

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

IN THE MATTER OF:)	
Jerald E. Jorgensen	)	CASE NO. 00-11
)	
CERTIFICATE NO. CG01412	)	STATEMENT OF CHARGES
)	
RESPONDENT)	

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

1. She is the Executive Officer of the Iowa Real Estate Appraiser Examining Board and files this Statement of Charges solely in her official capacity.
2. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 543D, 272C (2001).
3. On February 28, 1992, Jerald E. Jorgensen, the Respondent, was issued an Iowa Real Estate Appraiser Certificate by the Board.
4. The Certificate No. CG01412 is in good standing and is scheduled for renewal in June of 2002.

COUNT I

The Respondent is charged with violations of the Uniform Standards of Professional Appraisal Practice (USPAP) in connection with the development of two real estate appraisals pursuant to Iowa Code sections 543D.17(1)(d)(e)(f) and 543D.18(1)(1999 & 2001) and Iowa Administrative Code 193F-7.1(5).

CIRCUMSTANCES

1. The Respondent prepared and communicated five (5) appraisals for real property identified as the Rosonke property, 160 Acres in Sect.1, Dayton Township, Chickasaw County, IA., dated June 28, 1999; Boeding property, 106 Acres in Sect. 31, Jacksonville Township, Chickasaw County, IA., dated June 28, 1999; Reilly property, 150.51 Acres in Sect. 10, Hazel Green Township, Delaware County, IA., dated February 12, 1999; Wilgenbusch property, 200 Acres in Sect. 10, Prairie Township, Delaware County, IA., dated March 5, 1999, and the McDonald property, 77 Acres in Sect. 22 & 23, Hazel Green Township, Delaware County, IA. March 5, 1999.

2. The above appraisals were prepared and communicated after the Respondent was issued an Iowa Certified General Real Property Appraiser Certificate No. CG01412.

3. The Rosonke property, 160 Acres in Sect. 1, Dayton Township, Chickasaw County, IA. report contains deficiencies including, but not limited, to the following:

- a. Failure to use a report format required by USPAP, when users other than the client are expected to rely upon the report. 2-2
- b. Failure to properly identify the intended use of the appraisal. 1-2(b), 2-2(c)(ii)
- c. Failure to correctly develop and support the highest and best use. 1-1(a), 1-3, 2-2(c)(x)
- d. Failure to collect, verify, analyze and reconcile comparable sales, adequately identified and described. 1-1(a), 1-4(a), 2-2(c)(ix)
- e. Failure to consider, analyze and report any current option or listing of the property being appraised. 1-5(a), 2-2(c)(ix)
- f. Failure to identify the effective date of the appraisal. 1-2(d), 2-2(c)(vi)

4. The Boeding property, 106 Acres in Sect. 31, Jacksonville Township, Chickasaw County, IA. report contains deficiencies including, but not limited, to the following:

- a. Failure to use a report format required by USPAP, when users other than the client are expected to rely upon the report. 2-2
- b. Failure to properly identify the intended use of the appraisal. 1-2(b), 2-2(c)(ii)
- c. Failure to correctly develop and support the highest and best use. 1-1(a) 1-3, 2-2(c)(x)
- d. Failure to collect, verify, analyze and reconcile comparable sales, adequately identified and described. 1-1(a), 1-4(a), 1-5(c) 2-2(c)(ix)
- e. Failure to consider, analyze and report any current option or listing of the property being appraised. 1-5(a), 2-2(c)(xi)

5. The Reilly property, 150.51 Acres in Sect. 10, Hazel Green Township, Delaware County, IA. report contains deficiencies including, but not limited, to the following:

- a. Failure to use a report format required by USPAP, when users other than the client are expected to rely upon the report. 2-2(c)(xi)
- b. Failure to properly identify the intended use of the appraisal. 1-2(a), 2-2(c)(iii)
- c. Failure to collect, verify, analyze and reconcile comparable sales, adequately identified and described. 1-4(b)(iii), 2-2(c)(viii), 1-1(a)

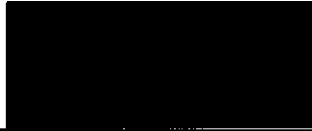
6. The Wilgenbusch property, 200 Acres in Sect. 10, Prairie Township, Delaware County, IA. report contains deficiencies including, but not limited, to the following:

- a. Failure to use a report format required by USPAP, when users other than the client are expected to rely upon the report. 2-2(c)(xi)
- b. Failure to properly identify the intended use of the appraisal. 1-2(a), 2-2(c)(iii)
- c. Failure to collect, verify, analyze and reconcile comparable sales, adequately identified and described. 1-4(b)(iii), 2-2(c)(viii), 1-1(a)

7. The McDonald property, 77 acres in Sect. 22 & 23, Hazel Green Township, Delaware County, IA. report contains deficiencies including, but not limited, to the following:

- a. Failure to use a report format required by USPAP, when users other than the client are expected to rely upon the report. 2-2(c)(xi)
- b. Failure to properly identify the intended use of the appraisal. 1-2(a), 2-2(c)(iii)
- c. Failure to collect, verify, analyze and reconcile comparable sales, adequately identified and described. 1-4(b)(iii), 2-2(c)(viii), 1-1(a)

WHEREAS, the Complainant prays that a hearing be held in this matter and that the Board take such action as it deems appropriate under the law.



Susan A. Griffel, Executive Officer
Complainant

On this 22nd day of May, 2001, the Iowa Real Estate Appraisal Examining Board found probable cause to file this complaint and to order a hearing in this case.



Richard E. Bruce, Chair
Iowa Real Estate Appraiser Examining Board

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

IN THE MATTER OF: JERALD E. JORGENSEN Certificate No. CG01412, Respondent.)))))	Case No. 00-11 SETTLEMENT AGREEMENT AND CONSENT ORDER
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The Iowa Real Estate Appraiser Examining Board (Board) and Jerald E. Jorgensen (Respondent) enter into this Consent Order (Order), pursuant to Iowa Code section 17A.10 (2001) and 193F IAC 8.6:

1. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 543D, and 272C (1999 and 2001).
2. Respondent is a certified general real estate appraiser in Iowa. He was issued Certificate No. CG01412 on February 28, 1992.
3. The Board charged Respondent with a failure to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) in connection with five appraisal assignments completed in 1999. In all five instances, the Board alleged that the Respondent used an inappropriate report form. Because Respondent used a restricted appraisal report form, he did not describe, state or summarize sufficient information within the report from which the reader could determine the methodology used or market information supporting the conclusions reached.
4. While not admitting all allegations of the Statement of Charges, Respondent does agree to the terms of this Consent Order.
5. Respondent has a right to a hearing on the charges, but waives his right to hearing and all attendant rights by freely and voluntarily entering into this Order. This Consent Order is the final agency order in the contested case.
6. Respondent agrees the State's counsel may present this Order to the Board and may have ex parte communications with the Board while presenting it.
7. This Order shall be part of the permanent record of Respondent and shall be considered by the Board in determining the nature and severity of any disciplinary action to be imposed in the event of any future violations.

8. This Order and the Statement of Charges are public records available for inspection and copying in accordance with the requirements of Iowa Code chapter 22 (1999).

