

**TEXAS APPRAISER LICENSING  
AND CERTIFICATION BOARD ("BOARD")**

**V.**

**CLIFFORD PARVIN DODSON, JR.  
TX-1337922-G ("RESPONDENT")**

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**BEFORE THE TEXAS  
APPRAISER LICENSING AND  
CERTIFICATION BOARD**

**DOCKET NO.  
329-12-6477.ALC**

**FINAL ORDER**

On this 15th day of February, 2013, the Board considered the above-styled case.

After proper notice was given, the above-styled case was heard by an Administrative Law Judge ("ALJ") at the State Office of Administrative Hearings who made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on November 27, 2012 ("PFD"). This PFD was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record. Exceptions were filed by Board staff ("Staff Exceptions") and Respondent filed a reply ("Respondent's Reply"). The ALJ, by letter dated December 27, 2012, made a revision to delete some incorrect language in Section II.E.1.a., amended corresponding Finding of Fact No. 33, and noted a typographical mistake regarding the penalty amount on page 1 of the PFD, but found no reason to make changes to any other portion of the PFD based on Staff Exceptions and Respondent's Reply ("Exceptions Ruling Letter").

The Board, after review and due consideration of the PFD, Staff Exceptions, Respondent's Reply, and the Exceptions Ruling Letter, collectively attached hereto as Exhibit A, adopts the Findings of Fact and Conclusions of Law of the ALJ contained in the PFD, as amended by the Exceptions Ruling Letter, and incorporates those Findings of Fact and Conclusions of Law into this Final Order as if such were fully set out and separately stated in this Final Order. All proposed Findings of Fact and Conclusions of Law submitted by any party that are not specifically adopted in this Final Order are denied. The Board increased the administrative penalty recommended by the ALJ to \$4,500 due to the fact that this is the third Board order for the Respondent and the violations warrant assessing the higher limit of \$1,500 for each of the three violations the ALJ recommended a penalty. The Board also added an additional remedial education course to the mentorship requirements because this is Respondent's third Board order and Respondent would benefit from a course to be taken within a shorter period.

IT IS THEREFORE ORDERED by the Texas Appraiser Licensing and Certification Board that Clifford Parvin Dodson, Jr. is assessed an administrative penalty of \$4,500.00, payable in full on or before twenty days after the date Clifford Parvin Dodson, Jr. is notified of this Final Order.

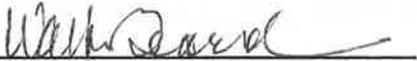
IT IS FURTHER ORDERED that Clifford Parvin Dodson, Jr. complete seven four-hour sessions of in-person mentorship conducted by a mentor appointed by the Board in accordance with the schedule set out below. Respondent shall submit a Certification of Completion of Mentorship signed by the mentor to the Board on or before the due date listed for each mentorship session. Respondent is solely responsible for locating and scheduling an appointed mentor to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.

1. On or before June 30, 2013;
2. On or before September 30, 2013;
3. On or before December 31, 2013;
4. On or before March 31, 2014;
5. On or before June 30, 2014;
6. On or before September 30, 2014; and
7. On or before December 31, 2014.

IT IS FURTHER ORDERED that Clifford Parvin Dodson, Jr. submit evidence to the Board of successful completion of a classroom course in Residential Report Writing with a minimum of fifteen (15) class hours on or before August 15, 2013. This class must be approved by the Board and require in-class attendance and have an exam. Respondent must receive a passing grade on the exam. The class will not count toward Respondent's continuing education requirements for certification. Respondent is solely responsible for locating and scheduling the class to timely satisfy this Order and is urged to do so well in advance of the compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.

If enforcement of this Final Order is restrained or enjoined by an order of a court, this Final Order shall then become effective upon a final determination by said court or appellate court in favor of the Board.

Approved by the Board and signed this 15 day of February, 2013.



Walker R. Beard, Chairperson  
Texas Appraiser Licensing and Certification Board

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

November 27, 2012

Douglas E. Oldmixon  
Administrator  
Texas Appraiser Licensing and Certification Board  
1700 N. Congress Avenue, Suite 400  
Austin, TX 78701

**VIA INTERAGENCY**

**RE: Docket No. 329-12-6477.ALC; Texas Appraiser and Licensing  
Certification Board v. Clifford Parvin Dodson, Jr.**

Dear Mr. Oldmixon:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Joanne Summerhays".

Joanne Summerhays  
Administrative Law Judge

JS/me

Enclosure

xc: Kyle Wolfe, Staff Attorney, 1700 N. Congress Avenue, Suite 400, Austin, TX 78701 – **VIA INTERAGENCY**  
Ted Whitmer, Attorney at Law, 2508 Merrimac Court, College Station, TX 77845 – **VIA REGULAR MAIL**  
Troy Beaulieu, TALCB, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 – (with 1 hearing CD) **VIA-INTERAGENCY**

300 W. 15<sup>th</sup> Street, Suite 502, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025  
512.475.4993 (Main) 512.475.3445 (Docketing) 512.322.2061 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)

TEXAS APPRAISER LICENSING AND  
CERTIFICATION BOARD,

Petitioner

V.

CLIFFORD PARVIN DODSON, JR.,

Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

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SOAH DOCKET NO. 329-12-6477.ALC

TEXAS APPRAISER LICENSING AND  
CERTIFICATION BOARD,  
Petitioner

V.

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Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Texas Appraiser Licensing and Certification Board (Staff/Board) brought this action to revoke the real property appraiser certification held by Clifford Parvin Dodson, Jr., (Respondent), or in the alternative to impose an administrative penalty, require remedial education or mentorship on Respondent, and/or suspend or impose a probated revocation of Respondent's certification, based on allegations that Respondent violated the Texas Appraiser Licensing and Certification Act and the Board's rules by producing appraisal reports that were deliberately misrepresentative and that failed to conform to the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). The Administrative Law Judge (ALJ) recommends that Respondent should be required to submit to a mentorship and pay an administrative penalty of \$3,000.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

There were no contested issues of jurisdiction or notice. Therefore, those issues are set out in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened August 27-29, 2012, before Administrative Law Judge (ALJ) Joanne Summerhays at the William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Staff was represented by attorneys Kyle Wolfe and Troy Beaulieu. Respondent appeared and was represented by attorney Ted Whitmer. The record closed on September 28, 2012, to allow written closing arguments.

## II. DISCUSSION

### A. Overview of the Allegations and the Parties' Positions

This case arose from real property appraisal services performed by Respondent on two properties. One appraisal was dated November 19, 2010, on property located at 4420 E. Enon Road in Fort Worth, Texas (the Enon property). The other appraisal was done on March 17, 2011, on property located at 1517 Wesley Drive, in Mesquite, Texas (the Wesley property). Each of the appraisals was performed for the purpose of a mortgage finance transaction in which the lender, who was Respondent's client, was seeking to determine the value of the property so the lender/client could make a lending decision.

Staff's Statement of Charges consists of two overarching charges. In its first charge, Staff alleges Respondent violated Tex. Occ. Code (Code) § 1103.405 and 22 Tex. Admin. Code §§ 153.20(a)(3) and 155.1(a) by failing to comply with multiple USPAP standards in effect at the times he conducted the appraisals at issue.<sup>1</sup> In its second charge, Staff alleges Respondent violated 22 Tex. Admin. Code § 153.20(a)(9)<sup>2</sup> by making material misrepresentations and omissions of material facts in his appraisals of both properties and in his response to Board Staff's request for his workfile in response to a complaint. According to Staff, Respondent's conduct was more egregious than mere negligence. Staff contends Respondent deliberately appraised the Enon and Wesley properties so as to achieve results that were predetermined, inflated, and misleading, or were done with gross negligence. In addition, Staff contends that Respondent's response to Board Staff's complaint was intentionally misleading.

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<sup>1</sup> Code § 1103.405 requires that a licensed appraiser comply with the most current edition of the USPAP or other standards promulgated by the Board that are at least as stringent as USPAP. Board Rule 155.1(a) requires that an appraisal performed by a person subject to the Act must conform with the USPAP standards in effect at the time of the appraisal. 22 TAC § 155.1(a). Pursuant to 22 TAC § 155.20(a)(3), the Board may suspend or revoke the license of an appraiser who has failed to comply with the applicable USPAP.

