

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

IN THE MATTER OF:)	CASE NO. 04-70, 05-19
)	DIA NO. 06DOCRE009
STUART GRAY)	
CERTIFICATE NO. CR01367)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On March 27, 2006, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Statement of Charges against Stuart Gray (Respondent). Respondent was charged with repeatedly failing to adhere to appraisal standards, including but not limited to the ethics and competency rules of the Uniform Standards of Professional Appraisal Practice, in the development, preparation, and communication of multiple appraisals; failure to exercise reasonable diligence in the development, preparation and communication of multiple appraisals; and negligence or incompetence in the development, preparation, and communication of multiple appraisals, in violation of Iowa Code sections 543D.17(1)(d), (e), and (f) and 543D.18(1)(2003,2005) and 193F IAC 7.2(5).

A prehearing conference was held by telephone on June 22, 2006 at 1:30 p.m. Respondent Stuart Gray appeared for the prehearing conference and was self-represented. Assistant Attorney General John Baty appeared for the state of Iowa and presented a prehearing conference report. The hearing procedure was explained to Respondent, and he was provided with a copy of the state's proposed exhibits.

The hearing was held before the Board on June 28, 2006 at 9:00 a.m. The Respondent appeared and was self-represented. Assistant Attorney General John Baty represented the state of Iowa. The following Board members presided at the hearing: Michael Lara, Appraiser, Chairperson; Richard Koestner, Appraiser; Amy Thorne, Appraiser; and Judy Zwanziger, Appraiser. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. A certified court reporter recorded the proceedings.

The hearing was open 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 Prehearing Conference Report, the testimony of the witnesses, State Exhibits 1-46, and Respondent Exhibits A (pp.1-74), B1-B3, C, and D.

FINDINGS OF FACT

Licensure/Disciplinary History

1. Respondent is a certified residential real estate appraiser in the state of Iowa. Respondent's Certificate No. CR01499 was issued on July 6, 1992. (Testimony of Respondent; State Exhibit 4)

2. On October 16, 2001, the Board found probable cause to file a Statement of Charges against Respondent, alleging that he violated the Uniform Standards of Professional Appraisal Practice (USPAP)¹ and failed to exercise reasonable diligence and/or was negligent or incompetent in his preparation and communication of three real estate appraisals. (State Exhibit 3)

On December 3, 2001, Respondent and the Board entered into a Consent Order in settlement of the Statement of Charges. Respondent was reprimanded for his failure to adhere to USPAP standards and agreed to fully comply with USPAP in all future assignments. Respondent further agreed to complete a 15-hour tested USPAP course and a 30-hour tested course on Fundamentals of Real Estate Appraisal, focusing on the sales comparison and cost approach, by April 15, 2002. After completing the education, Respondent agreed to submit appraisal logs, from which the Board would select appraisals to be reviewed for compliance with USPAP. (State Exhibit 4)

¹ The Uniform Standards of Professional Appraisal Practice (USPAP) are promulgated by the Appraisal Standards Board of The Appraisal Foundation and have been adopted by rule as the standards of practice governing all real estate appraisal activities in the state of Iowa. (State Exhibits 44-46; 193F IAC 7.1.)

3. On November 18, 2002, the Board selected two appraisals from Respondent's log to submit for peer review by certified real estate appraiser Terry Culver. Culver prepared written review reports and identified several significant USPAP violations in both appraisal reports. (State Exhibits 5-7, 41)

519 Maple St., Washburn, Iowa

4. After reading Culver's review reports, the Board asked Respondent to submit his log from January 1-May 1, 2003 and one appraisal that he felt represented his best work. (State Exhibits 8-11) On June 16, 2003, Respondent submitted his appraisal report for the property located at 519 Maple St., in Washburn, Iowa. Certified real estate appraisers Terry Culver and Nancy Larson both reviewed the appraisal report for 519 Maple St.² (State Exhibits 12-14, 40) Both reviewers found significant USPAP violations.