9. Failure to comply with the provisions of this Order shall be grounds for disciplinary action pursuant to Iowa Code section 272C.3(2)(a) (2001). However, no action may be taken against Respondent for violations of these provisions without a hearing, or waiver of hearing.

10. This Order is subject to approval of the Board:

(a) If the Board fails to approve this Order, it shall be of no force or effect on either party, and it shall not be admissible for any purpose in further proceedings in this matter.

(b) If the Board approves this Order, it shall fully dispose of all issues in this case.

IT IS THEREFORE ORDERED:

A. Reprimand

The Respondent is reprimanded for failure to adhere to the Uniform Standards of Professional Appraisal Practice (USPAP). Respondent agrees to fully comply with all applicable USPAP standards in all future appraisal assignments.

B. Education

Respondent shall complete by November 15, 2001, a fifteen hour tested course on USPAP, successfully passing the exam. Respondent has indicated a desire to take a USPAP course offered in October, 2001. In the event Respondent is unable to complete this requirement by November 15, 2001, Respondent shall contact the Board office prior to November 15, 2001, providing the date by which Respondent will have successfully completed this requirement. No extension will be provided to a date after January 31, ~~2001~~, absent very compelling circumstances beyond Respondent's control. Three of the USPAP course credit hours may be counted toward the continuing education requirements required for certificate renewal. The remaining 12 hours may not be counted toward the required continuing education requirement. Documentation of education shall be submitted within ten days of completion.

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C. Revised Appraisals

The Respondent shall, no later than 30 days following successful completion of the education described above, submit to the Board revised appraisals as follows:

(1) The appraisal assignments subject to this requirement involve the Rosonke 160 acre property in Chickasaw County, Iowa (originally dated June 28, 1999), and the Wilgenbusch 200 acre property in Delaware County, Iowa (originally dated March 5, 1999).

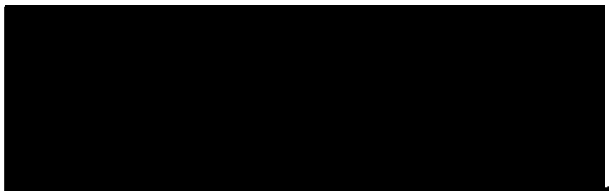
(2) Respondent shall complete new appraisal reports in a self-contained or summary report format in full compliance with all USPAP standards, including but not limited to the Standard 2 provisions applicable to the report form selected. Respondent should rely upon information originally collected for the appraisal assignments in 1999 when preparing the new reports. If any new information is gathered or relied upon, Respondent shall highlight the change. The new reports are for demonstration only. They should be marked as demonstration reports and should be provided solely to the Board, but they should otherwise satisfy all applicable USPAP standards.

(3) The new appraisal reports shall contain sufficient detail to allow the Board to understand the support and derivation of all adjustments and conclusions. Respondent agrees that he will disclose in detail the data relied on and the analysis employed to arrive at conclusions, even if such detail may be more than minimally required in a summary report, if that reporting form is selected. Respondent should consult the Statement of Charges when preparing the reports to assure issues raised by the Board in the Charges are addressed in the new reports. The Board will submit the new reports to a Board consultant for review. Upon request the Respondent shall provide any additional information from his work files that the consultant requires to reasonably review the reports. Respondent may contact the Board's consultant with any questions about what he should contain in the demonstration reports. Additionally, while not required, Respondent may have the demonstration reports reviewed by an appraiser of his choice, at his expense, prior to submitting the demonstration reports to the Board.

(4) The terms of this Order shall fully resolve the pending contested case, but shall not preclude the Board from filing additional charges if one or both of the demonstration reports reflect significant deviations from USPAP standards or other probable cause to take such an action. Respondent agrees Board review of the revised appraisals shall not constitute "personal investigation" or otherwise disqualify a Board member from acting as a presiding officer in any subsequent contested case.

AGREED AND ACCEPTED:

The Respondent



Jerald E. Jorgensen

9/17/01

Date

**The Iowa Real Estate Appraiser
Examining Board**



By: Sharon L. Chism, Chair

9/26/01

Date

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

IN THE MATTER OF:	)	CASE NO. 00-11
	)	DIA NO. 02DOCRE003
JERALD E. JORGENSEN)	
CERTIFICATE NO. CG01412	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
RESPONDENT	)	DECISION AND ORDER

On January 24, 2002, the Iowa Real Estate Appraiser Examining Board (Board) found probable cause to file a Statement of Charges against Jerald E. Jorgensen (Respondent). The Statement of Charges alleged that the Respondent violated the Uniform Standards of Professional Appraisal Practice (USPAP) in connection with the development of two real estate appraisals, in violation of Iowa Code section 543D.17(1)(d), (e), (f), and (g) and 543D.18(1)(2001) and 193F IAC 7.1(5). A Notice of Hearing was issued scheduling the hearing for July 24, 2002, but the hearing was continued at the Respondent's request.

The prehearing conference was rescheduled for October 17, 2002 at 1:30 p.m., and the hearing was rescheduled for October 24, 2002 at 10:00 a.m. Both the state and the Respondent submitted pre-hearing conference reports. In addition, the state filed a Motion to Amend Charge, Motion in Limine, Supplement to Motion in Limine, and First and Second Objections to Exhibits. The Respondent filed an Application to Amend Answer and a First Amended Answer to the Statement of Charges.

The motions were addressed at the pre-hearing conference held by telephone on October 17, 2002 before the administrative law judge. The Motion to Amend Charges was not resisted and was granted. The State's Motion in Limine to limit the issues to the pending Statement of Charges was granted, but ruling on the issue of whether exhibits would be excluded was deferred to the date of the hearing to allow the parties an opportunity to reach a stipulation.

The Respondent's Motion to Amend Answer was granted in part, and denied in part. The first two paragraphs of the Motion to Amend, which raised constitutional defenses, were granted. The third paragraph was granted with respect to the pending Statement of Charges but was denied with respect to the May 22, 2001 Statement of Charges which had been resolved on September

26, 2001 through a Stipulation and Consent Order. The fourth paragraph was denied, consistent with the ruling on the Motion in Limine.

The hearing was held on October 24, 2002 at 10:00 a.m. The Respondent appeared for the hearing, and was represented by his counsel, John J. Hines. The state of Iowa was represented by Pamela Griebel, Assistant Attorney General. The following Board members were present for the hearing: Richard J. Koestner, Appraiser, Chairperson; Richard Bruce, Appraiser; Beth Weeks, Appraiser; and David Erickson, Public Member. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, 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)(2001). At the close of the evidence, the Respondent's attorney orally waived the legal issues raised in the second and third paragraphs of the Amended Answer. The record was held open for the parties to submit briefs on the constitutional issue raised in the first paragraph of the Respondent's First Amended Answer. On November 11, 2002, the Respondent's attorney notified the Board in writing that he and the assistant attorney general had agreed that they would not file briefs on the constitutional issue at this time, and the parties did not expect the Board to rule on the constitutional issue in its decision.

After hearing the testimony and examining the exhibits, the Board convened in closed executive session, pursuant to Iowa Code section 21.5(1)(f)(2001) to deliberate its decision. The members of the Board instructed the administrative law judge to prepare the Findings of Fact, Conclusions of Law, Decision and Order, in conformance with their deliberations.