<sup>2</sup> This rule was renumbered without substantive changes effective December 27, 2012, and is now located at 22 Tex. Admin. Code § 153.20(a)(12).

Respondent denies predetermining or inflating the value of the properties or engaging in any deliberate wrongdoing. Respondent contends that the Enon appraisal report upon which Staff bases its charges was not the “final” appraisal report submitted to the client, and that Staff’s charges regarding the Enon appraisal should therefore be dismissed.

Staff seeks revocation of Respondent’s certification and the imposition of a \$5,000.00 administrative penalty.<sup>3</sup> Staff has also suggested an alternative penalty of suspension or probated revocation, remedial education, mentorship, and/or an administrative penalty. It is undisputed that Respondent entered into two previous agreed disciplinary orders with the Board, one in 2002 and one in 2008. The 2002 Order required a two-year probated suspension of Respondent’s certification, suspension of sponsorship of trainees, a \$5,000.00 administrative penalty, and a promise to comply with the regulations in the future. The 2008 Order required an eighteen-month probated suspension, remedial education, and a promise to comply with regulations in the future.

Staff offered the appraisal reports at issue, Respondent’s workfiles, its expert witness’s investigative report, and related documents into the record. Staff also offered the testimony of its expert witness, John F. McComb, Jr., and called Respondent as a witness as well. Respondent testified on his own behalf and offered documentary evidence into the record. Respondent also offered the testimony of an expert witness, Diana Jacob Tidwell.

## **B. Legal Authorities**

A person who holds a certificate issued by the Board is required to comply with the most current edition of the USPAP.<sup>4</sup> The Board may suspend or revoke a certification if a person fails

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<sup>3</sup> The Board’s current sanctions rule is found at 22 TAC § 153.24(9). The Board is authorized to impose an administrative penalty not to exceed \$5,000.00 for multiple violations. Code § 1103.552.

<sup>4</sup> Code § 1103.405; 22 Tex. Admin Code § 155.1.

to comply with the USPAP.<sup>5</sup> The Board has adopted a penalty matrix which bases the severity of the penalty imposed on the history of similar violations and the seriousness of the violation.<sup>6</sup> The least onerous penalties are recommended if the violations do not constitute evidence of a serious inability or unwillingness to comply with the legal standards; more onerous penalties are recommended if the violations demonstrate a serious but remedial deficiency; and the most onerous penalties are recommended if the violations were done willfully or in a grossly negligent manner. Revocation is recommended only for first and second violations that demonstrate willfulness or gross negligence, or for third violations that constitute evidence of a serious but remedial deficiency.<sup>7</sup>

In addition to the guidelines outlined in the matrix, Staff may recommend any or all of the following:

(i) reducing or increasing the recommended penalty based on documented factors that support the deviation, including but not limited to the number or seriousness of the violation(s) and degree of harm to the public;

(ii) probating all or a portion of a sanction or administrative penalty for a period not to exceed five years;

(iii) requiring additional reporting requirements; and

(iv) such other recommendations, with documented support, as will achieve the purposes of the Act (Code ch. 1103), the Rules (22 Tex. Admin. Code ch. 153, 154, and 155), and/or USPAP.<sup>8</sup>

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<sup>5</sup> 22 Tex. Admin. Code § 153.20(a)(3), renumbered effective December 27, 2010, as § 153.20(a)(6).

<sup>6</sup> 22 Tex. Admin. Code § 153.24(9).

<sup>7</sup> The matrix does not address third violations that are willful or grossly negligent. Presumably this is because revocation is recommended (in addition to an administrative penalty) with no other suggested alternative for a second violation that is willful or grossly negligent, so there would not be a case of a certified appraiser who had a third occurrence of such a violation. For third violations that demonstrate a serious but remedial deficiency, revocation is recommended, but only as an alternative to either an administrative penalty or 180 day suspension with remedial in-class instruction or adoption of policies and procedure or both.

<sup>8</sup> 22 Tex. Admin. Code § 153.24(9)(B).

**C. Backgrounds and Qualifications of Respondent and the Board's Expert Witness****1. Respondent's Background and Qualifications**

Respondent has been certified as a general real estate appraiser for sixteen years, which permits him to appraise commercial or complex residential properties. He holds the highest certificate the Board awards.<sup>9</sup> He does business as a sole proprietor and performs appraisals primarily for mortgage finance companies. He testified that he does an average of twenty appraisals a week, with a staff of two trainees and two support staff. He testified that he takes the required USPAP course every two years, as well as other courses on appraisal theory and practice.

**2. Background and Qualifications of Staff's Expert Witness, John F. McComb, Jr., and his Role in this Case**

Mr. McComb holds a general appraiser certification issued by the Board and has been performing appraisals for more than forty years. He has a degree from Southern Methodist University. He is currently employed as an appraiser investigator with the Board. He has testified on behalf of the Board in Texas state and federal courts. He was familiar with Respondent in that Mr. McComb was involved in both of the previous agreed orders against Respondent. He testified that in the 2003 Order, Respondent was found to have signed an appraisal report "that was not substantially produced by the person." In the 2008 Order, the Board found that Respondent submitted "a draft report without identifying it as a draft report, and this report lacked the signature of a certified general appraiser. A subsequent report was eventually submitted with the signature of a general appraiser." He stated that the violations described in the previous orders were similar to the violations alleged in this action.

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<sup>9</sup> According to the testimony, Respondent's certificate was revoked by summary action of the Board two days prior to the hearing.

Mr. McComb described a real estate appraiser as a market analyst whose job is to analyze objective market data and report his or her findings about that data. Typically, appraisers provide their services for mortgage lending purposes. In order to determine the market value of a property, an appraiser typically gathers information from the Internet, the local Multiple Listing Service (MLS), deed records, and the local appraisal district office. The appraiser also gains access to the property to be appraised, measures the property, and takes photographs of it. Thereafter, the appraiser finds properties in the neighborhood that have sold and compares their characteristics to the characteristics of the subject property, in an effort to determine how the market is likely to respond to the property being appraised.

Mr. McComb testified that the USPAP standards constitute the minimum requirements to which an appraiser must conform in order for his or her appraisal report to be credible. In connection with his investigation of the complaints that gave rise to this proceeding, Mr. McComb considered the complaints that had been filed and Respondent's responses to Staff inquiries; reviewed Respondent's appraisal reports and workfiles; analyzed market data that were available to Respondent at the time he performed the appraisals; drove through the neighborhoods in which the properties at issue and comparables were located, viewed (but did not inspect) the properties, and took photographs; applied the USPAP Standards; and prepared investigative reports containing his analyses and conclusions. However, Mr. McComb testified that, as a reviewer for the State, he is not required to follow USPAP standards in doing his investigation, as his job is not to do an appraisal, but to evaluate the appraisal done by someone else.

### 3. **Diana Jacob Tidwell<sup>10</sup>**

Ms. Jacob did not review any of the appraisal reports that were the subject of the proceeding. She only reviewed the deposition of Mr. McComb, listened to the testimony, and did some internet research. She was called as an expert to rebut the testimony of Mr. McComb.

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<sup>10</sup> Tidwell is the witness's married name. She explained that she goes by Jacob professionally, so she will be referred to as Ms. Jacob in this PFD.

Both parties agreed that she was a highly regarded Appraisal Qualification Board USPAP certified instructor and a Texas Appraiser Licensing and Certification Board mentor with expert knowledge of the USPAP.

Ms. Jacob explained that USPAP Standard 1-1 is a competency requirement. It requires an appraiser to use accepted methodologies and keep abreast of changes in methodologies, to include significant information in development of a market value, and to not be negligent. She pointed out that the appraiser is not held to a standard of perfection, and that the comment section indicated that mistakes can be made without violating the competency requirements. She explained that Standard 1-2 defines the scope of work and Standard 1-3 describes the collection of the data. She stated that Standard 1-4 addresses the different approaches to valuing a property; Standard 1-5 requires analysis of the listing, the contracts, and the agreements; and Standard 1-6 deals with the final reconciliation of all the data and approaches to value. Standard 2-1 is the ethical standard that requires an appraiser to report value without bias. Standard 2-2 sets out the three different ways to write a report, the most common of which is the summary report. This is a form report, usually on the 1004 form also called the Uniform Residential Appraisal Report form. This form is used for residential single-family properties. The appraiser is required to follow the eleven point checklist set out in Standard 2-2 when filling out this form.