Larson described the following USPAP violations in her written report and in her testimony at hearing:

- Failed to sufficiently identify and report the site description, i.e. Respondent reports that the site is 72 x 160 and does not indicate it is a corner lot, while the grid page and county records indicate that the site is 201 x 160 and a corner lot. While it is possible that the subject site is being divided, Respondent does not state that in his report. The legal description provided by Respondent is incorrect making it unclear if Respondent knows what he is appraising. [USPAP 1-2(e)(i-v) and 2-2(b)(iii)]
- Failed to adequately identify and report the physical, functional, and external market factors as they may affect the appraisal. Respondent states that the subject is in average condition but describes many updates that would usually place the subject in above average to good condition, without discussing the effect of the upgrades on the property. [USPAP 1-2(e)(i-v) and 2-2(b)(iii)(x)]
- Failed to appropriately value the site; no explanation on how estimated site value was obtained. [USPAP 1-4(b)(i), 2-2(b)(iii)(vii)(ix)]
- Failed to collect, verify, analyze and reconcile comparable sales, adequately identified and described, i.e.

² Terry Culver passed away, and the Board asked Nancy Larson to review a number of Respondent's appraisal reports that had been previously reviewed by Culver.

Respondent's adjustments are not market oriented. On the front page of the 1004, Respondent lists the site dimensions as 72 x 160 but bases the adjustments on the larger lot size shown on the grid page. [USPAP 1-4(a), 2-2(b)(iii)(vii)(ix)]

- Failed to consider, analyze and report any prior sales in the last three years. Assessor's data indicated that the property sold in August 2000 for \$58,000 but Respondent does not report this. [USPAP 1-5(b), 2-2(b)(iiii)(vii)(ix)]
- Failed to include a final reconciliation of the three approaches to value. Only the Sales Comparison Approach was mentioned. While Respondent developed the Cost Approach, it was not mentioned. [USPAP 1-6(a)(b), 2-2(b)(iii)(vii)(ix)]
- Failed to include sufficient information to enable the persons who are expected to receive it or rely on it to understand it properly, i.e. the reviewer found that the report lacks credibility due to errors, including adjustments in the grid that are not market oriented and site adjustments based on incorrect data.

(Testimony of Nancy Larson; State Exhibits 12, 14, 40)

1819 Washington Ave. SE, Cedar Rapids, Iowa;
1202 Independence Avenue, Waterloo, Iowa

5. On January 20, 2004, the Board asked Respondent to send in his log of all appraisals completed between August 1, 2003 and January 15, 2004. Respondent did not reply. On April 9, 2004, the Board sent a second request, asking Respondent to send his log of all appraisals completed since January 1, 2004 or face charges for failure to respond to a Board communication. Respondent provided his log on April 23, 2004. The Board selected two of Respondent's appraisal reports for Standard 3 peer review: 1819 Washington Ave. SE in Cedar Rapids and 1202 Independence Avenue in Waterloo. (State Exhibits 16-18)

6. Terry Culver and Nancy Larson both reviewed Respondent's appraisal report for 1819 Washington Ave. SE. Both reviewers found significant USPAP violations. (State Exhibits 15-22) Larson described the following USPAP violations in her report and in her testimony:

- Failed to sufficiently identify and report the site description, i.e. Respondent states zoning compliance is legal but it is actually legal non-conforming and could not

be rebuilt if over 65% destroyed without a zoning variance.
[USPAP 1-2(e)(i-v) and 2-2(b)(iii)]