THE RECORD

The record includes the request for continuance and order continuing hearing, the state's Motion to Amend Charges, state's Motion in Limine and Supplement, state's Prehearing Conference Report, Respondent's Prehearing Conference Report and First Supplement, Respondent's Application to Amend Answer, Respondent's First Amended Answer, and State's Response, state's Objection To Exhibits and Second Objection to Exhibits, the November 11, 2002 letter to the Board from Respondent's attorney, the testimony of the witnesses, and the following exhibits:

State Exhibit 1: Statement of Charges, Notice of Hearing, Amended Notice of Hearing, and Proof of Service

State Exhibit 2: Settlement Agreement & Consent Order (9/26/01), and Statement of Charges

State Exhibit 3: Demonstration Report - Wilgenbusch (Alliance)

State Exhibit 4: Demonstration Report - Rosonke (IDOT)

State Exhibit 5: Respondent Cover Letter dated 12/17/01 and supporting documentation

State Exhibit 6: Hummel Review (2/12/02)

State Exhibit 7: Hummel Vitae

State Exhibit 8: 1999 USPAP Standards One and Two

Respondent Exhibit A: Jacob Report

Respondent Exhibit B: Jacob CV

Respondent Exhibit C: Respondent work file on pipeline easement appraisal

Respondent Exhibit D: Minutes of Board and Committee Meetings on Respondent complaints

Respondent Exhibit E: 5/24/00 (Hummel Report to Board)

Respondent Exhibit F: same as State's 6

Respondent Exhibit G: 7/1/98 Agreement for consulting services with Hummel

Respondent Exhibit H: 7/1/99 Agreement for consulting services with Hummel

Respondent Exhibit I: 7/1/00 Agreement for consulting services with Hummel

Respondent Exhibit J: 7/2/01 Agreement for consulting services with Hummel

Respondent Exhibit K: Memo on Case 99-26 and 00-11 of Hummel

Respondent Exhibit L: 1999 USPAP Manual

Respondent Exhibit M: Historical summary of complaints processed by the Board from 1993

No exhibit N

Respondent Exhibit O: Respondent response to Hummel's 2/12/02 Appraisal Review

Respondent Exhibit P: 5/28/98 Appraisal for Iowa DOT in Rosonke case

Respondent Exhibit Q: 2/10/99 Appraisal for Alliance Pipeline in the Wilgenbusch case

Respondent Exhibit R: Correspondence between Respondent and Susan Griffel

Respondent Exhibit S: 3/30/00 complaint from Gary Wegmann

Respondent Exhibit T: Jacob review of Respondent's two demonstration reports

BOARD RULING ON MOTION IN LIMINE

On October 17, 2002, the state filed a Motion in Limine, seeking a prehearing order limiting the issues in this contested case to whether the Respondent's preparation of two new demonstration reports in December, 2001 violated the Uniform Standards of Professional Appraisal Practice (USPAP). The Respondent resisted and further asked the Board to reconsider the issues presented in a previous Statement of Charges, which was resolved on September 26, 2001 with a Settlement Agreement and Consent Order. The administrative law judge orally granted the Motion in Limine at the prehearing conference on October 17, 2002.

At the hearing, the Respondent asked the Board to reconsider the ruling of the administrative law judge on the Motion in Limine

and to reopen the prior case which was resolved by a Settlement Agreement and Consent Order. The Board affirms the prior rulings. The Settlement Agreement and Consent Order was a final decision in a contested case that cannot be collaterally attacked. Paulson v. Board of Medical Examiners, 592 N.W.2d 677 (Iowa 1999). Even if the Board has authority to reopen the prior contested case, it declines to do so. The Respondent voluntarily entered into the Settlement Agreement and Consent Order, waiving his right to a hearing. While the Settlement Agreement and Consent Order may have some negative effects on the Respondent's practice, his situation is no different from other licensees who enter into Consent Orders with the Board.

STATEMENT OF ISSUES

- 1) Whether the Respondent violated the Uniform Standards of Professional Appraisal Practice (USPAP) in connection with his development of two real estate appraisals (Wilgenbusch and Rosonke)? and if so,
- 2) What sanctions if any are appropriate to address the violations?

FINDINGS OF FACT

1. On February 28, 1992, the Respondent was issued an Iowa Real Estate Appraiser Certificate by the Board. The Certificate, No. CG01412, is valid. The Respondent owns his own appraisal company and has had other appraisers work for him in the past. Currently, he employs two apprentice appraisers who are working towards certification.

Most of the Respondent's appraisal experience has been in farm and land appraisals, including agricultural business appraisals. Starting in approximately 1994, the Respondent became involved in eminent domain cases involving the Iowa Department of Transportation. Starting in 1999, the Respondent began performing appraisals involving pipeline easements. (Testimony of Jerald Jorgensen; State Exhibit 1)

2. On May 22, 2001, the Board found probable cause to file a Statement of Charges against the Respondent, alleging violations of the Uniform Standards of Professional Appraisal Practice (USPAP), in connection with the development of five real estate appraisals completed in 1999. On September 26, 2001, the Respondent and the Board entered into a Settlement Agreement and Consent Order in resolution of this Statement of Charges. The

Respondent waived his right to a hearing and freely and voluntarily entered into the Consent Order.

Pursuant to the terms of the Consent Order, the Respondent agreed:

- to accept a reprimand for failure to adhere to USPAP;
- to complete a fifteen hour tested course on USPAP by November, 15, 2001;
- to submit new appraisal reports in a self-contained or summary report format, in full compliance with USPAP standards, for the Rosonke and Wilgenbusch properties within thirty days following successful completion of the USPAP course. The new reports were to be solely provided to the Board, and were for demonstration only. The Respondent would rely upon information originally collected for the appraisal assignments in 1999 when preparing the reports; or else any new information would be highlighted.
- In preparing the demonstration reports, the Consent Order required the inclusion of sufficient detail to allow the Board to understand the support and derivation of all adjustments and conclusions, even if such detail may be more than minimally required in a summary report, if that reporting form is selected. The Consent Order further provided that the Respondent may contact the Board's consultant with any questions about what should be contained in the demonstration reports and may have the demonstration reports reviewed by an appraiser of his own choice, at his own expense, prior to submitting them to the Board.

(Testimony of Alan Hummel; State Exhibit 2)

3. On December 19, 2001, the Respondent submitted his two revised appraisals (hereinafter, "demonstration reports") to the Board in summary report format and attached supporting documentation. The Respondent completed the fifteen hour tested course on USPAP prior to his preparation of the two demonstration reports. The Respondent did not ask the Board's consultant for any advice, nor did he elect to have his demonstration reports reviewed by another appraiser prior to submission.

Both of the properties being appraised involved condemnations that had gone before condemnation juries for a determination of damages. The Respondent has had a lot of experience in

condemnation cases; he estimates that he may have performed as many as 1000 appraisals in condemnation cases over the past ten years. One of the property appraisals (Wilgenbusch) involved an easement for the construction of a gas pipeline; the other property appraisal (Rosonke) involved a permanent taking of a portion of the property for a highway project by the Iowa Department of Transportation. (Testimony of Jerry Jorgensen; Alan Hummel; State Exhibits 3-5)

4. The Board asked its appraiser-consultant, Alan Hummel, to review the Respondent's demonstration reports for compliance with USPAP standards. Alan Hummel is a certified general real property appraiser in the state of Iowa and is actively engaged in a diverse real estate appraisal practice. He has served as a consultant to the Iowa Board since the early 1990's and has also consulted with professional licensing boards in other states. Mr. Hummel performs appraisal reviews for the Board's consideration but does not recommend discipline. He may make recommendations for the type of remedial education that would address any deficiencies.