Ms. Jacob pointed out that it is extremely important to understand the property interest being appraised. She noted that the workfile rule requires the appraiser to either have or cite to all sources of the data the appraiser relies on in his or her workfile. She stated that the appraiser can incorporate by reference a source so long as the appraiser can produce it if necessary. She stated that the appraiser is required only to keep the final report in the workfile.

Ms. Jacob believes that the USPAP is subject to interpretation and that in different situations it might be interpreted differently. In her opinion, after listening to the testimony of Mr. McComb, she felt he needed to have a better understanding of the USPAP. She also was surprised that Mr. McComb testified that he did not inspect the property at the time he was doing

the investigation, but rather went out and did an inspection later, after he had already submitted his report to the Board. She felt that this was not an appropriate way to evaluate an appraisal.

#### **D. Relevant Terminology**

##### **1. Market Value Defined**

The parties and witnesses agreed that market value is properly defined as the most probable price that a property should bring in a competitive and open market under conditions requisite to a fair sale, with a willing buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.

##### **2. The Three Primary Approaches to Value**

Both Respondent and Mr. McComb testified that appraisers use three primary approaches or methodologies to determine value: the sales comparison, income, and cost approaches. Under the sales comparison approach, the appraiser analyzes recent sales of property for characteristics such as improvement size (square footage), lot size, quality of construction, and location, thereby seeking to find the sale of the property that is most similar, *i.e.*, most comparable, to the property being appraised. Using the income approach, the appraiser determines the likely income stream and expenses associated with rental property. Under the cost approach, the appraiser considers the cost of the land, plus the cost of constructing or reconstructing the improvements, less depreciation. If a particular approach is not relevant to a particular property, the appraiser must explain why it is not being used.

**E. Analysis of the Allegations, Applicable Law and USPAP Standards, and Evidence****1. The Wesley Property**

Respondent issued an appraisal report for the Wesley property on November 18, 2010, effective that date. Therefore, he was required to comply with the USPAP Standards effective in 2010-2011.<sup>11</sup>

Staff's investigator expert witness, Mr. McComb, concluded that Respondent produced a misleading, fraudulent appraisal report in which he reported a predetermined opinion of value. In Mr. McComb's view, Respondent not only made many careless errors but also intentionally misled the users of the appraisal report as to the value of the collateral for the loan being sought on the property.

Staff alleges Respondent violated the USPAP Standards in the following ways in performing his appraisal of the Wesley property:

**a. USPAP Ethics Rule (Conduct):**

The USPAP Ethics Rule pertaining to conduct provides in relevant part,

- "An appraiser must not communicate assignment results with the intent to mislead or to defraud."
- "An appraiser must not communicate a report that is known to be misleading or fraudulent."
- "An appraiser must not perform an assignment in a grossly negligent manner."

Staff alleged that Respondent violated the conduct portion of the USPAP Ethics Rule by

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<sup>11</sup> USPAP Standards beginning with the number "1" describe the substantive standards pursuant to which an appraiser should develop an appraisal of real property. Standards beginning with the number "2" specify the content and level of information required in a report that communicates the results of a real property appraisal.

knowingly and intentionally communicating assignment results in a misleading and fraudulent manner with the intent to deceive and inflate the value in the appraisal report and reach a predetermined value.

**Evidence:**

Mr. McComb testified that, based on the errors in the appraisal report and based on the erroneous methodology used by Respondent as discussed below, he concluded that the report was intentionally misleading. However, he agreed that he did not find the value stated in the report to be inflated or that the appraisal was intended to reach a predetermined value.<sup>12</sup> Furthermore, he had no direct evidence that Respondent intentionally misrepresented anything in his report.

Respondent testified that he did not produce a misleading report, and did not intentionally inflate the value in his report. He stood by his analysis, and said he believes that it is an accurate report. He testified that no one instructed him to appraise the property at a specified value; nor did anyone threaten to withhold payment or future business if he did not appraise it at a certain value. He stated that the person who filed the complaint was a competitor in the same real estate area, and he believed that the person was motivated to eliminate him as competition.

**Analysis:**

Whether a person committed an ethics violation necessarily involves a judgment regarding a person's integrity, which implies that a person intentionally committed a bad act for gain. The USPAP Ethics rule requires at a minimum a "knowing" misstatement for a violation. As detailed below, the ALJ finds that Staff proved that Respondent violated some of the USPAP standards. However, Staff's evidence was insufficient to show that Respondent intentionally,

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<sup>12</sup> Mr. McComb contradicted this testimony in various locations in the record. However, the ALJ relied upon testimony based on her perception of its credibility. Mr. McComb's contradictions weakened his credibility in regard to this particular evidence.

purposefully, or knowingly made any misstatements in his appraisal. Even Mr. McComb stated, contrary to his investigative report, that he did believe that the market value which Respondent reached was predetermined or inflated. Therefore, the ALJ finds no violation of the Ethics Rule in regard to the Wesley Property appraisal.

**b. USPAP Ethics Rule (Record Keeping):**

The USPAP Ethics Rule relating to recordkeeping states in relevant part,

[A]n appraiser must prepare a workfile for each appraisal, appraisal review, or appraisal consulting assignment. The workfile must be in existence prior to the issuance of a written or oral report. The workfile must include . . . all . . . data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with this Rule and all other applicable Standards, or references to the location(s) of such other documentation.

Staff alleged that Respondent violated the USPAP Ethics Rule by failing to maintain a workfile as required by USPAP's recordkeeping provisions.

**Evidence:**

Mr. McComb's primary concern about Respondent's workfile in regard to the Wesley property was that some of the data contained in the workfile that Respondent used for neighborhood analysis was dated after the date of the appraisal.<sup>13</sup> This indicated to Mr. McComb that Respondent added this information to the workfile after the complaint was made in an effort to fix his failure to comply with the rule.

However, when asked about the record-keeping requirements in regard to electronically available data, Mr. McComb admitted that as long as there was a reference to the electronic source of the data in the file, the file did not have to include a hard copy of the digital data. He

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<sup>13</sup> Petitioner's Exhibit 6H.

agreed that USPAP guidelines explained that the source data just needed to be available for access during the workfile retention period. He also agreed that the information missing from the workfile was MLS information which is available electronically, and that the report itself referenced that information. Mr. McComb agreed that any charge against Respondent should not be based on his running off copies of MLS listings to submit with his workfile after the appraisal was done.

Respondent agreed that he should have included the Marshall and Swift worksheets he used in his calculations of cost value in his workfile. He stated that the omission was due to misunderstanding or misinterpretation of the USPAP requirements. He testified that he is more thorough about his workfile since he took a recent course on USPAP and the instructor suggested keeping those documents in his workfile. However, he pointed out that he did not use the cost value in reaching his appraised value. At present, he does not even do a cost evaluation for most clients because they do not want one.

**Analysis:**

The ALJ finds that Staff proved that Respondent violated the workfile rule by failing to include copies of the Marshall and Swift worksheets in his workfile. However, the failure to do so did not affect the credibility of his final appraisal report.

**c. USBPAP Standards Rules 1-2(e)(iv) and 2-2(b)(viii):**

USPAP Standard 1-2(e)(iv) requires an appraiser, in developing a real property appraisal, to identify the relevant characteristics of a property, including any known restrictions Standard 2-2(b)(viii) requires that an appraisal report summarize the information analyzed and the reasoning that supports the conclusions and opinions of the appraiser.

According to Staff, Respondent violated USPAP Standards 1-2(e) (iv) and 2-2(b)(viii) by failing to analyze and report the proper zoning classification of the Wesley property.

**Evidence:**

Mr. McComb testified that Respondent incorrectly wrote in the space on the appraisal report form for zoning, "SF-1300; 7200." Mr. McComb interpreted this to mean single family residence of 1300 square feet on a site having a minimum of 7200 square feet. Mr. McComb stated that under the City of Mesquite zoning ordinance, Respondent should have reported the zoning as R-3, or residential.