- Failed to adequately identify and report improvement(s) description. Despite identifying several major upgrades, Respondent does not discuss their impact on the subject and only considers it to be in average condition. [USPAP 1-2(e)(i-iv), 2-2(b)(iii)]
- Failed to adequately identify and report the physical, functional, and external market factors as they may affect the appraisal. Respondent's comments are vague and do not provide specific neighborhood boundaries for the subject. [USPAP 1-2(e)(i-v) and 2-2(b)(iii)(x)]
- Failed to appropriately value the site; the estimated site value does not appear to be extracted from the market but was obtained from assessor's records. Respondent gave no value to the subject's 864 square foot basement. The depreciation taken by Respondent appears low when referencing the Marshall and Swift Residential Cost Handbook. [USPAP 1-4(b)(i), (ii), (iii), 2-2(b)(iii)(vii)(ix)]
- Failed to correctly employ recognized methods and techniques. [USPAP 1-1(a), 2-2(b)(iii)(vii)(ix)]. Respondent did not develop the Cost Approach using correct methodology.
- Failed to collect, verify, analyze and reconcile comparable sales, adequately identified and described. Sales used do not appear to be substitutes for the subject property. The sales were all different styling. Although the subject is reported as a 1.5 story, it appears to be a one story with a walk up attic due to limited headroom. All of the adjustments appear based on the assessed site values rather than the market. The square footages in the comparable sales as noted in the appraisal are different from the assessor's data, except for Sale No. 1, but no comments were made for the square footage discrepancies. [USPAP 1-4(a), 2-2(b)(iii)(vii)(ix)]
- Failed to correctly employ recognized methods and techniques. Respondent's Sales Comparison Approach lacked credibility due to poor comparables selection, errors in reporting, and non-market oriented adjustments. [USPAP 1-1(a), 2-2(b)(iii), (vii), (ix)]
- Failed to clearly and accurately set forth the appraisal in a manner that will not be misleading and failed to include sufficient information to enable the person(s) expected to receive and rely on the report to understand it properly. [USPAP 1-1(a)(b)(c), 2-1(a)(b)(c)]

(Testimony of Nancy Larson; State Exhibits 19, 21, 22)

7. Terry Culver and Nancy Larson both reviewed Respondent's appraisal report for 1202 Independence Ave. Both reviewers found significant USPAP violations. (State Exhibits 23-25) In part, Larson found that the Cost Approach was not developed with proper methodology, and the Sales Comparison Approach was not developed using recognized methods and techniques. The site adjustments were all based on assessed values and were not extracted from the market, and two of the comparable sales used were not comparable in design and appeal to the subject. (Testimony of Nancy Larson; State Exhibit 25)

8. On October 7, 2004, the Board found probable cause to charge Respondent with failure to fully comply with the Consent Order, based on the USPAP violations in Respondent's appraisal reports for the properties at 519 Maple Street, 1819 Washington Ave. SE, and 1202 Independence Ave. (State Exhibits 2A, 26)

Reviews/Mentoring by Diana Jacob

9. In December 2004, Respondent and the Board's Executive Officer engaged in discussions, by email, concerning a possible Consent Order to avoid a formal Statement of Charges and hearing. On December 27, 2004, Respondent submitted a proposal to the Board's Executive Officer, offering to retain his own reviewer to work with him on his USPAP compliance and to review two or more of his appraisal reports for USPAP compliance. The two reports would be submitted to the Board for their review. If the Board was not satisfied with the quality of the reports, they could then pursue formal charges and the parties could either enter into a Consent Order or the Respondent could request a hearing. Respondent was told to submit two additional appraisals and reviews by January 31, 2005 so that they could be reviewed at the Board's February 10th meeting. (Respondent Exhibit A-1 to A-17)

10. Diana Jacob subsequently reviewed two of Respondent's appraisal reports and provided him with a lengthy (approximately 175 page) review report on January 19, 2005.³ On January 20, 2005, Respondent requested an extension until the next Board meeting in April 2005 to allow him time to communicate with Ms. Jacob, implement the necessary changes in 15-20 appraisals, and then submit a recent appraisal to Diana Jacob for a Standard 3

³ This review report was not offered as an exhibit at the hearing.