Mr. Hummel also teaches courses on USPAP, but did not teach the USPAP course recently taken by the Respondent. Mr. Hummel is paid fees for his Board consulting work and for teaching USPAP courses. There are approximately 12-15 approved USPAP instructors in the state of Iowa.

Mr. Hummel conducted his desk review on February 12, 2002, using the standards of appraisal practice that were in effect at the time of the original appraisal report (1999). Mr. Hummel did not inspect the subject properties, did not estimate the value of the subject properties, nor did he offer an opinion as to the accuracy of the values arrived at in the reports. (Testimony of Alan Hummel; Susan Griffel; State Exhibits 6, 7; Respondent Exhibits G-J)

5. The Respondent retained Diana Jacob as his expert witness. Diana Jacob is the Director of Education for the Lincoln Graduate Center in San Antonio, Texas and the Director of Education for the National Association of Master Appraisers. In this position, Ms. Jacob teaches instructors of USPAP courses. She has thirteen years of experience in appraisal and appraisal review of single family and multi-family residential property, vacant land, (both rural and commercial sites), and commercial property. She is a certified residential appraiser in Louisiana, a general certified appraiser in North Carolina, and a non-resident general certified appraiser in Georgia. She is

not certified in Iowa. (Testimony of Diana Jacob; Respondent Exhibit B)

6. The Uniform Standards of Professional Appraisal Practice (USPAP) are the rules promulgated by the Appraisal Standards Board, which is appointed by The Appraisal Foundation. The Appraisal Foundation has been recognized by Appraisal Subcommittee of Congress as the body to establish, promulgate, and publish rules to be used in relation to federally related transactions.

Iowa (and other states) has adopted USPAP as its own standard for the licensing and certification of appraisers. In order to be recognized by the Appraisal Subcommittee to license for federally related transactions, appraisers are required to comply with USPAP. If Iowa appraisers did not have to comply with USPAP, it is likely that the Appraisal Subcommittee would no longer recognize Iowa appraisers as licensed to perform federally related transactions, and then Iowa appraisers would not be able to perform the work necessary for Iowa banks to make federal loans.

USPAP includes a preamble, Ethics Rule, Competency Rule, Departure Rule, Definitions, and ten standards. Only Standards One through Three were at issue in this hearing.

a. The preamble is part of the standards and gives direction for how the standards are to be utilized. The explanatory comments to the rules have the same force and effect as the rules themselves.

b. The standards include *binding* requirements, as well as *specific* requirements to which the Departure Rule may apply under certain conditions. Binding requirements must be taken into account in every real property appraisal. Specific requirements are expected to be taken into account, but the appraiser may depart from them if the client approves and the appraiser determines that they are not necessary in order to reach opinions or conclusions that are credible. Departure applies only in the development of an appraisal, not in its reporting. In addition, no departure is permitted from the preamble, ethics rule, competency rule, or definitions.

c. Standard 1 establishes the requirements for the development/analysis of a real property appraisal. Standard 2 establishes requirements for the reporting of a

real property appraisal. Standard 3 establishes requirements for reviewing a real property appraisal and reporting on that review.

(Testimony of Alan Hummel; Diana Jacob; State Exhibit 8)

7. The Respondent asked Ms. Jacob to review Mr. Hummel's appraisal review of the demonstration reports and to report on Mr. Hummel's compliance with USPAP Standard 3. (Respondent Exhibit A) Ms. Jacob concluded that Mr. Hummel's review (2/12/02) did not comply with the current USPAP requirements for an appraisal review and suggests that this makes his substantive opinions regarding the Respondent's compliance with USPAP unreliable. Ms. Jacob offered a number of criticisms of Mr. Hummel's appraisal review of the two demonstration reports. The Board has reviewed these criticisms but does not believe that any failure by Mr. Hummel to fully comply with Standard 3 in his appraisal review detracts from the credibility of his opinions regarding the deficiencies in the Respondent's demonstration reports. While Mr. Hummel acknowledged that he attempts to comply with Standard 3 in preparing his reports to the Board, he has never considered himself bound by Standard 3 in providing consultant reports to the Board and has been so advised by an assistant attorney general. The Board is satisfied that Mr. Hummel has an excellent understanding of USPAP and is qualified to render expert opinions. (Testimony of Diana Jacob; Alan Hummel; Respondent Exhibits A, B; State Exhibit 6, 7)

[Note: Consistent with its ruling on the Motion in Limine, the Board did not consider the portions of Ms. Jacob's report that critique Mr. Hummel's report for the contested case that was settled.]

8. Ms. Jacob also reviewed the Respondent's two demonstration reports and prepared her own appraisal review report. (Respondent Exhibit T) Ms. Jacob agreed with many of Mr. Hummel's conclusions regarding deficiencies in the Respondent's development and the reporting of the two appraisals. Her main point of disagreement with Mr. Hummel was that she felt that there was no USPAP departure because in her opinion the Respondent effectively communicated that the income approach was not applicable due to lack of sufficient data. (Testimony of Diana Jacob; Respondent Exhibit T)

Wilgenbusch Property Appraisal-Demonstration Report

9. The Wilgenbusch property consisted of 200 acres of agricultural land and building improvements located near Manchester, Iowa. The Respondent describes his demonstration report as a Complete Summary Appraisal Report, in accordance with the binding requirements and guidelines of USPAP. The Respondent describes the purpose of the appraisal as "to estimate the market value of the property." The Respondent describes the intended use of the appraisal as:

...for the determination of fair market value of property easement rights (temporary and permanent) to be acquired by Alliance Pipeline L.P. for the construction of a 36-inch diameter, high pressure gas pipeline through the subject property.

The Respondent named the property owners and their attorney as the intended users of the appraisal report. (Testimony of Jerry Jorgensen; Alan Hummel; State Exhibit 3)

10. The Respondent's demonstration report for the Wilgenbusch property deviated from the applicable USPAP standards in the following respects:

a. The Respondent did not correctly invoke and report a departure, in violation of the Departure Rule and 2-2(b)(xi). [Refer to Conclusions of Law for USPAP rules cited in these Fact Findings; see Exhibit 8, p. 6 for full text of the Departure Rule]

At p. 16 of the Wilgenbusch demonstration report, the Respondent asserts that the "Income Capitalization Approach was not applicable to this appraisal and the Cost Approach was used to determine the value of improvements only." In order to comply with USPAP, all the usual valuation approaches must be developed, or the appraiser must provide sufficient explanation why the approach is not applicable. If an approach is *applicable*, but not *necessary* to develop a credible opinion of value, then departure is permitted and disclosure of the departure must be reported. However, if departures are taken, the report becomes a limited appraisal, and is no longer a complete appraisal.

A specific requirement is not applicable when:

- it addresses factors or conditions that are not present in a given assignment, or

- it addresses analysis that is not typical practice in such an assignment, or
- it addresses analysis that would not provide meaningful results in a given assignment.

