

BEFORE THE IOWA
REAL ESTATE APPRAISER EXAMINING BOARD

IN THE MATTER OF:)	
GARY O. PENNINGROTH)	R.E. APPR. NO. 95 - 23
Cert. No. [REDACTED])	
RESPONDENT)	CONSENT AGREEMENT

COMES NOW the Iowa Real Estate Appraiser Examining Board (the Board) and Gary O. Penningroth (Respondent), and, pursuant to Iowa Code section 17A.10 and 272C.3(4)(1995) and 193F Iowa Administrative Code section 8.7, enter into the following Consent Agreement of the contested case currently on file:

1. Respondent was officially licensed as a certified general real property appraiser in the state of Iowa on November 16, 1992 and holds license number [REDACTED]. Respondent's license is current until June 30, 1997.
2. The Board has jurisdiction of the parties and the subject matter.
3. The Respondent shall successfully complete the following educational courses, all of which may be counted toward continuing education requirements for certification renewal:
 - A. 15 tested hours on USPAP, and
 - B. A minimum of thirty additional tested hours that include course work covering methods and techniques (income producing properties) and capitalization.
4. The Respondent shall, within sixty days from the date this Consent Agreement is signed, submit an educational plan to the Board for course approval.
5. Respondent shall develop a desk review consultation agreement with an Iowa certified general property appraiser in good standing and pre-approved by the Board. The agreement shall specify that desk report review shall be performed by the consultant prior to the release of each non-residential appraisal prepared by the Respondent on or after the date of the Agreement. Once the reviewer has been approved by the Board, an executed copy of the agreement shall be submitted to the Board within ten (10) days.
6. The reviewer's suggestions and/or concerns shall be incorporated into each appraisal report 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.
7. The desk review process shall not be required on residential real property appraisals. The Respondent may petition the Board to cease the desk review process as soon as he verifies successful completion of the educational plan described above and has had at least two non-residential appraisals reviewed. The Board will halt the desk review requirement if the desk review comments fail to reveal serious deviations from the Uniform Standards of Professional Appraisal Practice in the Respondent's appraisals. If the Board finds serious deviations from the

Uniform Standards of Professional Appraisal Practice in the desk review comments or appraisals, the consultation agreement shall continue for six months and again be reviewed.

8. Prior to the time Respondent has successfully completed the educational plan described above, Respondent shall disclose in all non-residential appraisal reports (and associated correspondence) completed after this Order is signed that the appraisal is subject to desk review pursuant to a Consent Order issued by the Iowa Real Estate Appraiser Examining Board. Additionally, any appraisal subject to desk review must disclose any significant professional input by the desk reviewer.

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

10. Should Respondent violate the terms of this Consent Agreement in any respect, the Board may institute formal disciplinary proceedings. This agreement shall be made part of the permanent record of the Iowa Real Estate Appraiser Examining Board, and may be considered by the Board in determining the nature of severity of any future action.

11. This Consent Agreement is subject to approval of the Board. If the Board fails to approve this Consent Agreement, it shall be of no force or effect to either party.

12. This Consent Agreement is public record available for inspection and copying in accordance with Chapter 22 of the Iowa Code.

Jan. 31, 1996
Date


Gary Penningroth, Respondent

This Consent Agreement is accepted by the Iowa Real Estate Appraiser Examining Board on this 20 day of February, 1996

2/20/96
Date


L. Craig Harris, 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. 95-23
)	DIA NO. 97DOCRE-1
GARY O. PENNINGROTH)	
CERTIFICATE NO. [REDACTED])	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On September 2, 1997, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Complaint against Gary O. Penningroth (Respondent). The Complaint alleged that the Respondent prepared and communicated four appraisals for real property which contained deficiencies which violated the Uniform Standards of Professional Appraisal Practice (USPAP). The Respondent was charged in three separate counts. A Notice of Hearing scheduled a prehearing conference for September 26, 1997 and a hearing for October 7, 1997. The Respondent failed to appear for the prehearing conference.

The hearing was held on October 7, 1997 at 2:30 p.m. The Respondent appeared and was not represented by counsel. The state of Iowa was represented by Pamela Griebel, Assistant Attorney General. The following Board members were present for the hearing: David R. Hicks, Appraiser, Chairperson; Nancy M. Larson, Appraiser; Terry D. Culver, Appraiser; Lil M. Perry, Appraiser; L. Craig Harris, Appraiser; and Theresa H. Lewis and Gary J. Johnson, Public Members. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, 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) and 193F IAC 8.12(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)(1997) to deliberate its decision. The Board instructed the administrative law judge to prepare its Findings of Fact, Conclusions of Law, Decision and Order, in conformance with its deliberations.

