

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

IN THE MATTER OF:)	CASE NO. 06-71
)	DIA NO. 07DOCRE013
CRAIG JACOBSON)	
CR02461)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
RESPONDENT)	DECISION AND ORDER

On September 25, 2007, the Iowa Real Estate Appraiser Examining Board (Board) filed a Notice of Hearing and Statement of Charges against Craig Jacobson (Respondent). Respondent was charged with:

a. 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, 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 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).

b. 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 272C.3(2)(b) and 272C.10(3).

A telephone prehearing conference was held on November 28, 2007. The hearing was held before the Board on December 5, 2007 at 9:00 a.m. Respondent Craig Jacobson appeared and was self-represented. Assistant Attorney General Pamela Griebel represented the state of Iowa. The following Board members presided at the hearing: Michael Lara, Appraiser, Chairperson; Gregory Morehead, Appraiser; Amy Thorne, Appraiser; Judy Zwanziger, Appraiser; and James Kesterson, Appraiser. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. A certified court reporter recorded the proceedings. The hearing was closed to the public at

Respondent's request, pursuant to Iowa Code section 272C.6(1)(2007) 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)(2007) 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 State's Prehearing Conference Report, the testimony of the witnesses, and Exhibits 1-21 (See State's Exhibit Index for description of Exhibits 1-16; Exhibits 17-21 are the following additional documents from Respondent's work file:

Exhibit 17:	Signature Page, Purchase Agreement, 3/10/04
Exhibit 18:	Email, 3/24/04 (Marty Maynes to Respondent)
Exhibit 19:	Purchase Agreement, 3/2/04
Exhibit 20:	Assessor Pages for 1112 26 th Street and comparable sales
Exhibit 21:	Order Form for Appraisal for 4917 Pine Valley Drive

FINDINGS OF FACT

1. Respondent was licensed as a certified residential property appraiser in the states of Wisconsin and Minnesota in February and March of 2004. Respondent was certified as a residential real property appraiser in Iowa on October 11, 2004. Respondent's Iowa certification is in active status and is set to expire on June 30, 2008. Respondent's Minnesota license is active through August 31, 2009, but his Wisconsin license is inactive. Respondent resides in LeRoy, Minnesota, approximately 500 feet from the Iowa border. Respondent estimates that he spends 95% of his time on his appraisal practice, 90% of which is in the state of Iowa. Respondent, who is also licensed as a real estate salesperson, spends 5% of his time on home inspections and real estate sales. (Testimony of Respondent; State Exhibits 1, 2)

2. Prior to his certification, Respondent's Iowa appraisal practice was supervised by three certified appraisers: James Coughlon, Jerome Pisney, and Jason White. All three have since

been disciplined by the Iowa Board. (Testimony of Respondent; State Exhibit 3)

1112 26th Street, Des Moines, Iowa

3. On or about March 26, 2004, Respondent prepared an appraisal of a residential property located at 1112 26th Street in Des Moines, Iowa. At the time of the appraisal, Respondent was still an associate appraiser and was working under the supervision of Jerome Pisney and Jason White. Respondent prepared two appraisal reports for the property at 1112 26th Street, which appear to be nearly¹ identical, although one is signed by Jerome Pisney as Respondent's supervisor and the other is signed by Jason White. When asked why he prepared two reports, Respondent explained that the lender would not accept the first appraisal report, signed by Jerome Pisney, because Pisney did not personally inspect the property. In both appraisal reports, Respondent provides a value of \$145,700 for the property.

Respondent prepared his appraisal at the request of Marty Maynes of Full Circle Lending. (State Exhibit 18) The purchaser of the property was Jeff Maynes. The seller was the Federal National Mortgage Association (Fannie Mae). Respondent's work file includes two different copies of the purchase agreement for the property and both are dated March 2, 2004.² (Testimony of Respondent)

4. Nancy Larson is a certified real property appraiser who is a former Board member and who has served as a Board peer reviewer for the past two years. In October 2006, a law firm retained Larson to prepare a review appraisal of Respondent's appraisal report for the 26th Street property.³ (State Exhibits 4, 5) Larson identified numerous serious inaccuracies and deficiencies in Respondent's appraisal report, which led her to conclude that the report was suspect and lacked any credibility. Ms. Larson further concluded that Respondent's opinion of market

¹ One discrepancy, discovered by a Board member during hearing, is that one report lists the basement square footage for the subject property (State Exhibit 5, p. 6) and the other report omits this information (State Exhibit 6, p. 14) The reports have not been meticulously compared to determine if there are other discrepancies.