The Respondent fails to provide sufficient information to explain or establish why the Income Approach was not applicable to this appraisal. An income approach to value would be typical in the appraisal of agricultural property, and the appraisal reveals that the Respondent had income information available for the property. If the problem with using the income approach was that there was insufficient data, such as expense information, available to complete the report, then the Respondent should have explained that in the report. Ms. Jacob concluded that the Respondent communicated that there was insufficient data available to complete the income approach, but the Board agrees with Mr. Hummel that this was not adequately communicated or explained by the Respondent in the report.

If the income approach was applicable but not used, then this should have been reported as a departure, and the report became a limited report, not a complete report as claimed by the Respondent.

The Respondent only used a cost approach to indicate a value for the property's improvements and did not explain why he did not develop the sales comparison approach. This departure renders this a limited appraisal and must be reported.

b. The Respondent did not correctly consider and identify the purpose and intended use of the appraisal, in violation of 1-2(b), 1-2(c), 2-2(b)(ii) and 2-2(b)(iii).

The actual "purpose" of the appraisal was mislabeled by the Respondent and identified under "intended use." The Respondent identified the purpose of the appraisal as "to estimate market value of the property." This was not the purpose, it was just one factor to be considered. The obvious purpose of the appraisal was to estimate the just compensation due for the easement. In order to do this, the Respondent needed to determine market value both before and after the easement. The Respondent did not report an intended use of the report, as that term is defined by USPAP (see Exhibit 8, p.11)

c. The Respondent did not correctly consider and state extraordinary assumptions, in violation of 1-2(g), 2-1(c), and 2-2(b) (viii)

USPAP defines extraordinary assumption as an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. The comment adds that extraordinary assumptions assume as fact otherwise uncertain information about physical, legal or economic characteristics of the subject property or about conditions external to the property, such as market conditions or trends, or the integrity of data used in an analysis. (Exhibit 8, p. 11) USPAP requires extraordinary assumptions to be disclosed in conjunction with statements of each opinion or conclusion that was affected.

The Respondent states his extraordinary assumptions once on p. 7 of his report, but does not restate them in connection with opinions that were affected by the extraordinary assumptions (e.g., pp. 21, 23, 25, 26) Moreover, many of the assumptions listed on page 7 are information that is known and which should not be categorized as extraordinary assumptions. (See Exhibit 6, p. 3)

d. The Respondent did not adequately identify and report improvements description, in violation of 1-2(e)(i), 2-2(b)(iii).

The Respondent failed to provide sufficient information to adequately identify and report the improvements on the property. The only place where the improvements are actually discussed is at p. 3 of the report, where a chart lists the type of improvement, its size, its physical condition, and reconstruction costs. In the before value of the property, the improvements account for 25% of the total value of the farm. The description of the improvements should be commensurate with their proportionate value.

e. The Respondent did not correctly consider and report easements, in violation of 1-2(e), 2-2(ix).

The report indicates that there is an existing pipeline on this property, but the impact of the existing easement on the value of the property is not addressed or discussed. The only reference is that the existing pipeline "has been

in service for 20 years and has left long-term unresolved damage issues unpaid to farmers affected by this gas pipeline." (Exhibit 3, p.11) No further detail or explanation is provided concerning the type or extent of damages or how this affects the property. This is especially troubling since the Respondent concludes that the new pipeline will result in 50% diminution in the value of the property, but fails to state whether the first pipeline had any detriment to the property value.

f. The Respondent did not appropriately value the site, in violation of 1-4(a), 2-1(b) and 2-2(b) (ix).

This criticism goes to the adequacy of the Respondent's analysis and not to whether the resulting value was correct. In his analysis of the value of the 200 acres (Exhibit 3, pp. 18-19), the Respondent does not provide sufficient information to allow the reader to understand how he arrived at or how he supports his assigned values of \$800 per acre for pasture, \$500 per acre for waste/building site, or \$300 per acre for tiling. The Respondent fails to provide market support for his analysis for difference in soil qualities (Corn Suitability Rating- CSR). Sales three and four have the lowest CSR's and yet they sold for a higher dollar per tillable acre than sales one and two.

In his analysis of small takings (Exhibit 3, p. 20), the Respondent fails to provide sufficient information for the reader to understand what the characteristics of the small takings were and how they affected the appraisal. The Respondent does provide important characteristics of the sales, such as location, physical and economic, so that they can be compared for their similarities/differences to the subject. In addition, the sales used are inappropriate for comparison because they have significantly different highest and best uses (i.e. building sites) than the subject property, which is a 3,520' x 119' strip of land. Finally, the Respondent provides no support or rationale for assigning a value of \$5,500 per acre from an unadjusted range of \$3,483 to \$6,944 per acre.

The Respondent did not include any sales of similar land that have pipeline easements so there was no market data as to what diminution in value, if any, is caused by the easement.

g. The Respondent did not collect, verify, analyze and reconcile the cost of new improvements, in violation of 1-4(b)(ii) and 2-2(b)(ix).

The Respondent does not give any detailed description of the improvements, (e.g. what construction materials are used, how were they constructed), which would support his assigned cost for reconstruction.

h. The Respondent did not collect, verify, analyze and reconcile accrued depreciations, in violation of 1-4(b)(iii) and 2-2(b)(ix).

This goes back to the Respondent's conclusion, without adequate explanation, that the new pipeline will diminish the property value by 50%, at the same time failing to explain why no diminution in value was taken for the pipeline that is already in existence.

i. The Respondent did not consider, analyze, and report any current sale, option, or listing of the property being appraised, in violation of 1-5(a) and 2-2(b)(ix).

The Respondent admitted this omission but stated that it is insignificant since there was no current sale, option or listing at the time of the appraisal.

j. The Respondent did not consider, analyze, and report any prior sales within the last three years, in violation of 1-5(b) and 2-2(b)(ix).

The Respondent admitted this omission but stated that it is insignificant since the property had been owned for more than three years by the current owner at the time of the appraisal.

k. The Respondent did not correctly employ recognized methods and techniques, in violation of 1-1(a), 2-1(a), and 2-2(b)(ix).

Although the Respondent states at p. 21 that "the determination of compensation for an eminent domain taking as defined in Iowa law is the differences in the value of the whole property before the taking and after the taking", the Respondent's analysis does not use this technique. His analysis provides a value before the taking and a value of the property taken.

The Respondent's determination of diminution in value to the farmstead of 50% was not supported by market information, fails to consider that a pipeline already exists in the same general vicinity, and uses the same level of detriment for the farm building as the dwelling.

The Respondent did not present market information to show that the abandonment of the pipeline is a measurable market concern or that the "cost to cure" of filling the pipeline with concrete is a reasonable market action or is the only feasible alternative.

The Respondent did not support his calculation of compensation for crop damages and his calculation is not consistent with his conclusion that compensation for the encumbered property (temporary and permanent easements) is equal to the value of the property as if all rights were taken (fee simple).