Respondent explained that he copied the zoning code off the tax assessment record, which specifies zoning. In the space on the record designated "zoning code," the Wesley tax assessment record used the detailed description that Respondent copied into the report, rather than the more general zoning code used by the City of Mesquite. Respondent agreed that he should have used the more general code R-3, but stated that the description he used was actually more specific. He stated that any user of the appraisal would know from his appraisal that the area was zoned residential.

**Analysis:**

The ALJ finds that Staff submitted sufficient evidence to prove that Respondent violated this provision of the USPAP by failing to use the correct zoning code. However, the evidence did not prove that this was an intentionally misleading statement, or that it would have been misleading to the user of the appraisal. It did not affect the credibility of the appraisal.

**d. USPAP Standards Rules 1-1(b),1-3(a) and 2-2(b)(viii):**

Rule 1-3(a) requires the appraiser, when necessary to develop a market value opinion, to identify and analyze the economic supply and demand and market area trends. Rule 1-1(b) states that an appraiser must not make a significant error of omission or commission that significantly affects the appraisal. Standard 2-2(b)(viii) requires that an appraisal report summarize the information analyzed and the reasoning that supports the conclusions and opinions of the appraiser.

Staff alleged that Respondent failed to identify and analyze significant and material information concerning economic supply and demand and market area trends. Staff alleged also that Respondent misrepresented sales prices and general market area trends in the area which were misleading to the client.

**Evidence:**

Mr. McComb testified that Respondent reported on his appraisal that the market trends relevant to the value of the Wesley property were stable over three to six months. Mr. McComb stated that he went back six years and compared sales and determined that there was a decline in the market value of properties in the Wesley property neighborhood of approximately thirty-five percent over the last six years. Mr. McComb testified that Respondent's failure to note this decline in his appraisal was misleading.

Mr. McComb also determined that Respondent's report of predominant One-Unit Housing Price was erroneous. Mr. McComb explained that the predominant value gives the lender an idea of the neighborhood values where the lender is thinking of making a loan. These figures should be based on sales in the same neighborhood as the subject property. According to Mr. McComb's calculations based on MLS data of sales in the same neighborhood, the predominant or average value in the neighborhood was \$69,000, not \$100,000, as reported by

Respondent. Mr. McComb stated Respondent reached an erroneous predominant value because he used comparable sales that were not located in the neighborhood of the subject property. This was contrary to correct appraisal methodology in Mr. McComb's judgment. In Mr. McComb's opinion, Respondent misreported the predominant value as a figure closer to that of the sales contract price of \$102,000 to mislead the client lender and avoid raising red flags.

Mr. McComb admitted that under some circumstances it was appropriate to use comparables outside of the neighborhood. Mr. McComb also admitted that the house next to the Wesley property sold for an amount close to the predominant value reported by Respondent and thus supported his value.

Ms. Jacob also testified that comparables can be used from different neighborhoods. A different neighborhood may offer the same amenities, and therefore be considered a competing neighborhood. Sales from such a neighborhood would offer suitable comparisons even though they were not in the same neighborhood.

Respondent explained that the Wesley house was unique in that it was newer construction in a neighborhood of older houses. The fact that there were older houses skewed the predominant value lower. There were no sales of newer property in the neighborhood to compare with the Wesley property. The only sale of newer construction on the west side of the freeway was the house next door. Although he couldn't use that sale as a comparable because the lender did not want comparables that were more than six months old, it sold for approximately the same as the appraisal value he put on the Wesley property. Therefore, in his opinion it supported his analysis of the predominant value in the neighborhood. Furthermore, Respondent was very familiar with the market area having worked in it for fifteen years. In his opinion, the neighborhood across the freeway from the Wesley property was a similar and competing neighborhood. The neighborhood west of IH 635 has some streets of smaller older homes that are not comparable to the Wesley property. He felt Mr. McComb's figure was

erroneously based on those older homes, not the newer development that was taking place on the street where the Wesley property was located.

Respondent explained that he included a market analysis in his report which he based on sales over the last twelve months. The market analysis shows the sales, the average sales, and days on the market for the previous three months, the three months before that, and the six months prior to that. His twelve-month analysis showed thirty-eight sales during nine months that were stable and ten sales during the most recent three months that indicated a decline. In his opinion, the ten sales showing a decline within a three-month period were not sufficient data to offset the much larger database of thirty-eight sales over a nine-month period that showed a stable market. Respondent explained his reasoning in the Market Addendum to the appraisal report.<sup>14</sup>

**Analysis:**

The ALJ finds that the evidence was insufficient to establish that Respondent violated these standards as alleged. Mr. McComb used a much longer period of time than Respondent did for his analysis. However, Mr. McComb did not dispute that Respondent included in his appraisal a disclosure that he based his market trend analysis on a twelve-month period. Respondent disclosed precisely how he reached the determination of a stable market. Respondent also testified that his client did not want him to use comparables of more than six months. There was no evidence presented that USPAP required markets trends to be based on sales over a particular length of time in order to be credible, nor did Mr. McComb testify that Respondent's analysis was faulty. Mr. McComb simply testified that he used a different length of time and had a different result based on that analysis. The evidence did not establish that Respondent's report was misleading or incorrectly used a shorter time period to determine the market trends.

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<sup>14</sup> Petitioner Ex. 6

In regard to Mr. McComb's criticism that his calculations showed a lower predominant value than Respondent's, once again the evidence did not establish that Respondent used an incorrect methodology, only that he reached a different result than Mr. McComb. Mr. McComb agreed that sales outside of the neighborhood would be appropriate to consider in some circumstances when determining value. Mr. McComb also admitted that the sale amount of the house next door supported Respondent's predominant value. Mr. McComb did not address Respondent's contention that the street where the Wesley property was located was unique within the neighborhood due to newer construction, and that thus, using older houses on a different street with smaller lots sizes would yield an inaccurate predominant value. In fact, Mr. McComb admitted that he had not done any analysis of the age of the homes in the neighborhood. Thus, the ALJ finds that Staff failed to prove a violation of these standards as alleged in the notice of hearing.

**e. USPAP Standards Rules 1-4(b), 1-1(a), and 2-2(b)(viii):**

Standards Rule 1-4(b) sets out the actions required of an appraiser when a cost approach is necessary to the appraisal assignment in order to reach a credible result. Rule 1-4(b)(i) requires an appraiser to use an appropriate method or technique to develop a site value determination; Rule 1-4(b)(ii) requires an appraiser to analyze available comparable data to estimate the cost of new improvements; and Rule 1-4(b)(iii) requires the appraiser to analyze available comparable data to estimate the difference between the cost new and the present worth of the improvements, or the accrued depreciation. Standards Rule 2-2(b)(viii) requires that an appraisal report summarize the information analyzed and the reasoning that supports the conclusions and opinions of the appraiser. Standards Rule 1-1(a) requires the appraiser to use recognized methods and techniques in developing an appraisal.

Staff alleged that Respondent violated these Standards Rules by failing to provide any supporting data or documentation to support the site value in the cost approach section of the Wesley property appraisal. In addition, Staff alleged that Respondent failed to employ

recognized methods and failed to properly collect, verify, and analyze the available data to reach his calculation of cost of new improvements. Finally, Staff alleged that Respondent failed to correctly calculate and provide support for his depreciation determinations in reaching his Cost Approach value.

**Evidence:**

Mr. McComb testified that Respondent failed to document how he reached the site value. The site (or lot) value determination is the first element of the cost approach to value. Mr. McComb stated that Respondent should have used MLS reports of residential lot sales in the same neighborhood as the Wesley property to calculate the lot value. Respondent's appraisal report did not reference how he developed his site value determination. However, Mr. McComb agreed that Respondent's actual value was accurate. Mr. McComb agreed that the tax records show that the site was appraised for the same amount that Respondent used in his report, and that the tax records supported that Respondent's market valuation of the property. His criticism of Respondent is based on the fact that Respondent did not explain how he arrived at that value.