² The purchase agreement submitted to the Board as part of Respondent's work file lists a purchase price of \$145,000. (State Exhibit 6, p. 2) A second purchase agreement lists a purchase price of 152,000, which is crossed out and a price of \$145,000 is inserted. Respondent produced this purchase agreement for the first time during the hearing. (State Exhibit 19)

³ Larson was given the appraisal report signed by supervisor Jerome Pisney.

value was not accurate. Nancy Larson estimated the property's value at \$105,000 in her retrospective field review appraisal. (Testimony of Nancy Larson; State Exhibits 4, 5) In both her review appraisal report and her testimony at hearing, Ms. Larson offered the following valid criticisms of Respondent's appraisal report:

a. Contract Section. Respondent incorrectly states that the property had not been offered for sale in the past 12 months. The effective date of Respondent's appraisal was March 26, 2004. The property was in fact listed through the Multiple Listing Service (MLS)⁴ from 1/16/03 to 5/6/03 for a price of \$109,000 and then cancelled or withdrawn. The property was listed from 5/13/03 to 7/8/03 for \$104,900 and then cancelled/withdrawn. The property was then relisted on 9/29/03 through 12/25/03 for \$69,500 as a foreclosure, with that listing expiring. The property was again relisted on 2/24/04 for \$54,900 (with that listing later reported as a sale on 4/30/04 for \$54,900). Respondent did not discuss any of the listings or why his appraised value was more than \$90,000 over the list price. Larson reasonably questions whether this could be an instance of "flipping," i.e., getting a property approved for a loan higher than its actual value in order to pocket the loan proceeds. Respondent also did not discuss the pending purchase agreement dated 3/2/04 for \$145,000.

b. Neighborhood section. Respondent indicated that the area is 97% single family homes, which is incorrect. The subject is located in the heart of the Drake University area, which has several rentals, house conversions, and multi-family units. Respondent's neighborhood comments are "boilerplate" and have little relevance to the subject neighborhood. Respondent does not address the proximity of Drake University to the subject.

c. Site section. Respondent provided incorrect zoning information. The zoning classification is "legal nonconforming" not "legal" as reported. This is an important distinction to lenders as it can affect the owner's ability to rebuild if the property is destroyed due to a fire, etc.

d. Improvements section. Respondent states only that the home is in "good" condition and that at inspection he did not "notice any major repairs needed." Respondent does not address

⁴ If an appraiser is not a member of MLS or a similar service, the appraiser is expected to align himself or herself with someone who can provide access to the necessary information to develop a complete appraisal.

the prior listings which inconsistently stated that the subject was completely renovated, that seller was offering \$5,000 back to buyer to complete updating with full price offer, that renovation was complete, and then that the home had great potential but renovation was incomplete. In addition, Respondent listed the subject as having 1 bath, while the courthouse records and the Multiple Listing Service (MLS) show 2 baths above grade and a $\frac{3}{4}$ bath in the basement.

e. Comparable Sales. Larson identified Comparable Sale #1 used by Respondent as very suspect because the buyer was Martin Maynes, who had the same last name as the subject's buyer and because it sold for \$154,000, which was \$69,100 over its list price.⁵ Sale #2 had previously been listed through the MLS for \$135,000 with that listing withdrawn/cancelled, then sold "by owner" for \$146,000, five months after cancellation. Respondent did not discuss this or what improvements, if any, were made after the cancelled listing. Larson was unable to verify Sale #3 through the MLS.

f. Cost Approach. Respondent did not develop his cost approach through proper methodology. He did not use Marshall and Swift for cost figures. He cites to "current area building estimates" but fails to explain how he obtained these figures.

Larson found more comparable and less suspect sales in close proximity to the subject property, and she arrived at a value of \$105,000 for the property, based on the extraordinary assumption that most of the data relating to the subject property was correct. (Testimony of Nancy Larson; State Exhibits 4, 5)

5. Nancy Larson provided the Board with her review appraisal report of Respondent's appraisal of 1112 26th Street. When the Board asked Respondent for his work file on the property, he provided State Exhibit 6, which included the second appraisal report, with the same effective date as the report reviewed by Ms. Larson, but co-signed by a different supervising appraiser - Jason White. (State Exhibit 6) At the hearing, Respondent provided the Board with additional documents from his work file that he had not previously submitted. (State Exhibits 17-20)

⁵ It does not appear that Nancy Larson was aware that Martin Maynes was also Respondent's contact at Full Circle Lending, the lender for the subject property, since Respondent only disclosed this when he produced Exhibit 18 at the hearing. Presumably this information would have raised additional red flags for Ms. Larson as it did for the Board.