Rosonke Property Appraisal-Demonstration Report

11. The Rosonke property consisted of approximately 160 acres. The Respondent describes his demonstration report as a Complete Summary Appraisal Report, in accordance with the binding requirements and guidelines of USPAP. The Respondent describes the purpose of the appraisal as "to estimate the market value of the property as of the date of the inspection: June 1, 1999." The stated intended use of the appraisal was:

... for the determination of the fair market value of property to be permanently acquired by the Iowa Department of Transportation through condemnation. The taking of property for public purposes is known as the right of eminent domain and in this case, is the taking of property for the construction of public highways.

The Respondent named the property owners and their attorney as the intended users of the appraisal report. (Testimony of Testimony of Jerry Jorgensen; Alan Hummel; State Exhibit 4)

12. The Respondent's demonstration report for the Rosonke property deviated from the applicable USPAP standards in the following respects:

a. The Respondent did not correctly consider and state extraordinary assumptions, as required by 1-2(g), 2-1(c) and 2-2(b) (viii).

In the Rosonke appraisal, the Respondent makes the extraordinary assumption that "agricultural land immediately adjacent to growing communities begins to increase in value years ahead of it actually being developed. (Exhibit 4, p. 7) However, this assumption is something that can be researched, analyzed and quantified in the marketplace. In addition, the Respondent failed to restate his extraordinary assumption when he gave opinions that depended upon it at pages 11, 17, 18, 20, and 21.

b. The Respondent did not correctly consider and identify the purpose and intended use of the appraisal, in violation of 1-2(b), 1-2(c), 2-2(b) (ii) and 2-2(b) (iii).

Once again, the Respondent confuses the purpose of the appraisal with its intended use. He gave the purpose of the appraisal as "to estimate the market value of the property." (Exhibit 4, p. 8) This is inconsistent with the value reconciled in the conclusion of the report, which is an opinion of the just compensation due to a taking under eminent domain. The statement made by the Respondent under the heading "Intended Use" should have been stated as the purpose. No intended use, as the term is defined by USPAP, has been reported.

c. The Respondent did not correctly consider and report the highest and best use, in violation of 1-3(a) and 2-2(b) (x).

The Respondent reported insufficient information to support the legally permissible uses of the property, such as whether or not a zoning change would be required to utilize the property for commercial/light industrial or whether commercial development is financially feasible. These are all factors of highest/best use that must be analyzed in the report.

d. The Respondent did not collect, verify, analyze, or reconcile comparable sales, adequately identified and described, in violation of 1-4(a), 1-5(c), 2-1(b) and 2-2(b) (xi).

Of the comparable sales cited by the Respondent, six of the eight are located a considerable distance (45 to 60 miles) from the subject property or in nearby communities that are 2 to 21 times larger than the community of the subject property. The Respondent fails to provide sufficient characteristics of the comparable sales and to explain how they relate to the subject property in terms of zoning, use, neighborhood, etc. The Respondent also failed to reconcile how he arrived at a value of \$4000 per acre from a range of \$3,850 to \$21,919 per acre.

e. The Respondent did not consider, analyze or report any current sale, option or listing of the property being appraised, in violation of 1-5(a) and 2-2(b)(ix).

The Respondent admitted this omission but stated that it is insignificant since there was no current sale, option or listing at the time of the appraisal.

CONCLUSIONS OF LAW

I. The USPAP Violations

Iowa Code section 543D.17(1)(d)-(g)(2001) provides, 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, in 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.

g. Willful disregard or violation of a provision of this chapter or a rule of the board of the administration and enforcement of this chapter.

Iowa Code section 543D.18(1)(2001) provides:

543D.18 Standards of Practice

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

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.

The Uniform Standards of Professional Appraisal Practice, 1999 Edition, provides in relevant part *:

Standards Rule 1-1 (This Standards Rule contains binding requirements from which departure is not permitted)

In developing a real property appraisal, an appraiser must:

(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

...

Standards Rule 1-2 (This Standards Rule contains binding requirements from which departure is not permitted)

In developing a real property appraisal, an appraiser must:

...

(b) identify the intended use of the appraiser's opinions and conclusions;

...

(c) identify the purpose of the assignment, including the type and definition of the value to be developed; and, if the value opinion to be developed is market value, ascertain whether the value is to be the most probable price;

...

(e) identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal, including:

(i) its location and physical, legal, and economic attributes.

...

(g) identify any extraordinary assumptions necessary in the assignment;

Standards Rule 1-3 (This Standards Rule contains specific requirements from which departure is permitted. See the DEPARTURE RULE)

When the value opinion to be developed is market value, and given the scope of work identified in accordance with Standards Rule 1-2(f), an appraiser must:

(a) identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic demand, the physical adaptability of the real estate, and market area trends:

Standards Rule 1-4 (This Standards Rule contains specific requirements from which departure is permitted. See the DEPARTURE RULE.)

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information applicable to the appraisal problem, given the scope

of work identified in accordance with Standards 1-2(f).

(a) When a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

(b) When a cost approach is applicable, an appraiser must:

...
(ii) analyze such comparable operating expense data as are available to estimate the operating expenses of the property;

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

...
Standards Rule 1-5 (This Standards Rule contains binding requirements from which departure is not permitted)

In developing a real property appraisal, an appraiser must:

(a) analyze any current Agreement of Sale, option, or listing of the property, if such information is available to the appraiser in the normal course of business.

(b) analyze any prior sales of the property occurring within the following minimum time periods:

...
(ii) three years for all other property types;

(c) reconcile the quality and quantity of data available and analyzed within the approaches used and the applicability or suitability of the approaches used.

STANDARD 2 REAL PROPERTY APPRAISAL, REPORTING

...
Standards Rule 2-1 (This Standards Rule contains binding requirements from which departure is not permitted)

Each written or oral real property appraisal report must:

(a) clearly and accurately set forth the appraisal in a manner that will not be misleading;

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

(c) clearly and accurately disclose any extraordinary assumption, hypothetical condition, or limiting condition that directly affects the appraisal and indicate its impact on value.

...
Standards Rule 2-2 (This Standards Rule contains binding requirements from which departure is not permitted)

...
(b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

...
(i) state the identity of the client and any intended users, by name or type

...
(ii) state the intended use of the appraisal;
(iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment;

...
(viii) state all assumptions, hypothetical conditions, and limiting conditions that affected the analyses, opinions, and conclusions;

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

...
(x) state the use of the real estate existing as of the date of value, and the use of the real estate reflected in the appraisal; and, when the purpose of the assignment is market value, summarize the support and rationale for the appraiser's opinion of the highest and best use of the real estate;

...

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

...

*citations to the Preamble, Departure Rule, Definitions, and comments, while relevant, have been omitted in the interest of conserving space. All can be found in State Exhibit 8. Many of these are discussed in the Findings of Fact and all are incorporated in this decision as though fully set forth.

The Respondent asserts several reasons why he believes that the Board should not rely on Mr. Hummel's opinions as an appraiser consultant. The Respondent suggests that Mr. Hummel has a conflict of interest as a consultant because he also teaches USPAP courses, and licensees are sometimes required by the Board to attend USPAP courses as a sanction for USPAP violations. The Board does not believe that Mr. Hummel has a conflict of interest because he teaches USPAP courses. The Board believes that teaching USPAP courses renders Mr. Hummel better qualified to perform the duties of an appraiser-consultant. The minimal potential increase in enrollment in Mr. Hummel's USPAP courses as a result of Board orders is not sufficient to provide Mr. Hummel with a financial interest in the outcome of contested case, especially since there are also at least a dozen other approved USPAP instructors in the state of Iowa. The Board never dictates which particular course must be taken, and the Respondent did not in fact attend Mr. Hummel's course.