Next, according to Mr. McComb, Respondent should have determined the cost of new improvements, or what it would have cost to build a new home on the lot. There were three builder sales in the same subdivision that he could have used to determine the cost of building a home on the lot. Instead, Respondent used Marshall and Swift, which is a handbook containing calculations that appraisers use to determine what it costs to build the house. Mr. McComb stated that Marshall and Swift was a very useful tool relied upon by appraisers nationwide. However, he felt that Respondent should have checked the Marshall and Swift figures against the builder sales in the area to corroborate the calculations. He explained that the builder sales are more specific to the area being evaluated than Marshall and Swift. He stated that per square foot cost of improvements based on the local builder sales were \$50 per square foot, while the Marshall and Swift calculations relied upon by Respondent indicated a cost of \$60 per square foot. He felt the local builder sales were more accurate and Respondent's failure to rely on them

was misleading to his client. However, he admitted that using the Marshall and Swift data was an accepted and appropriate methodology.

Mr. McComb also criticized Respondent for failing to include the calculations from Marshall and Swift in his workfile to support his report. Mr. McComb admitted that USPAP guidelines explained that the source data just needed to be available for access during the workfile retention period, and that it was sufficient to reference the source of the data in the report or somewhere else in the workfile. He also agreed that the appraisal report itself referenced Marshall and Swift as the source for Respondent's cost approach analysis.

Finally, Mr. McComb testified that Respondent failed to follow correct methodology for calculating accrued depreciation. Respondent depreciated the improvements by \$17,375. This figure was calculated by taking the age of the house (twelve years) and assuming a total economic life of seventy-five years. Respondent calculated the depreciation rate based on this age/life calculation as sixteen percent. Mr. McComb found the use of seventy-five years as the basis for the calculation "unusual." He stated that Marshall and Swift used sixty years as the economic life of property. If Respondent had used the economic life figure used by Marshall and Swift, he would have calculated a depreciation rate of twenty to twenty-two percent, which would have lowered the estimate of value. Because Respondent referenced Marshall and Swift in his report, Mr. McComb felt that Respondent's failure to use the same economic life figure used by Marshall and Swift in his calculations was misleading to the client.

Ms. Jacob agreed that using seventy-five years as the economic life of a house is not accepted methodology.

Respondent explained that he always used seventy-five years as the economic life in his appraisals because that was what the two appraisers he trained with used. However, after listening to the evidence presented by the other experts in the case, he has decided to change his practice and use the figure recommended by Marshall and Swift. He stated that he does not

believe that it affected the appraisals in this case because his appraised value was not based on the cost approach. He stated that a lot of his clients no longer want the cost approach included in the report when the appraisal does not involve new construction.

Respondent testified that he did not, at the time this appraisal was done, include in his workfile the worksheet he filled out online through the Marshall and Swift service to calculate the cost approach. However, since then, he has taken a USPAP course and the instructor recommended including a copy of the calculations in the workfile. Respondent has changed his practice to scan the worksheet and include it in the electronic workfile. He did not change the calculations; he just started keeping them in the workfile.

**Analysis:**

The ALJ finds that the evidence was insufficient to prove the violations alleged. It was undisputed that Respondent failed to include his Marshall and Swift calculations in his workfile and erroneously used seventy-five years as his depreciation factor. He also failed to compare local builder's sales with the Marshall and Swift figures. If the cost approach were necessary to a credible result, these actions violated Standards Rule 1-4(b). However, Standards Rule 1-4(b) states that the Rule only applies if the cost approach is *necessary to a credible result*. The evidence did not establish that the cost approach was necessary to a credible result in this case. Mr. McComb only testified that the use of seventy-five years as a depreciation factor changed the cost approach value, not the appraised value. He did not opine whether the cost approach was necessary to a credible result. Respondent testified that he did not rely on the cost approach to establish the appraised value. Furthermore, these violations were not intentionally misleading and did not inflate the appraised value of the property, as Respondent did not rely on the cost approach to determine the value. Therefore, Staff failed to prove the violations alleged.

**f. USPAP Standards Rules 1-4(a), 1-1(a), and 2-2(b)(viii):**

Standards Rule 1-1(a) requires that an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal. Pursuant to Standards Rule 1-4(a), when a sales comparison approach is necessary to a credible appraisal result, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion. Standards Rule 2-2(b)(viii) requires that an appraisal report summarize the information analyzed and the reasoning that supports the conclusions and opinions of the appraiser.

Staff alleged that Respondent violated Standards Rules 1-1(a), 1-4(a), and 2-2(b)(viii) by failing to collect, verify, analyze, and reconcile comparable sales data adequately and failing to employ recognized methods and techniques in his sales comparison approach. Staff alleged that Respondent failed to use sales comparables from the neighborhood in which the Wesley property was located or to explain why he went outside that neighborhood for comparable sales on which to base his sales comparison approach. According to Staff, Respondent also failed to analyze or point out the difference in the neighborhood characteristics where the subject property and the sales comparables were located. Staff alleged that the report was intentionally misleading and demonstrated that Respondent used a predetermined value.

**Evidence:**

The Wesley property is located in the Spring Ridge Estates subdivision which is located west of Interstate Highway (IH) 635. In his appraisal report, Respondent described the boundaries of the neighborhood as including a large tract that was on the east side of IH 635. Mr. McComb was critical of Respondent's analysis for two reasons. First, Respondent used sales of homes located outside of the boundaries of the neighborhood described in his report in order to calculate the market value under the sales comparison approach. Mr. McComb testified that this was not the recognized method. Rather, the accepted method was to use sales

comparisons in the same neighborhood described in the report, if possible. Mr. McComb compared sales within the neighborhood boundaries described by Respondent and the comparables used by Respondent and found that generally the comparable sales used by Respondent sold for more money per square foot than comparable sales in the neighborhood described in Respondent's report. Mr. McComb explained that, although the improvements (houses) in the two neighborhoods were comparable, the sites (lots) were not. This was reflected in the Central Dallas Appraisal Districts appraisals of the sites. Thus, in order to compare the Wesley property with the property in the comparables neighborhood, an appraiser would have to adjust for the more valuable sites in the comparables neighborhood by reducing the comparables accordingly. Respondent did not do that, even though he cited in his report to the tax records showing the higher appraisal value of the comparables, which indicated he had reviewed those records and used them as verification for his report. Thus, Mr. McComb concluded, by using comparable sales from a different neighborhood, without adjusting for the higher value of the lots in that neighborhood, Respondent intentionally inflated the actual market value of the Wesley property. However, Mr. McComb agreed that, if the houses in the immediate subdivision were older than the property being appraised, that might justify using comparables from other neighborhoods. He stated that he did not know if the houses in immediate neighborhood of the Wesley property were the same age or older than the Wesley property.

Mr. McComb also criticized Respondent's description of the neighborhood boundaries for the Wesley property. In Mr. McComb's opinion, the appropriate neighborhood boundaries should all lie west of IH 635. He disagreed with Respondent's inclusion of the neighborhood east of IH 635 as part of the neighborhood in which the Wesley property was located, because the two areas were in two different high school attendance zones. Mr. McComb stated that the high school attendance zone can affect the value of the property. He mapped an alternative neighborhood which was entirely west of IH 635 and was able to find sufficient comparable sales in that neighborhood on which to base a calculation of value, including the house next door to the Wesley property. According to Mr. McComb's calculations based on MLS data of sales in

his alternative neighborhood west of IH 635, the square foot value should be less than Respondent calculated.

Mr. McComb later contradicted his testimony that Respondent inflated the value of the Wesley property and stated instead that he did not find that the Wesley property appraisal value was inflated or predetermined.<sup>15</sup>

Mr. McComb criticized Respondent for using photos of comparables from MLS listings rather than taking his own photos. He stated that the Federal Housing Administration (FHA) requires appraisers to take their own photos. He was particularly critical of one photograph which appeared to have had the for sale sign photo-shopped out of the picture. He felt that this indicated an intentional misrepresentation on Respondent's part.

Ms. Jacob agreed that Respondent should have taken his own photographs of the comparable properties under FHA guidelines. She stated that this requirement came under the scope of work requirement of USPAP, and was not a specific requirement set out in USPAP.