6. The Board submitted Respondent's appraisal report for a Standard Three review by peer reviewer Dennis Loll. (State Exhibit 7) Loll identified many of the same deficiencies and agreed with Nancy Larson's opinion that Respondent's appraisal report was not well supported, included incorrect factual data, and had weak methodology. Loll found that Respondent's site value was based on unknown data and his adjustments do not appear to be market derived. Moreover, Loll also questioned whether the information on the subject property was truthful and whether Respondent overlooked work that needed to be done on the subject property. Loll concluded that the appraisal reflected improper advocacy of value. (Testimony of Dennis Loll; State Exhibits 7, 14)

7. At the Board's request, Respondent submitted a log of all appraisals that he completed from May 6, 2006 until October 30, 2006. Respondent completed 34-41 appraisals in each of these months, and the appraisals were completed in communities throughout the eastern half of Iowa. It is doubtful that Respondent could obtain sufficient geographic competence to perform this number of appraisals in such a short period of time over such a wide geographical area. (State Exhibit 8; Testimony of Nancy Larson) The Board asked Respondent to submit two additional appraisal reports for peer review by Dennis Loll. Respondent selected two of his more recent appraisal reports, which were completed in December 2006. (Testimony of Respondent)

2722 E. Tiffin Avenue, Des Moines, Iowa

8. Respondent's appraisal report for 2722 E. Tiffin, completed on December 5, 2006, was of much higher quality than the report for 1112 26th Street. However, Respondent continued to make adjustments that were not supported or market driven, such as his \$1400 upward adjustment for Comparable #1 because the site was 300 square feet smaller than the subject size. (Testimony of Dennis Loll; State Exhibits 9, 10)

4917 Pine Valley, Pleasant Hill, Iowa

9. Respondent's appraisal report for 4917 Pine Valley Drive, which he completed on December 5, 2006, was not well supported and included weak methodology.

a. The factual data used by Respondent appeared correct with one important exception. Respondent listed Comparable Sale #3 as a conventional sale, but it actually sold on contract.

This is an important distinction that required analysis by Respondent because contract terms can affect the sale price. The Board did believe Respondent's claim that this was just a computer error in preparing the report.

b. The adjustments made for the Comparable Sales are math derived, not market derived. Respondent applies a \$100 adjustment for each year of age difference. For example, Respondent makes a \$300 adjustment for a three year age difference on Sale #1 and a \$900 adjustment for a nine year age difference on Sale #2. He provides no market support for these adjustments.

c. Respondent fails to support his site value other than to state that he used "the percentage of value the assessor's office has established out of the total value." While the assessor's information might have been used to support the site value, the site value must be market derived. Respondent also failed to provide any support for his cost data.

(Testimony of Dennis Loll; State Exhibits 11; 12; 21)

CONCLUSIONS OF LAW

Iowa Code section 272C.3(2)(b)(2005)⁶ authorizes a board to revoke or suspend the privilege of a licensee to engage in one or more specified procedures, methods, or acts incident to the profession, if 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 necessary to assure the residents of this state a high standard of professional care.

Iowa Code section 272C.10(3)(2005) provides, in part, that a licensing board shall establish rules for the revocation or suspension of a license for engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

Iowa Code sections 543D.17(1)(d), (e) and (f) (2005) provide, in relevant part:

543D.17 Disciplinary proceedings.

⁶ The same statutes were in effect when Respondent prepared the appraisal report for 1112 26th Street in March 2004.

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(2005) provides, in relevant part:

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 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.

...

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. See State Exhibits 15, 16. A Number of USPAP Standards Rules (SR) are specifically relevant to this contested case, including but not limited to:

In developing a real property appraisal, an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal, must not commit a substantial error of omission or commission that significantly affects the appraisal, and must not render services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of the appraisal, in the aggregate affects the credibility of those results. SR 1-1(a)-(c)

SR 1-2(e)(i) requires appraisers to identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal, including its location and physical, legal, and economic attributes.

When the value opinion to be derived is market value, the appraiser must identify and analyze the effect on use and value of existing land use regulations... SR 1-3(a).

When a sales comparison approach is applicable, SR 1-4(a) requires an appraiser to analyze comparable sales data as are available to indicate a value conclusion.

When a cost approach is applicable, SR 1-4(b)(i) requires the appraiser to develop an opinion of site value by an appropriate appraisal method or technique.