THE RECORD

The record includes the Complaint, Notice of Hearing, State's Prehearing Conference Report, the testimony of the witnesses, and the following exhibits:

- State Exhibit A: Proof of Service
- State Exhibit B: Consent Agreement, 2/20/96
- State Exhibit C: Appraisal, 8/14/96

State Exhibit D: Appraisal, 9/27/96
State Exhibit E: Appraisal, 4/11/96
State Exhibit F: Appraisal, 4/8/96
State Exhibit G: Curriculum Vitae, Alan Hummel
State Exhibit H: Appraisal Review, 8/19/97
State Exhibit I: 1996 USPAP Standards, One and Two

FINDINGS OF FACT

1. On November 11, 1992, the Respondent was issued Iowa Real Estate Appraiser Certificate, no. [REDACTED], by the Board. Certificate No. 481403796 is currently in good standing. (Board licensing records; State Exhibit B)

2. On February 20, 1996, the Board and the Respondent entered into a Consent Agreement, in settlement of a pending contested case. Pursuant to the terms of the Consent Agreement, the Respondent was required to complete an educational plan; was required, for a specified period of time, to submit all non-residential appraisals to another certified general property appraiser for review prior to release; and was required to submit a log of all non-residential appraisals to the Board. The Board was permitted to select any of those appraisals for Board review. (Testimony of Alan Hummel; State Exhibit B)

3. The Respondent complied with the terms of the Consent Agreement. However, deficiencies were identified during the review of four of the Respondent's non-residential appraisals by the Board's consultant. These deficiencies led to the filing of the current Complaint. (Testimony of Alan Hummel; State Exhibits B, H)

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 1992. Mr. Hummel reviewed four agricultural appraisals that were prepared and communicated by the Respondent. Of these four appraisals, two had been subject to the desk review specified in the Consent Agreement (Exhibits E, F) and two had not. (Exhibits C, D) Mr. Hummel concluded that all four appraisals contained deficiencies and failed to meet the following Uniform Standards of Professional Appraisal Practice: Standards Rule 1-4(b)(iii), (iv), (v), and (vi); Standards Rule 2-1(b) and Standards Rule 2-2(b)(viii). (Testimony of Alan Hummel; State Exhibits C-I)

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 1996 Edition of USPAP was applicable to the appraisals which are the subject of this hearing. (Testimony of Alan Hummel; State Exhibit I; 193F IAC 7.1(5))

6. Standard 1 of USPAP outlines the analysis that an appraiser should go through in developing their methodology, in order to produce an appraisal that is not misleading. Standard 2 of USPAP gives the minimum guidelines to the appraiser for reporting the analysis. (Testimony of Alan Hummel; State Exhibit I)

7. Mr. Hummel identified violations of the minimum USPAP standards in each of the four appraisals prepared and communicated by the Respondent. He concluded that the Respondent failed to exercise reasonable diligence and was negligent or incompetent in the preparation and communication of the four appraisals. (Testimony of Alan Hummel; State Exhibits G, H, I)

8. 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)

9. 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)

10. The first appraisal, which was prepared and communicated by the Respondent on August 14, 1996, was a "complete appraisal" of an agricultural property using a summary format. Mr. Hummel identified the following specific deficiencies in the first appraisal:

a) The adjustment for time of sale is based on the Iowa State University (ISU) land value survey. While it is acceptable to use a published survey, this information must be checked against local market information to make certain that the survey is reasonable for the subject property. There is no indication in the appraisal that the Respondent did this.

b) The appraisal report states that it will estimate the market value of the fee simple interest, which means all of the rights of the owner are bundled within the value that the appraiser has estimated, free of any leases or any other rights. However, in the income approach to value, the Respondent indicates that the house will be occupied rent free until October 1, 1999. If a fee simple was being estimated, the lease should be ignored, and the income for the house would be estimated at market value. By not including market rent, something less than the fee simple value has been estimated. Similarly, the appraiser uses the CRP income for 98 acres, rather than using the market rent which should be used in calculating a fee simple.

c) In the four Sale To Subject Comparisons provided in the report, it is not apparent what methodology the Respondent used. Even a summary report should explain the source of the information in the Sale to Subject Comparisons.

d) There is no indication in the report as to how the capitalization rates were applied. It is not known whether they were imputed or whether they took into consideration that the subject property has buildings on it while the comparable properties may not. There is a lack of summarization of the data.

e) Since the land value is such a large portion of the overall value of the property, it is imperative that the appraiser specify how the land value was determined. The Respondent merely states a dollar per acre value without specifying how it was determined.

f) The Respondent, in his final estimation of value, added up his three approaches to value and divided by three to obtain the average value. This is not acceptable methodology. The appraiser is required to use the reconciliation process and weight the credibility of each approach to value for this

particular property. The Respondent indicates that the sales approach is the most valid in this case, but then rather than using it, he calculates the average of the three approaches.

g) Using consistent methodology, if the Respondent concludes that the prudent buyer does not want improvements to the property, then there should be a deduction or no value placed on the improvements. However, the Respondent did not include obsolescence in the cost approach. The Respondent did not treat these items consistently in this appraisal.