Ms. Jacob testified that choosing comparable sales that were most similar to the property in question required some judgment on the part of the appraiser. The factors that affected that judgment were the proximity, the characteristics, and the date of sale of the comparable. It was not always possible to find properties that met all these factors in the same neighborhood as the subject. The ideal comparable would be a property across the street that sold on the same date as the property being appraised. A different neighborhood may offer the same amenities, and therefore be considered a competing neighborhood. Sales from such a neighborhood would offer suitable comparisons even though they were not in the same neighborhood.

Respondent testified that he did not try to inflate the value of the appraisal or reach a predetermined value. He chose comparables based on the lender's criteria. One of those criteria

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<sup>15</sup> Transcript pp. 271-272.

was that he could not use sales comparables over six months from the date of the appraisal. The house next door to the Wesley property sold more than six months before the appraisal, and that was why he didn't use it. However, the selling price of the house next door (\$103, 000) was very close to the appraisal value for the Wesley property (\$104,000.) Therefore, using or not using the house next door as a comparable did not affect his appraisal value.

Respondent explained that the Wesley house was unique in that it was newer construction in a neighborhood of older houses. Other than the house next door, there were no sales of newer property in the neighborhood to compare with the Wesley property. Respondent was very familiar with the market area having worked in it for fifteen years. In his opinion, the neighborhood across the freeway from the Wesley property was a similar and competing neighborhood because they are newer, larger homes. The neighborhood west of IH 635 has some streets of smaller, older homes that are not comparable to the Wesley property.

Respondent felt that Mr. McComb misunderstood his description of the boundaries of the neighborhood the property was located in. He said that some of the comparables were in the Wesley neighborhood he described in his report, contrary to Mr. McComb's testimony. He stated that when he ran the comparables, he was not able to locate any from the same side of the freeway where the Wesley property were located that were comparable and within the last six months. He used comparables that were most similar by location, by physical characteristics, and functionally to the Wesley property. They were similar in age and size and were in the same school district. There was no indication in the data, he testified, that different school attendance zones affected the values in these neighborhoods. In his opinion, the neighborhood he chose the comparables from was either the same or a competing neighborhood with houses in the same age and size range. He based his opinion on his long experience in that market. He believes the appraisal he did was credible and complied with USPAP standards in terms of sales comparables.

Respondent stated that he was not aware that FHA required him to take his own photographs and not use the photographs from the MLS listing. He stated that there was no intent to deceive in using those photographs, and that he was not aware that the photograph had been changed to take out the for sale sign.

**Analysis:**

Staff failed to prove by a preponderance of the evidence that Respondent violated any USPAP Standards in reaching the sales comparison approach appraised value of the Wesley property. All experts agreed that using comparables from different neighborhoods was acceptable if more similar comparables in the specific neighborhood were not available and if the neighborhood from which the comparables were chosen was a competing neighborhood. Based on the evidence, choosing comparables clearly involves judgment on the part of the appraiser. It was undisputed that Respondent was very familiar with the neighborhoods in question and had done appraisals for many years in the area. Mr. McComb did not attest to having had experience with appraisals in this area. Mr. McComb admitted that, if the houses in the immediate neighborhood were older than the subject property, that would be one reason for an appraiser to go to another neighborhood for comparables. He stated he did not know the age of the houses in the immediate subdivision of the Wesley property, while Respondent testified that that was one of the reasons he chose comparables that were not in the immediate neighborhood. Mr. McComb testified that tax records showed higher appraised values for comparable sites, not the houses themselves, which he testified were comparable. Although Mr. McComb's primary concern seems to be that Respondent did not adjust for the difference in the site appraisals, the Addendum to the appraisal report states, "Site differences were adjusted at a market extracted value. This derived from recent land sales and land to improvements ratio."<sup>16</sup> Mr. McComb failed to make clear in his testimony how Respondent failed to take into account the differences in the appraised value of the sites.

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<sup>16</sup> Petitioner Ex. 6 at 627.

Mr. McComb noted the comparables were in different school attendance zones, but he failed to explain what actual affect this had on Respondent's choice of comparables. He did not state whether one school zone was actually considered better than another, only that that was a potential factor. Respondent testified that the neighborhoods were competing based on his experience and knowledge of the area.

Mr. McComb agreed that the house next door to the Wesley property, which he would have used as a comparable, sold at a value very similar to the appraised value of the Wesley property. His testimony was contradictory regarding whether the Wesley appraised value was inflated or intended to reach a predetermined amount. However, he was consistent that he had no reason to believe, other than speculation, that it was a predetermined value. The facts simply did not lead to the conclusion that no other explanation other than fraud was the basis for the appraised value. Furthermore, the evidence did not establish that using MLS photographs in the report, instead of taking his own, had any effect on the credibility of the value derived from the sales comparison approach or Respondent's methodology. Thus, the evidence did not establish that Respondent violated USPAP standards in the sales approach to the Wesley property.

**g. USPAP Standards Rules 1-6(a) and (b) and 2-2(b)(viii):**

USPAP Standards Rules 1-6(a) and (b) provide that, in developing a real property appraisal, an appraiser must reconcile the quality and quantity of data available and analyzed within the approaches used and reconcile the availability or suitability of the approaches used to arrive at the value conclusion(s). USPAP Standards Rule 2-2(b)(viii) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Staff alleged that Respondent failed to reconcile the quality and quantity of the data within the approaches to valuation he used.

**Evidence:**

Mr. McComb explained that a reconciliation means that sometimes an appraiser must make adjustments in the data used to reach a valuation if the data is not consistent. The appraiser may also indicate which approach is the best to determine value based on the characteristics of the property. The reconciliation needs to be set out in the appraisal report. Mr. McComb pointed out that Respondent stated in the report that no adjustments needed to be made to the data based on locational differences of the sales comparables. Mr. McComb noted that this was not accurate because Respondent used sales comparables from a different neighborhood with different site values.

Mr. McComb also indicated that Respondent erroneously stated on the report that the small neighborhood he described in the report is the only portion of Mesquite ISD on the west side of IH 635. In fact, Mr. McComb stated, twenty-five percent of Mesquite ISD is on the west side of IH 635. In addition, according to Mr. McComb, Respondent wrongly stated that there were no comparable sales in the neighborhood on the west side of IH 635. Mr. McComb was able to identify six comparable sales in the neighborhood on the west side of IH 635, including one house next door to the Wesley property which had sold seven and one-half months before the appraisal. Mr. McComb admitted that the comparable next door sold for \$103,000, which was approximately the same amount Respondent valued the Wesley property. Mr. McComb explained that he was not saying that the Wesley appraisal was inflated, only that Respondent did not consider data he should have considered. Mr. McComb admitted that it was not a violation of USPAP standards to go outside of the neighborhood to obtain comparable sales.

Mr. Dodson's testimony as outlined above in section f. applies to this allegation. Respondent testified that he believed that the neighborhoods that he chose his comparables in were competing neighborhoods based on school district, location, size, and characteristics.

**Analysis:**

Just as Staff failed to establish that Respondent should not have used the comparables he used, it failed to establish that those comparables were not reconcilable with the appraisal value that Respondent calculated. Mr. McComb did not establish that Respondent's failure to use the comparables in the neighborhood he identified on the west side of IH 635 led to an inflated appraisal. The evidence did not establish violations of the Standards Rules 1-6(a) and (b).

**h. 22 Tex. Admin Code § 153.20(a)(9):**

The Board's rule 153.20(a)(9) provides that the board may suspend or revoke a license, certification, authorization or registration . . . or deny issuing a license, certification, authorization or registration to any applicant at any time when it has determined that the person applying for or holding the license, certification, or registration has made a material misrepresentation or omission of material fact.

Staff alleges that in regard to the Wesley appraisal, the violations discussed above all constitute violations of Rule 153.20(a)(9). Therefore, if the violations are found, the only issue left to decide is whether the violations constituted a misrepresentation or omission of material fact. The evidence submitted in regard to this alleged violation is the same as that discussed above.