Review. The Board's Executive Officer asked Respondent to submit Jacob's two reviews prior to the February 10, 2005 Board meeting. (Respondent Exhibit A-18 to A-23) After reviewing Jacob's review reports, the Board voted to go ahead with a hearing unless Respondent agreed to enter into another Consent Order. When this was communicated to Respondent, he was upset because he did not think that Jacob's initial reviews should have been considered to determine his compliance. Respondent felt that he should have been given additional time to incorporate Jacob's comments into his appraisals and then submit two more appraisals for a Standard 3 review by Jacob. (Testimony of Respondent; Respondent Exhibit A-20 to A-27)

11. On March 4, 2005, the Board's Executive Officer notified Respondent that the Board would set a hearing date at their next meeting on May 24, 2005. She advised Respondent that he could present three USPAP compliant reports to the Board, along with the peer reviewer reports and comments, no later than May 9, 2005, but also warned him that she could not guarantee the results he was looking for since she did not get to vote on the matter. (Respondent Exhibit A-32)

On March 7, 2005, the Board notified Respondent that it had received a complaint about his appraisal report for the property located at 34993 Osterdock Road in Guttenberg, Iowa. The Board requested a copy of Respondent's appraisal report and work file for this property by March 21st. (Respondent Exhibit A-28)

On April 18, 2005, Respondent asked certified real estate appraiser Diana Jacob to perform reviews of his appraisal work. Respondent sent Diana Jacob three of his appraisal reports on May 4, 2005. On May 22, 2005, Respondent sent the Board, via email, three appraisal reports with Standard 3 reviews by Diana Jacob. These appraisal reports were for properties located at 1219 Meadow Brook Lane and 918 3rd St. N.W. in Waverly, Iowa and 1117 Leavitt Street in Waterloo, Iowa. In a letter to Respondent dated May 22, 2005, Jacob commends Respondent for his tremendous advancement in the writing of a Summary Appraisal Report. However, despite her characterization of the overall quality of the reports as average, Jacob describes a number of USPAP deficiencies in each of the appraisal reports. (Testimony of Respondent; Respondent Exhibit A-30 to A-47, B1, B2, B3)

On May 24, 2005, the Board reviewed Jacob's three additional review reports and considered the new complaint on the Osterdock Road appraisal. The Board did not take any action but asked Respondent to provide copies of the appraisal reports that were

the subject of Jacob's reviews. (Respondent Exhibits A-48 to A-52).

34993 Osterdock Road, Guttenberg, Iowa

12. Terry Culver and Nancy Larson both reviewed Respondent's August 16, 2004 appraisal report for 34993 Osterdock Road. Both reviewers found significant USPAP violations. (State Exhibits 33-39) In part, Larson found that the report lacked credibility because Respondent:

- Gave inconsistent descriptions of the condition of the property in different sections of the report ("totally remodeled top to bottom," "very good condition," "average condition")
- Used comparable sales that were not substitutes for the subject due to their ages, design, and lesser square footage;
- Made adjustments, without explanation, that were not market oriented and failed to make other adjustments that appeared warranted;
- Did not develop the Cost Approach and Sales Comparison Approach using proper methodology and did not address the exclusion of the Income Approach;
- Failed to discuss the terms of the purchase agreement, including no mention of the large concession (\$28,500) from seller to buyer;
- Exclusively used comparable sales provided by the broker/seller, without discussion. This raises questions whether Respondent was a disinterested third party.

