current sales in the subject's market as he does not subscribe to the local MLS, this is atypical methodology. He does not disclose this to the reader which is misleading.

·Appraiser gives a neighborhood description of Tama yet goes to Toledo for comps. He does not describe the differences between the two towns/market.

·Appraiser furnished the work file, assessor's information. Appraiser does not discuss the subject's external obsolescence (traffic artery) and its impact on value.

·Appraiser does not include the subject's sale of 8/4/04 @ \$75,000.

·Appraiser does not include the subject's external depreciation.

·Appraiser selects comparables that appear to be the best available, yet in researching properties on local traffic arteries, there were comps available (located on the assessors website). In researching the market information it appears that there is a difference in value between Tama and Toledo of approximately 4%. This is noticeable in both research and the assessor's valuing of sites between the two cities. Appraiser does not note this detail or recognize it. Between the appraiser's other reports under review, he is not consistent with his adjustments (noticeable on bath values and fireplace). He has misidentified comp #1, #2 siding, he has vinyl, and assessor has steel. Appraiser doesn't include 2 previous sales of C#3.

·Due to the misidentifying of the subject, its external obsolescence, potential difference in market value between Tama & Toledo, the report is misleading. The appraiser's lack of access to the local MLS misleads the reader as to his statements on the listing, etc. of the property.

·Appraiser does not understand the appraisal process, appears to select comps without doing any market research. Does not use a matched pair analysis to determine adjustment values. Misleads reader by not indicating his lack of using local MLS

information. Does not make the effort to include similar external obsolescence comps. (Ex. 24, Selberg testimony).

11. Respondent admitted in the hearing that he allowed Mr. Hill, his trainee, to use his signature on appraisals. From June 13, 2006 to August 23, 2007, Mr. Hill created appraisals, with the Respondent's signature, and the Respondent never reviewed the appraisals. Many of the problems identified in the Ure Street and Dean Avenue properties the Respondent concurred in during his testimony.

The Respondent admitted he made mistakes. He took full responsibility for his errors. He trusted Mr. Hill and was let down. After physically inspecting 8-10 properties that Mr. Hill performed appraisals on, he stopped physically reviewing properties. The Respondent no longer works in the Des Moines area, and he no longer supervises any trainees.

The Appellant went through each of the four appraisals that were critiqued by Ms. Selberg. He defended each appraisal, believing that he did a fair job on each appraisal.

12. The evidence overwhelmingly supports the factual conclusion that Respondent has repeatedly demonstrated an inability to appraise in a manner that will protect the public interest - including purchasers, lenders, and others who rely upon the independence and competence of real estate appraisers when making financial decisions.

#### CONCLUSIONS OF LAW

Iowa law provides that a licensing board shall promulgate rules to govern the revocation of a licensee's license for acts including "knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established." Iowa Code § 272C.10(3).

Licensing boards in Iowa have the authority to "revoke, or suspend either until further order of the board, the privilege of a licensee to engage in one or more specified procedures, methods, or acts incident to the practice of the profession, if pursuant to hearing or stipulated or agreed settlement the board finds that because of a lack of education or experience, or because of negligence, or careless acts or omissions, or because

of one or more intentional acts or omissions, the licensee has demonstrated a lack of qualifications which are necessary to assure the residents of this state a high standard of professional and occupational care." Iowa Code § 272C.3(2)(b).

Iowa Code sections 543D.17(1)(d),(e) 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.

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.

**543D.18 Standards of Practice**

1. A certified real estate appraiser shall comply with the uniform appraisal standards adopted under this chapter.
2. A certified real estate appraiser shall not accept an appraisal assignment or a fee for an appraisal assignment if the employment itself is contingent upon the appraiser reporting a predetermined estimate, analysis, or opinion or if the fee to be paid is contingent upon the opinion, conclusion, or valuation reached, or

upon the consequences resulting from the appraisal assignment.