(Testimony of Alan Hummel; State Exhibits C, G, H, I)

11. The second appraisal, which was prepared and communicated by the Respondent on September 27, 1996, was a "complete appraisal" of an agricultural property using a summary format. Mr. Hummel identified the following deficiencies in this appraisal:

a) The Respondent mentions in his description of the subject property that the property had been split and 40 acres had recently been sold. There should have been some analysis in the report concerning the sale price of the 40 acres and whether it was comparable to the subject property. One of the USPAP standards requires the appraiser to consider and analyze any sales of the subject property within the previous three years. The Respondent testified that he did not discuss or analyze the sale because it had not yet closed. However, the Respondent does not mention this in his report.

b) The Respondent states that the current use is as a farm and the highest and best use of the property is as a farm, for the storage of grain and livestock. Yet, three of the four comparable sales used by the Respondent are for acreages that are residentially oriented, which would be a different highest and best use. One of the premises of the sales comparison approach is that you analyze sales with similar types of highest and best use if at all possible. If not, the appraiser should discuss the search for similar sales, the lack of similar sales and the appropriate adjustments which were made. At the hearing, the Respondent admitted that he should have stated that the highest and best use of the property was as an acreage, not as a farm.

c) In the sales comparison approach, the Respondent made significant adjustments for the differences in the size of the properties, but provided no discussion or explanation of how the numbers were arrived at. There should be sufficient discussion to reassure the reader that the figures chosen are market oriented.

d) In the income approach, the Respondent states that nine of the acres have no economic value. This is the first time that this conclusion is made in the report. There is nothing noted in the sales comparison approach or the cost approach to indicate how the nine acres were handled in those approaches and whether they were also given no value.

e) There is no information provided in the report that would explain to the reader how rents for the land or dwelling were chosen and whether those rents were market oriented.

f) Within the cost approach, the Respondent states that the buildings are all old and outdated and have both physical and functional depreciation. However, in his methodology, only the physical depreciation is shown; no deduction is made for functional obsolescence. This is an inconsistency in the development of the methodology and in reporting.

g) Once again, the Respondent used the ISU land survey to establish land value in the cost approach. However, the Respondent did not present any information to establish that that the ISU survey is a valid representation of value for the subject property and its market.

(Testimony of Alan Hummel; Respondent; State Exhibits D, G, H, I)

12. The third appraisal, which was prepared and communicated by the Respondent on April 11, 1996, and the fourth appraisal, which was prepared and communicated by the Respondent on April 8, 1996, were both "complete appraisals" of agricultural properties using a summary format. Both of these appraisals had been subject to the desk review required by the Consent Order. These two appraisals present three deficiencies which were present in all four appraisals and which have been discussed in connection with the first and second appraisals. They are:

a) Use of ISU land survey as the tool of valuation, with no indication that there is any correlation back to the subject property.

b) The capitalization values used to develop a value in the income approach were not supported within the appraisal report. There was no indication as to how those capitalization rates were developed or that they were supported within the market.

c) In the cost approach, the land value was just stated as a number, with no explanation as to what was considered in establishing the land value. This is a particularly important deficiency because in all four of these appraisals the land value was a substantial portion of the whole value.

(Testimony of Alan Hummel; State Exhibits E-I)

13. Mr. Hummel expressed concern for both the manner in which these four appraisals were developed and the manner in which they were reported. If there had been proper disclosure and further description in the reports, there would have been fewer violations of USPAP. Mr. Hummel did not attempt to establish whether the values reached by the Respondent were correct. Rather, his concern was whether the values were supportable by the information in the report. In his testimony, the Respondent explained that he only used the ISU survey as a guideline to establish land value, and he also used sales from his own computer data base. If the Respondent used information from his own computer data base to establish values, this should have explained in the report. (Testimony of Alan Hummel; Respondent)

14. The Respondent estimates that he has completed approximately 120 appraisals in the past year, 75-80 of which were farm appraisals. Twenty of his appraisals were desk reviewed, pursuant to the Consent Agreement. The reviewer raised some USPAP concerns, and any concerns were corrected before the appraisal was released. According to the Respondent, the desk reviewer did not raise the same concerns addressed by the Board's consultant. (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 1996 USPAP contained the following relevant standards:

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:

...
(iii) such comparable sales data, adequately identified and described, as are available to indicate a value conclusion.