**Analysis:**

The basis for this alleged violation is Staff's argument that the evidence shows that Respondent intentionally violated USPAP standards. The evidence does not establish that Respondent's violations were intentional or resulted in an inflated value. Staff's expert testified that he had no evidence that Respondent intended to reach a predetermined value. He speculated that Respondent might do so because it would lead to more business. However, he contradicted

himself in regard to whether the value was inflated or not. Because the evidence failed to establish an inflated value, and because the violations found did not affect the credibility of the report, there is no ground for finding that Respondent misrepresented material facts in his appraisal report on the Wesley property.

## **2. The Enon Property Appraisal**

The Enon property consisted of a rural multi-acreage lot near Fort Worth, Texas, with a log home construction and operating gas wells. Respondent appraised the property on November 18, 2010, in a report dated November 19, 2010. In his appraisal, Respondent failed to take into consideration that there were gas wells on the property. Respondent claims he did a corrected report, including the gas wells, and submitted it to the client lender on December 28, 2010. Respondent contends that the corrected report is the final appraisal report under the Standards Rules and that he should not be judged based on the erroneous report, which is not a final report. Mr. Dodson relies on the definition of "report" set out in the USPAP: "any communication, written or oral, of an appraisal ...that is transmitted to the client upon completion of an assignment." Respondent contends that only the report submitted *upon completion*, i.e. the December 28, 2010 report, can be held to the USPAP Standards.

When Staff received the complaint regarding Respondent's appraisal of the Enon property, it received a copy of Respondent's original appraisal report from the complainant. Staff requested a response from Respondent to the complaint and submitted the complaint, with a copy of the original report attached, to Respondent. Respondent sent Staff the corrected report along with his workfile. Staff contends that Respondent submitted a misleading and intentionally false report to the client when he submitted the first report, and then intentionally submitted a misleading report to the Board by submitting the corrected report, rather than the first report, in response to the Board's request for a response to the complaint lodged against Respondent. Staff contends the client never received the second report. Staff contends that both reports were certified by Respondent, and therefore, both are subject to the USPAP standards.

Staff relies on Standards Rule 2-3, which requires the appraiser to sign a certification that the report is true and correct and not biased or intended to reach a predetermined value, and the Comments to 2-3, which state that an appraiser who signs a certification to an appraisal accepts full responsibility for the contents of the appraisal report.

The ALJ finds that both Enon property appraisal reports are subject to the standards of the USPAP because both were signed and certified by Respondent. Staff alleges Respondent violated the USPAP Standards in the following ways in performing his appraisal of the Enon property:

a. **USPAP Ethics Rule (Conduct):**

The USPAP Ethics Rule pertaining to conduct provides in relevant part,

- “An appraiser must not communicate assignment results with the intent to mislead or to defraud.”
- “An appraiser must not communicate a report that is known to be misleading or fraudulent.”
- “An appraiser must not perform an assignment in a grossly negligent manner.”

Staff alleged that Respondent violated the conduct portion of the USPAP Ethics Rule by knowingly and intentionally communicating assignment results in a misleading and fraudulent manner with the intent to deceive and inflate the value in the Enon appraisal report and reach a pre-determined value.

**Evidence:**

Mr. McComb stated that Respondent violated the ethics rule in both reports by failing to report certain property characteristics with the intent of hiding them to avoid the negative impact they might have on loan approval. At some point, after completing his investigation,

Mr. McComb visited the site and observed it from a neighboring property. He testified that the gas wells appeared to be approximately 200 or 300 feet from the house at the back of the property. He photographed the wells from a golf course that bordered the property in the back at a distance of about 200 to 300 feet. He could hear the machinery at that distance. Mr. McComb noted that the MLS listing states, "With an acceptable offer, mineral rights are negotiable." Mr. McComb interpreted this statement as notice to Respondent that there were gas wells on the property. He noted that Respondent certified on the report that he had done a complete visual inspection of the property. Mr. McComb asserted that it would have been impossible to miss the gas wells if Respondent had done a visual inspection as he certified he had. For these reasons, Mr. McComb found that the failure to include the gas wells on the first report was intentional.

Mr. McComb indicated that he would testify regarding these ethics violations more fully in regard to specific rules violations found in his investigation. Mr. McCombs admitted that he did not analyze the property to determine its value, and that he had no opinion of value or range of value for the property. He stated that his opinion, that the value was inflated, was not based on his own determination of the value, but rather on the fact that the seller was offering the property at a lower price than Respondent appraised it for. He had no direct evidence that Respondent purposefully misrepresented anything in the report. However, Mr. McComb believes Respondent intended to mislead the Board by dating the corrected report the same date as the original report.

Ms. Jacob testified that the report which Respondent should be held accountable for is the final report, as in her opinion appraisers should be allowed to submit reports and then correct them if they made an error. She believes this is a valid part of the appraisal process. She pointed out that the appraiser is not held to a standard of perfection, and that the USPAP comment section indicated that mistakes can be made without violating the competency requirements. However, she agreed that Respondent should not have dated the corrected report the same date as the first report. It should have been dated the date it was done. Ms. Jacob also criticized Mr. McComb for finalizing his investigation before he inspected the property.

Respondent testified that he sent the client a copy of the corrected report. Although the corrected report was not in the client's file, the rebuttal he sent to the client in response to the field review was in the file, and the rebuttal stated that he had submitted the corrected report with the gas wells noted to the client.<sup>17</sup>

Respondent admitted that he made a mistake by not changing the date on the signature page of the corrected report to show the actual date it was signed. However, he believes it was appropriate to keep the date of the appraisal itself the same date as the first report, because the appraisal value was based on an inspection, information, and data he reviewed as of that date, not the date of the revision. He testified that he kept only the final corrected report in the workfile, and so he sent only the final report to the Board when Staff requested his workfile. It was his understanding that the USPAP required only the final report to be included in the workfile. After having been criticized by Staff for not having the other reports in his workfile, he now understands the need to include all reports in his workfile, as well as every email and every communication with the client.

Respondent also testified that he did not intentionally misrepresent anything when he failed to include the gas wells on the appraisal. He stated that he did not realize there were gas wells, and that he could not have known that there were gas wells without a survey of the property. He stated that he expressly pointed out in the appraisal report that he had not received a survey and that "the lender is advised to rely on the survey for title and legal conditions."<sup>18</sup> He interpreted the easement and the mineral lease for the gas wells as "title and legal conditions" which would only be revealed by a survey. He stated that he did not have the expertise to determine those issues without a survey.

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<sup>17</sup> Petitioner Ex. 5C at 491.

<sup>18</sup> Petitioner Ex. 6 at 864.

**Analysis:**

It was undisputed that Respondent did not include the fact that there were gas wells on the property in his original report. The evidence, however, did not establish that he knew of the gas wells before he did the report. (See discussion under sections c. and d. below) As discussed below, Respondent testified that he did a visual inspection, but that he was not able to determine that the property included gas wells from the inspection. As Respondent pointed out in his report, a survey was necessary to determine that there were gas wells on the property. Therefore, the evidence did not establish an intentional omission or misrepresentation. Respondent indicated that the client asked him to do the job on a rush basis and that this may have contributed to his error. However, the fact that Respondent included in the appraisal an admonishment that the lender must rely on a survey indicated that Respondent was taking care not to misrepresent the legal characteristics of the property without the necessary information at his disposal to verify it.

The evidence also did not establish that Respondent sent a report to the Board which was not sent to the client. While the client's file does not contain a copy of the corrected report, it contains a copy of a rebuttal from Respondent that references the corrected report. Furthermore, Respondent testified that he sent the report to the client. Staff failed to submit any evidence from the client or anyone else that the report was not submitted as Respondent testified, and as the evidence indicated.

**b. USBPAP Scope of Work Rule:**

The Scope of Work Rule states: "For each appraisal ... an appraiser must identify the problem to be solved, determine and perform the scope of work necessary to develop credible assignment results, and disclose the scope of work in the report."<sup>19</sup>

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<sup>19</sup> Petitioner Ex. 3 at 54.

Staff alleged that Respondent violated this rule because he failed to properly identify the problem to be solved and the work necessary to develop credible assignment results.