In developing a real property appraisal, when the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business, analyze all agreements of sale, options, or listings of the subject property current as of the effective date of the appraisal. SR 1-5(a).

In developing a real property appraisal, an appraiser must reconcile the quality and quantity of data available and analyzed within the approaches used and must reconcile the applicability or suitability of the approaches used to arrive at the value conclusion. SR 1-6.

Each written or oral real property appraisal report must contain sufficient information to enable the intended users of the appraisal to understand the report properly. SR 2-1(b).

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 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(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 communicating an appraisal.

...

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

...

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

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) and 193F IAC 7.1, and 7.2 (2), (5), and (8) by repeatedly failing to adhere to appraisal standards in the development, preparation and communication of appraisals and by failing to exercise reasonable diligence and by demonstrating negligence or incompetence in the development, preparation and communication of appraisals.

The preponderance of the evidence further established that Respondent violated Iowa Code sections 272C.3(2)(b) and 272C.10(3) by engaging in practices harmful or detrimental to the public and by repeatedly demonstrating, through lack of education, negligence, and/or carelessness or omissions, a lack of qualifications necessary to assure the public a high standard of professional care.

The numerous USPAP violations established in this record reflect Respondent's significant lack of fundamental knowledge concerning the development, preparation, and communication of appraisals and/or his significant failure to apply the knowledge that he does possess. Moreover, the Board has concerns that Respondent may have been an unintentional participant in an attempted mortgage fraud with respect to his appraisal report for 1112 26th Street. In order to adequately protect the public from incompetent property appraisals, Respondent must be required to complete substantial educational remediation in a class-room setting, followed by a period of desk review. Given the significant deficiencies in Respondent's professional knowledge and in his application of knowledge to appraisal practice, the Board has determined that pending his completion of the education intervention, Respondent will not be permitted to release any of his appraisal reports to the public without first submitting the reports for desk review.

DECISION AND ORDER

IT IS THEREFORE ORDERED that Iowa residential certificate number CR02461, issued to Craig Jacobson, is hereby placed on INDEFINITE PROBATION, effective immediately upon service of this Decision and Order, and subject to the following terms and conditions:

A. **Education.** Within one hundred and twenty (120) days of the issuance of this Decision and Order, Respondent shall complete the following educational courses in a class room setting and shall forward certificates of completion to the Board:

- (1) a 15-hour tested USPAP course;
- (2) a 30-hour course on the Sales Comparison and Income Approaches to Value;
- (3) a 30-hour course on Site Value and Cost Approach;
- (4) a 7-hour course on narrative report writing.

All courses must be pre-approved by the Board. These courses may not be used by Respondent for license renewal. If Respondent verifies that the required courses were not reasonably available to him within the specified time period, the Board will consider a request for extension of time to complete the education.

B. **Pre-Education Desk Review.** Within thirty (30) days of the issuance of this Decision and Order, Respondent must enter into a desk review consultation agreement with a desk reviewer who is pre-approved by the Board. Respondent must submit a copy of the consultation agreement to the Board, which shall include a copy of this Decision and Order to ensure that the desk reviewer is familiar with its terms.

Prior to completion of the education outlined in section A, **ALL** of Respondent's appraisal reports must be desk reviewed in accordance with the procedure outlined below **before** the reports are released to the client.

(1) The desk reviewer shall perform a Standard Three desk review of each appraisal report. 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.

(2) 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 appraisal report misleading, Respondent shall correct the appraisal report before issuing it to the client.

(3) 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 corrected report.

(4) Respondent may not change desk reviewers without prior written approval by the Board.

C. **Post-Education Desk Review.** Following completion of the required education and for as long as he remains on probationary status, Respondent shall submit, by the 10th day of each month, a monthly log of all appraisals he has completed in the preceding month. The Board will then

randomly select appraisal reports to be submitted to a desk reviewer chosen by the Board. The Board will select no more than two appraisals for review each month.

Respondent's indefinite probationary status will continue until: (a) the Board has received at least three (3) residential appraisal reports with associated review reports that do not have significant USPAP violations, and (b) the Board determines that Respondent has derived maximum benefit from the desk review process.

The Board may file additional charges if one or more of the appraisals submitted for desk review demonstrate probable cause to take such action on an appraisal that was issued to the public.

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 trainee 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.

Dated this 19th day of December, 2007.

Michael Lara, Chairperson
Iowa Real Estate Appraiser Examining Board

cc: Pamela Griebel
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319

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