(Testimony of Nancy Larson; State Exhibits 33, 34, 36)

1219 Edgewood Drive, Waterloo, Iowa
1002 Ridgeway Blvd., Waverly, Iowa

13. On June 14, 2005, the Board asked Respondent to send two appraisal reports completed after his training with Diana Jacob that reflect his ability to complete a USPAP compliant appraisal. (Respondent Exhibit A-53) In response to this request, Respondent submitted appraisal reports that he prepared for properties located at 1219 Edgewood Drive in Waterloo, Iowa (date of report: May 16, 2005) and 1002 Ridgeway Blvd. in Waverly, Iowa (date of report: May 28, 2005). Terry Culver and Nancy Larson reviewed both reports and documented multiple USPAP violations. (State Exhibits 27-31)

14. Larson concluded that Respondent's appraisal report for the Edgewood Drive property contained several errors that would impact his estimate of value. Larson found, in part, that Respondent:

- Did not sufficiently address the subject property or its immediate neighborhood, but went into much detail on the community as a whole, which has little or no bearing on the subject property;
- Did not address the possible functional obsolescence of a split foyer with three bedrooms above grade and two bedrooms below grade with only one bath, on the upper level;
- Derived site value using the Allocation method based on the site's assessed value rather than market data;
- Did not specifically identify the source of the cost figure used in the report;
- States that he used the Age/Life method for depreciation but the actual figure used was inconsistent with this statement. The Age/Life method would be 20% depreciation but the grid shows 25% depreciation.
- Made square footage adjustments that were not market oriented; failed to explain or comment on fact that the subject property increased in value by 16.5% in approximately 13 months.

(Testimony of Nancy Larson; State Exhibits 27, 28)

15. Larson concluded that Respondent's appraisal report for the Ridgeway Blvd. property lacked credibility and contained several errors that would have a definite impact on his estimate of value. Larson found, in part, that Respondent:

- Did not sufficiently address the subject property or its immediate neighborhood, but went into much detail on the community as a whole, which has little or no bearing on the subject property;
- Derived site value using the Allocation method from viewing data from the tax assessor's sales records, rather than market data;
- Failed to note that several of the comparable sales had decks, patios, oversized garages, porches, and/or fireplaces. Sales 1,2,&3 all had four bedrooms and 2.5 baths compared to the subject's three bedrooms and 1.5 baths but no adjustments were made for the baths. Although

4 of the 5 comparable sales were newer than the subject, no adjustments were made for age or condition. Site adjustments appear based on assessed data. Under location, all sales are marked "urban" but sales 4 & 5 have adjustments of \$6150 and \$12,750 respectively, with no explanation.

(Testimony of Nancy Larson; State Exhibits 29, 30)

16. Respondent asserted that he used accepted methodology in his allocation method for these two properties and submitted worksheets with mathematical calculations to support the method he used. Although Respondent testified that these worksheets were completed when he developed the appraisal reports, the Board was not convinced that the worksheets were completed contemporaneously with the appraisal reports. (Testimony of Respondent; Respondent Exhibits C, D)

CONCLUSIONS OF LAW

Iowa Code sections 543D.17(1)(d), (e) and (f) (2003, 2005) 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 omissions:

...

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.

Iowa Code section 543D.18(1)(2003, 2005) provides that a certified real estate appraiser shall comply with the uniform appraisal standards adopted under this chapter.

The legislature has vested the Board with authority to adopt rules establishing uniform appraisal standards and appraiser certification requirements and other rules necessary to enforce Iowa Code chapter 543D.18 and its responsibilities under chapter 272C. Iowa Code section 543D.5.

In accordance with this authority, the Board has adopted, by rule, the Uniform Standards of Professional Appraisal Practice (USPAP). 193F IAC 7.1.