(iv) such comparable rental data as are available to estimate the market rental of the property being appraised.

(v) such comparable operating expense data as are available to estimate the operating expenses of the property being appraised.

(vi) such comparable data as are available to estimate rates of capitalization and/or rates of discount.

Standards Rule 2-1

Each written or oral real property appraisal report must:

...

(b) contain sufficient information to enable the person(s) who are expected to receive or rely on the report to understand it 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.

...
(b) The Summary Appraisal Report must:

...
(viii) summarize the information considered, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;

Comment: This requirement calls for the appraiser to summarize the data considered and the procedures that were followed. Each item must be addressed in the depth and detail required by its significance to the appraisal. The appraiser must be certain that the summary is sufficient enough that the client and the intended users of the report will understand it and will not be misled or confused. The substantive content of the report, not its size, determines its compliance.

4. The Board agrees with the analysis and conclusions of the expert witness who reviewed the four 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 four real estate appraisals which violated USPAP standards. Specifically, the appraisals violated the Standards Rule 1-4(b)(iii), (iv), (v), (vi); 2-1(b); and 2-2(b)(viii).

COUNT II

5. Iowa Code section 543D.17(1)(e) provides, in relevant part:

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

6. The preponderance of the evidence established that the Respondent violated Iowa Code section 543D.17(1)(e) by failing to exercise reasonable diligence in the preparation and communication of four real estate appraisals.

COUNT III

7. Iowa Code section 543D.17(1)(f) provides, in relevant part:

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

8. The preponderance of the evidence established that the Respondent negligently developed four real estate appraisals, negligently prepared the appraisal reports and negligently communicated the appraisals, in violation of Iowa Code section 543D.17(1)(f). The Board does not believe that the types of deficiencies noted in the appraisals constitute a sufficient basis for a finding of incompetency.

DECISION AND ORDER

IT IS THEREFORE ORDERED, that Gary O. Penningroth, Certificate No. [REDACTED], shall:

1. No later than June 30, 1998, complete an educational course in appraisal report writing and provide verification of completion to the Board. This course must be at least 15 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. Effective thirty (30) days from the date of this order, the Respondent must fully cooperate in desk review of all of his non-residential real estate appraisals by a review appraiser to be assigned by the Board.

a. Desk report review shall be performed by the reviewer prior to the release of each non-residential appraisal prepared by the Respondent. The review shall be for facial compliance with the Uniform Standards of Professional Appraisal Practice. The reviewer is not expected to perform field work or warrant the accuracy of the Respondent's work product. The reviewer should review field notes, working files and such other documents as reasonably needed to assess the Respondent's use of acceptable appraisal methodology.

b. The reviewer shall prepare written comments on each commercial appraisal reviewed. The reviewer's recommended revisions or corrections, if any, shall be incorporated into each appraisal prior to its release to the client. A copy of the reviewer's written comments shall be submitted to the Board directly from the

reviewer at the same time that they are provided to the Respondent. The comments do not need to be received by the Board prior to the release of the appraisal. The Respondent shall provide the Board copies of the appraisal as initially submitted to the reviewer and as finally released to the client within 15 days of a Board request for such documents. The Respondent shall highlight any changes between the initial draft and the final appraisal before sending these documents to the Board.

c. Consistent with USPAP, appraisals subject to desk review must disclose any significant professional input by the desk reviewer.

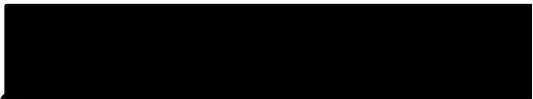
d. After three (3) months, the Respondent may petition the board in writing for release from prerelease review. The Board shall release Respondent from the desk review requirement if the review comments and appraisals do not reveal significant deviations from minimum appraisal standards. If there are significant deviations, the review process shall continue until further order of the Board.

3. The Respondent shall submit a log of all non-residential appraisal reports completed in the first six months following his successful completion of the report writing course. The Board may select one or more of the non-residential appraisals listed in the log for review.

4. All costs associated with compliance with this order of the Board shall be paid by the Respondent.

5. If the Respondent violates the terms of this Order in any respect, the Board may institute further disciplinary proceedings.

Dated this 24th day of October, 1997.



David R. Hicks, Appraiser
Chairperson
Iowa Real Estate Appraiser Examining Board

cc: Pamela Griebel

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