The Respondent suggests that Mr. Hummel is not competent as an appraiser because the appraisal review report that he prepared for the Board did not fully comply with all of the requirements of Standard 3 of USPAP. The Board is more than satisfied with Mr. Hummel's qualifications to serve as its consultant. Many of the deficiencies cited by Ms. Jacob were minor and were adequately explained by Mr. Hummel. The Board did not ask Mr. Hummel to prepare two separate reports, and he admits that he inadvertently used the word "provision" out of habit, instead of "rule" (the reference changed to "rule" in the 1999 edition of USPAP). Moreover, while he attempts to comply with Standard 3 in preparing his reports to the Board, Mr. Hummel has been advised by an assistant attorney general that he is not bound by Standard 3 in providing consultant review reports to the Board.

The preponderance of the evidence established that the Respondent's demonstration reports for the Wilgenbusch property and the Rosonke property contained numerous deviations from the

applicable USPAP standards, in violation of Iowa Code sections 543D.17(1)(d), 543D.18(1) and 193F IAC 7.5(1). The number and repeated nature of the deviations constitutes a failure to exercise reasonable diligence, in violation of Iowa Code section 543D.17(1)(e), and negligence in the development and communication of the appraisal, in violation of 543D.17(1)(f). However, the Board was not persuaded that the violations were willful, and therefore does not find a violation of Iowa Code section 543D.17(1)(g).

II. Sanctions

193F IAC 8.5 lists the sanctions that can be imposed by the Board, including civil penalties not to exceed \$1,000. 193F IAC 8.6 lists the factors to be considered by the Board in determining whether and in what amount to assess civil penalties.

Based on his testimony and presentation at hearing, the Board is satisfied that the Respondent has benefited from completion of the USPAP course and that he understands the USPAP requirements with respect to the development of commercial appraisals. However, the Respondent continues to demonstrate deficiencies in the reporting and communication of his appraisals, especially in the reporting and communication of his analysis. However, based on this record, the Board believes that this deficiency can be satisfactorily addressed by the Respondent's completion of a continuing education course in commercial report writing.

DECISION AND ORDER

IT IS THEREFORE ORDERED, that the Respondent shall successfully complete a continuing education course on commercial appraisal report writing and submit written proof of its completion to the Board by July 1, 2003. The course must:


- comply with Iowa continuing education rules;
- must be a minimum of seven (7) hours; and
- must substantively address the communication of commercial appraisal reports, including effective communication of the appraiser's analysis to ensure that the report is logical and can be understood by its reader.

The course may be used by the Respondent towards his general continuing education requirements for license renewal.

Successful completion of this requirement will constitute resolution of this contested case proceeding.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193F IAC 8.44(1), 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 30th day of December, 2002.


Richard Koestner, Appraiser
Chairperson
Iowa Real Estate Appraiser Examining Board

cc: Pamela Griebel, Assistant Attorney General
John J. Hines, Attorney for Respondent

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


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

IN THE MATTER OF:	)	CASE NO. 00-11
	)	DIA NO. 02DOCRE003
JERALD E. JORGENSEN)	
CERTIFICATE NO. CG01412	)	ORDER DENYING
	)	APPLICATION
RESPONDENT	)	FOR REHEARING

On December 30, 2002, the Iowa Real Estate Appraiser Examining Board (Board) issued Findings of Fact, Conclusions of Law, Decision and Order in the above-captioned contested case. On January 21, 2003, the Respondent filed a timely Application for Rehearing. The state of Iowa filed a Resistance to Application for Rehearing On January 22, 2003. On January 31, 2003 at 9:00 a.m., the Board convened by telephone conference call to consider the Application for Rehearing. A motion was taken, and the Board voted unanimously to deny the Respondent's Application for Rehearing in its entirety.

IT IS THEREFORE ORDERED that the Respondent's Application for Rehearing is hereby DENIED.

Dated this 31st day of January, 2003.


Richard Koestner, Appraiser
Chairperson
Iowa Real Estate Appraiser Examining Board

cc: Pamela Griebel, Assistant Attorney General
John J. Hines, Attorney for Respondent

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

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

IN THE MATTER OF:	)	Case No. 00-11
JERALD E. JORGENSEN)	
)	
Certificate No. CG01412,	)	STATE'S RESISTANCE TO
Respondent.	)	APPLICATION FOR REHEARING

COMES NOW the State and in resistance to Respondent's Application for Rehearing, states

1. The Board issued its Findings of Fact, Conclusions of Law, Decision and Order on December 30, 2002. Respondent served a timely Application for Rehearing on January 21, 2003. Respondent's Application will be deemed denied if not ruled on within 20 days pursuant to Iowa Code section 17A.16(2).

2. Respondent asks the Board to reconsider its decision not to reopen the prior contested case which concluded in a Consent Order. Respondent claims that the Board has authority to reopen under 193F Iowa Admin. Code 8.11(4).

3. Respondent's reliance on Rule 8.11(4) is misplaced. Rule 8.11 does not address complaint files which triggered formal charges before the Board. Rule 8.11 outlines the process under which complaint files are closed with no formal disciplinary action by the Board. Rule 8.11(4) addresses the possibility that the Board may receive additional information following the closing of a complaint which may cause the Board to reassess the initial decision to close the file.

4. The appropriate authority is Paulson v. Board of Medical Examiners, 592 N.W.2d 677 (Iowa 1999). In Paulson, a physician settled disciplinary charges by entering into a consent order. Six months later Dr. Paulson asked the Board to reconsider the consent order. The Board declined. Upon judicial review, the district court granted a motion to dismiss because Dr. Paulson's petition was untimely – judicial review of contested case decisions must be sought within 30 days of the issuance of the decision. 592 N.W.2d at 678. On appeal, the Iowa Supreme Court rejected all of Dr. Paulson's arguments, concluding with the following:

The fact that the choice is an unpleasant one would always be the case where a settlement is offered in lieu of litigating the board's charges. But that does not raise the matter to a due process significance and Paulson was not without counsel when he agreed to the settlement agreement.

592 N.W.2d at 681. In the instant case Respondent was represented by counsel and elected to settle the charges rather than proceed to hearing. He now evidently believes he had a defense he failed to litigate. The stated defense (challenges to the Board's expert's opinions) reveals no hint of any wrongdoing on the Board's part – only a delayed belief that had Respondent retained an expert earlier he may have been in a better position to defend the first charges. Utter chaos would result if licensees could endlessly request boards to reopen final contested case decisions merely because the licensee in retrospect feels the case was more defensible than initially thought.

5. Respondent claims the Board may have reversed course and concluded it did have jurisdiction to reopen the contested case which resulted in a Consent Order. In support, Respondent points to a phrase on page five of the Board's final order. Respondent attempts to stretch words well beyond their common sense meaning. The phrase in question states: "Even if the Board has authority to reopen the prior contested case, it declines to do so." This phrase does not in any way state the Board felt it did have jurisdiction to reopen the case. Indeed, the follow-up sentences clearly reveal that the Respondent voluntarily waived his right to hearing in the first case and is in no different situation than any other Respondent feeling post-settlement remorse.