193F IAC 7.2(5) 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 actions are set out in Iowa Code section 543D.17 and Iowa Code chapter 272C in both specific and general terms. The general terms of those provisions of the Iowa Code include the following particular grounds for such disciplinary action:

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

The preponderance of the evidence established that the Respondent violated Iowa Code sections 543D.17(1)(d), (e), and (f), 543D.18(1) and 193F IAC 7.2(5) when he repeatedly failed to adhere to the USPAP appraisal standards in the development and communication of six appraisals and when he failed to exercise reasonable diligence and demonstrated negligence or incompetence in the development, preparation and communication of six appraisals. All certified appraisers are required to comply with the Uniform Standards of Professional Appraisal Practice (USPAP). The Board's two experienced peer reviewers reviewed a total of six appraisal reports, including two appraisal reports developed and communicated after Respondent's remedial work with Diana Jacob. All of the appraisal reports had significant

violations of USPAP standards, including but not limited to poor selection of comparable sales, inconsistent and incorrect adjustments, consistent pattern of lack of analysis, and over reliance on assessor's data rather than market-driven data. The Board agreed with the conclusions and opinions of the two peer reviewers. While Respondent has clearly made improvements in the quality of his appraisal reports through his work with Diana Jacob, the appraisal reports developed and communicated by Respondent continue to show a pattern of significant USPAP violations that must be addressed.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Iowa Real Estate Appraiser Certificate No. CR01499, issued to Stuart W. Gray, is hereby placed on **PROBATION**, effective immediately upon service of this Decision and Order. Respondent's certificate will remain on probationary status until he fully complies with the terms of this Decision and Order. **IT IS FURTHER ORDERED** that Respondent must fully comply with the following terms of probation:

A. Education. Within six (6) months of the date of this Decision and Order, Respondent shall complete a minimum seven (7) hour course in Sales Comparison Analysis. Respondent is encouraged to complete the course as soon as possible. The course shall be pre-approved by the Board. Respondent shall forward a certificate of completion of the course to the Board within 10 calendar days after completing the course.

B. Desk Review. Respondent shall enter into a desk review consultation agreement with a desk review appraiser, pre-approved by the Board, within thirty (30) days of the date of this Decision and Order.

(1) Respondent shall submit a copy of the consultation agreement to the Board and shall attach a copy of this Decision and Order to ensure that the desk reviewer is familiar with its terms.

(2) For as long as Respondent is on probationary status, he shall submit by the 10th day of each month, a monthly log of all appraisals he has completed in the preceding month.

(3) The Board will randomly select the appraisal reports to be submitted to Respondent's pre-approved

desk reviewer. The Board will select no more than one appraisal for review each month.

(4) The desk reviewer shall perform a Standard Three desk review of each appraisal report selected by the Board. The review shall be for facial compliance with USPAP. The reviewer will not perform inspections or warrant the accuracy of Respondent's work product, but will review work papers, calculations and any other documents reasonably needed. Along with appraisal reports and work files, Respondent shall provide the reviewing appraiser copies of all documents verifying the accuracy of factual representations in each draft appraisal.

(5) The reviewer shall prepare written comments on each appraisal's compliance with USPAP, and shall provide copies of the written comments both to the Board and to Respondent. If the desk reviewer's comments reveal significant USPAP violations that make the previously issued appraisal report misleading, Respondent shall correct and reissue the appraisal report to the client. In the event a report is reissued, Respondent shall disclose the professional assistance of the desk reviewer in the reissued report.

(6) Respondent shall promptly provide the Board with a copy of each appraisal report submitted for review, a copy of the desk reviewer's review report, the work file, and a copy of any reissued report.

(7) Respondent's probationary status will continue until the Board has received a total of six (6) appraisals with associated review reports that do not have significant USPAP violations.

(8) Respondent shall not act as a review appraiser and shall not co-sign appraisals with any other associate or certified appraiser and shall not supervise the work product of an associate appraiser or unlicensed appraiser until he is released from probationary status.

IT IS FURTHER ORDERED that Respondent shall be responsible for all costs associated with compliance with this Decision and Order, including all costs of education and desk review.

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 upon compliance with all of the terms of this Decision and Order, including the education and desk review requirements, Respondent's certificate will be released from probationary status.

Dated this *24th* day of *July*, 2006.



Michael Lara, Appraiser
Chairperson
Iowa Real Estate Appraiser Examining Board

cc: Stuart W. Gray
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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.