193F IAC 7.2 provides, in relevant part:

**193F-7.2(543D) Grounds for disciplinary actions against certificate holders and associate registrants.**

The grounds for revocation and suspension of certificates and associate registrations and other disciplinary action 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:

...  
**7.2(2)** Dishonesty, fraud or gross negligence in the development of an appraisal within the meaning of Iowa Code section 543D.17(1)"f," includes making misleading, deceptive or untrue representations in preparing or in communicating an appraisal.

...  
**7.2(5)** Failure to comply with the USPAP applicable at the time of the development and communication of the real estate appraisal.

...  
**7.2(8)** A violation of Iowa Code chapter 272C shall be grounds for discipline.

*Count I*

The preponderance of the evidence established that the Respondent violated Iowa Code sections 272C.10(3), 543D.17(1)(d), (e), and (f); 543D.18(1), (2); and 193F IAC 7.1, 7.2(2), (5) and (8), when he repeatedly failed to adhere to the USPAP appraisal standards in the development and communication of the appraisals identified in the hearing and when he failed to exercise reasonable diligence and demonstrated negligence or incompetence in the development, preparation and communication of the appraisals.

Experienced certified real estate appraisers reviewed the Respondent's appraisals and concurred that they failed to comply with the applicable USPAP standards. The Board's peer reviewer reviewed appraisal reports that the Respondent submitted as representing work performed over the past six months. The appraisal reports contained the same types of errors and

deficiencies that were noted in all the Respondent's appraisal reports.

**Count II**

Iowa law provides that a licensing board has the authority to "revoke, or suspend either until further order of the board or for a specified period, the privilege of a licensee to engage in . . . the practice of the profession, if pursuant to hearing . . . the board finds that because of lack of education or experience, or because of negligence, or careless acts or omissions, or because of one or more intentional acts or omissions, the licensee has demonstrated a lack of qualifications which are necessary to assure the residents of this state a high standard of professional and occupational care." Iowa Code §272C.3(2)(b) and 272C.10(3).

The preponderance of the evidence established that the Respondent violated Iowa Code section 272C.3(2)(b) by providing appraisal services that evidence a lack of education, negligence, carelessness or omissions to assure the public a high standard of professional care.

The Respondent appears to lack a complete understanding of the role of the appraiser. The Respondent exhibited a lack of understanding of the way an appraisal is performed. The Respondent's actions put the public in jeopardy.

**DECISION AND ORDER**

The Respondent's serious and repetitive nature of the USPAP violations and the Respondent's lack of qualification warrant the revocation of his certificate.

**IT IS THEREFORE ORDERED** that Iowa Real Estate Appraiser Certificate No. CG01022, issued to Byron Witt, is hereby **REVOKED**, effective immediately upon service of this Decision and Order.

**IT IS FURTHER ORDERED** that the Respondent may not apply for reinstatement of his certificate for at least two years from the date of this Decision and Order. **IT IS FURTHER ORDERED** that the Respondent will be required to redo all of the education, examination, and experience requirements required for initial licensure. The required education, examination, and experience must be completed following the issuance of this Decision and Order and prior to filing an application for reinstatement.

**IT IS FURTHER ORDERED** that before any application for reinstatement is granted, the Respondent will be required to establish that the reason for the revocation no longer exists and it is in the public interest for his license to be reinstated. 193 IAC 7.38(5). The Board retains the right to set conditions of probation in connection with any order reinstating the Respondent's license.

**IT IS FURTHER ORDERED**, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that the Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing.

**IT IS FURTHER ORDERED** that the Respondent shall notify all clients of the fact that his certification has been revoked within fifteen (15) days of receipt of this final decision, in accordance with 193 IAC 7.30(3). Within thirty days of receipt of this final order, the Respondent shall provide the Board with copies of the notice sent to clients.

Dated this 12<sup>th</sup> day of February, 2008.



Michael Lara, (Appraiser  
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Iowa Real Estate Appraiser Examining Board

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Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A. 193 IAC 7.37.