6. Respondent's request to present additional evidence should be denied. The evidence he wishes to present is in the nature of substantive defense to the disciplinary charges which ended in a Consent Order.

7. Finally, Respondent seeks the tapes of closed session deliberations, "so that the degree of the Board's discretion on the issue of reopening the prior case can be determined." Closed session tapes can only be made public through court order pursuant to Iowa Code section 21.5(4). See also Fisher v. Iowa Board of Optometry Examiners, 478 N.W.2d 609 (Iowa 1991). Board deliberations are not part of the record in a contested case. Id.; Iowa Code § 17A.12(6). Respondent's curiosity about Board deliberations is certainly an insufficient basis to make them public. He does not claim bias. He simply does not like the outcome. The Board addressed Respondent's position in ruling on the Motion in Limine and in the final order. Respondent, with the advice of counsel, waived his right to hearing on the first charges. He did not timely challenge the Consent Order before the Board or district court, and can not collaterally attack the final decision in a contested case on the grounds he asserts.

WHEREFORE, the State prays that the Board deny Respondent's Application for Rehearing.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

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Margaret LaMarche, Administrative Law Judge
Department of Inspections and Appeals
Lucas State Office Building, Des Moines, IA 50319

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties in the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Des Moines, Iowa, on the 22nd day of JANUARY 2003.

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

IN THE MATTER OF:)	
	)	CASE NO. 00-11
JERALD E. JORGENSEN	)	DIA No. 02DOCRE003
Certificate No. CG01412,)	
	)	RESPONDENT'S APPLICATION
	)	FOR REHEARING
Respondent.)	

COMES NOW the Respondent, Jerald E. Jorgensen, and pursuant to 193F IAC 7.33 hereby requests the Board to grant his Application for Rehearing, and in support thereof states as follows:

1. The Respondent requests the Board to reconsider its decision not to reopen the prior contested case involving the Respondent which resulted in a Consent Order on September 26, 2001.

2. Prior to commencement of the hearing on October 24, 2002, Administrative Law Judge Margaret LaMarche granted the State's Motion in Limine to preclude the Respondent from introducing evidence to support his request to reopen the Consent Decree proceeding. In issuing the ruling, Judge LaMarche relied on the State's position that the Board was without authority to reopen the proceeding which resulted in the Consent Decree. This position was based on the case Paulson v. Board of Medical Examiners, 592 N.W.2d 677 (Iowa 1999).

3. The Paulson case is not controlling on the issue presented by Mr. Jorgensen. The Respondent in Paulson did not request the Board to reopen, rather that request was made to the District Court. In contrast, Mr. Jorgensen requested the Board to reopen the other complaint file under the authority of 193F IAC 8.11(4). This rule

specifically provides that a Board may reopen a closed complaint file if additional information arises after closure which provides a basis to reassess the merits of the initial complaint. Unfortunately, the ruling on the Motion in Limine prevented Mr. Jorgensen from presenting the Board with, "...The additional information arising after closure which provides a basis to reassess the merits of the initial complaint."

4. The hearing proceeded consistent with the ruling on the Motion in Limine since the parties, and the Board, assumed that the Board had no jurisdiction to reopen the May 22, 2000, complaint file.

5. In the December 30, 2002, ruling of the Board, it would appear that the Board switched gears and at least in the written decision indicated that it exercised some discretion (suggesting they had jurisdiction) and declined to reopen the prior case. (See page 5 of Findings of Fact, Conclusions of Law, Decision and Order).

6. If the Board decided to exercise discretion on the issue whether to reopen the prior case then it should have had available to it the evidence which was excluded on this very issue pursuant to the Motion in Limine.

7. In order to properly determine whether the earlier case should be reopened the Board needs to consider the evidence excluded by the pre-hearing Motion in Limine.

8. Pursuant to 193 IAC 7.33(3), Mr. Jorgensen requests that he be allowed to present additional evidence in support of his request for rehearing since such evidence could not have been presented at the original proceeding due to the ruling on the Motion in Limine. The additional evidence would include the following matters:

- a) The review appraisals developed in the earlier case violated USPAP in that the review of Mr. Jorgensen's appraisals could not have been done without looking at Mr. Jorgensen's work file.
- b) Mr. Jorgensen agreed to a Consent Order in the earlier proceeding because all involved assumed, as the Board probably did, that the consultant the Board hired to conduct the review complied with USPAP.
- c) The violations of USPAP in the prior proceeding are substantial and go to the very foundation of the alleged deficiencies which led to the entry of the Consent Order.

9. The Respondent requests that the notes, transcript or recording of the Board's deliberations be made a part of the record so that the degree of the Board's discretion on the issue of reopening the prior case can be determined.

WHEREFORE the Respondent requests the Board to grant this Application for Rehearing and request that he be given an opportunity to present the additional evidence referred to above and present arguments to the Board concerning the issue of whether to reopen the prior disciplinary complaint, and such further relief as the Board deems appropriate.

DUTTON, BRAUN, STAACK
& HELLMAN, P.L.C.
Attorneys for Respondent

BY: 

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PROOF OF MAILING

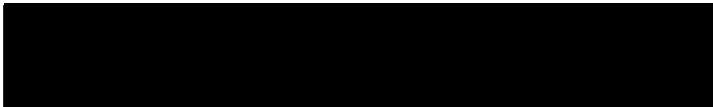
I certify under penalty of perjury and pursuant to the laws of Iowa that, on the 21st day of January, 2003, I mailed copies of the Application for Rehearing addressed to the Real Estate Appraiser Examining Board and to the name and address of the party listed below by depositing the same in a United States post office mailbox with correct postage property affixed.

Ms. Susan A. Griffel
Executive Officer
Iowa Real Estate Appraiser Examining Board
Iowa Department of Commerce
1918 S.E. Hulsizer Road
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The Honorable Margaret LaMarche, Administrative Law Judge
Department of Inspections and Appeals
Lucas State Office Building
Des Moines, IA 50319


January 21, 2003
Date


Cindy R. Campbell

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Executive Officer
Appraiser Board

IN THE IOWA DISTRICT COURT FOR BREMER COUNTY

12/22/04
FILED
2004 DEC 17 PM 12:50
CLERK OF DISTRICT COURT, IOWA

JERALD E. JORGENSEN,)
)
 Petitioner,)
)
 vs.)
)
 REAL ESTATE APPRAISER)
 EXAMINING BOARD OF THE)
 STATE OF IOWA,)
 99AG27211)
)
 Respondent.)

NO. CVCV 001931

**VOLUNTARY DISMISSAL, AND
AGREEMENT OF PARTIES**

COME NOW the Petitioner, Jerald E. Jorgensen, and the Respondent, Real Estate Appraiser Examining Board of the State of Iowa, through counsel, and state:

1. Petitioner continues to believe that the Board improperly imposed discipline against him.
2. The Board acknowledges that Petitioner has fully complied with the Board's order and that he is now in good standing with the Board.
3. In light of the passage of time and Petitioner's current good standing with the Board, he voluntarily dismisses his petition for judicial review. The parties will be responsible for their own costs.

JERALD E. JORGENSEN

[Redacted signature]

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