**Evidence:**

In his appraisal report, Respondent stated under the heading, "Scope of Work," the following:

The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, ... The appraiser must at a minimum: (1) perform a complete visual inspection of the exterior and interior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research verify and analyze the data from reliable public and/or private sector sources, and (4) report his or her analysis, opinions, or conclusions in this appraisal report.

Mr. McComb testified that this description of the scope of work was "generic" and that Respondent should have outlined "additional scope of work."

Respondent testified that he believes his description of the scope of work was accurate and complete. He stated he identified the problem to be solved, which meets the Scope of Work Rule in the USPAP.

**Analysis:**

There was insufficient evidence to establish what "additional scope of work" was missing from Respondent's appraisal. Therefore, the evidence did not establish that Respondent violated this standard.

**c. USPAP Standards 1-2(e)(i) and 2-2(b)(iii):**

USPAP Standard 1-2(e)(i) provides that, in developing a real property appraisal, an appraiser must identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including its location and physical, legal, and economic attributes. Standard 2-2(b)(iii) provides that the content of an appraisal report must be consistent with the intended use of the appraisal and, at a minimum, summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment.

Staff alleged that Respondent violated USPAP Standards Rules 1-2(e)(i) and 2-2(b)(iii) by failing to identify the three producing gas wells on the property and the service road to the gas wells, and by stating that the property needed no repairs despite the fact that the owner had disclosed needed repairs.

**Evidence:**

Mr. McComb found in his investigation that Respondent did not disclose on his original report that there were three producing gas wells on the Enon property, as well as a service road to reach the wells for maintenance purposes.

As stated above, at some point, after completing his investigation, Mr. McComb visited the site and observed it from a neighboring property. He testified that, because he could hear the gas wells from the back of the property and that the MLS listing states, "With an acceptable offer, mineral rights are negotiable," Respondent should have been on notice that there were gas wells on the property. Mr. McComb asserted that it would have been impossible to miss the gas wells if Respondent had done a visual inspection as he certified he had. For these reasons, Mr. McComb found that the failure to include the gas wells on the first report was intentional.

Mr. McComb testified that he requested the file regarding this appraisal from Respondent's client, AmeriPro Funding, and that Respondent's second, corrected report, which showed the gas wells, along with a \$10,000 reduction in the appraised value, was not in that file. The client's notes indicated that the client declined the loan based on Respondent's original appraisal, then requested a field review by a second appraiser, who pointed out that Respondent's original appraisal did not include the three producing gas wells.<sup>20</sup> The client decided not change its decision to decline the loan based on the information in the field review about the three producing gas wells on the property.<sup>21</sup>

Mr. McComb deduced from this record that the corrected report was never sent to the client by Respondent. These facts convinced Mr. McComb that the corrected report was not an actual report developed for the client, but rather was intended to mislead the Board into thinking that it was submitted to the client as the original report, to cover-up for Respondent's failure to include the gas wells on the first report. In support of his conclusion, Mr. McComb noted that the corrected report had the same date as the original report, so one would not know from looking at it that it was not the original report.

Mr. McComb also found while investigating the complaint that Respondent had failed to disclose necessary repair items disclosed by the seller. The seller had disclosed to the listing agent that some logs needed replacing on the house through a seller's disclosure form.<sup>22</sup> Those needed repairs were not disclosed on the appraisal. Mr. McComb testified that Respondent had a duty under USPAP standards to identify and report the seller's disclosure. Mr. McComb noted that Respondent specifically stated in the report that there were "no needed repairs," defined in the report as "repairs that in total put the subject improvements in something less than average market condition."<sup>23</sup>

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<sup>20</sup> The second appraiser's field review was the complaint received by the Board against Respondent.

<sup>21</sup> Petitioner Ex. 20II.

<sup>22</sup> Petitioner Ex. 4A at 442.

<sup>23</sup> Petitioner Ex. 20HH at 864.

Ms. Jacob noted that appraisers base their statement of needed repairs on a visual inspection and do not generally have the expertise to determine repairs that are not visually evident, such as the extent to which a log might be rotted or need to be replaced. According to Ms. Jacob, USPAP does not require the appraiser to do an inspection beyond readily-observable visual inspections. Ms. Jacob pointed out that under the USPAP an appraiser should explain the level of inspection done, but an appraiser is not held to a standard of seeing everything.

Ms. Jacob agreed that it would have been a violation of USPAP standards not to include the gas wells on the appraisal report if Respondent knew there were gas wells on the property. However, as she indicated by her testimony, if he did not know, it was not necessarily a violation. In her opinion, the fact that he knew that gas production in the area was common did not translate into knowledge that there were producing wells on the property. She stated that it was not an appraiser's duty necessarily to walk the whole property. She opined that it would be easy to miss the roadway going to the wells when inspecting the front of the property. Without a plat, it would be feasible that an appraiser would not realize that the roadway was on the property being appraised.

Ms. Jacob agreed with Mr. McComb that the second report should not have been dated the same date as the first report. It should have been dated the date it was done, in her opinion, so that it was clear that it was a corrected report.

Ms. Jacob also criticized Mr. McComb for not going out to inspect the property before writing his investigation. She felt that if a person's license was at stake as in this case, the investigator should have visited the site before drawing conclusions, as that is what is required of an appraiser.

Respondent testified that he was not aware of the gas wells when he did the original appraisal report on November 18, 2010. He pointed out that the assignment was a rush job and

that the client requested him to visit the property and issue the report the same day the assignment came into his office. When he observed the property, he noted it was a log cabin, which made the assignment more complex. There are very few comparables for log cabins generally. On December 10, 2010, he issued a second report, also dated November 18, 2010, in which he added two more comparables at the client's request.<sup>24</sup> Then he did a third report and added three more comparables, at the client's request, for a total of nine.<sup>25</sup> Respondent stated that it was not unusual for the client to request more comparables, particularly when the property was complex, such as this one, with a log cabin.

Respondent explained that he did not see or hear the gas wells as he was focused on the issues with the log cabin. He did not become aware of the gas wells until after another appraiser was asked to do a field review and the client sent the field review to Respondent and asked him to correct his report. Respondent issued a corrected report on December 28, 2010, in which he disclosed the gas wells.<sup>26</sup> He lowered his appraisal value by \$10,000 in the corrected report for "negative view." That report was submitted to the client along with his rebuttal of the field review, which also referenced the gas wells. Respondent pointed out that the client's file included the rebuttal, in which he referenced his inclusion of the gas wells in the corrected appraisal report.<sup>27</sup>

Respondent did not observe the logs that needed replacement when he inspected the property either. He did not see the seller's disclosure and did not ask for it. He said it was not his practice to review the seller's disclosure unless he visually observed something or the sales contract referenced needed repairs. Typically, if the seller disclosed a needed repair, it would be mentioned in the contract. Normally, an appraiser would not be able to ascertain from an appraisal inspection that a log needed replacing, as it requires poking the log with a rod. He did

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<sup>24</sup> Respondent Ex. 33. This exhibit consists of the client file subpoenaed by Respondent.

<sup>25</sup> The third report was not admitted into evidence.

<sup>26</sup> Respondent Ex. 1.

<sup>27</sup> Respondent Ex. 33.

not have the expertise to determine from an inspection whether a log needed replacement. An inspector would have the expertise to evaluate whether a rotten log needed replacing. He stated in his report that there no “evident needed repairs” defined as “repairs that in total put the subject improvements in less than average marketable conditions.” Furthermore, in the report, he expressly disclaimed any knowledge of “hidden or unapparent . . . needed repairs.”

**Analysis:**

According to Ms. Jacob, who both parties agree is an expert, USPAP standards do not require that an appraiser’s report be error-free. They require, however, that an appraiser use due care. Respondent testified that he was given the Enon appraisal as a rush job, and that contributed to his error. The evidence was sufficient to establish that Respondent was not acting with due care in performing appraiser services when he did the Enon appraisal. Therefore, the ALJ finds that Respondent violated this standard by submitting an appraisal without noting that there were gas wells present on the property.

The evidence did not establish that Respondent intentionally submitted a misleading report to the Board to cover up his original report. The evidence established that Respondent did not know of the existence of the gas wells when he did the original report and that, when informed of them, he submitted a corrected report to the client.

The evidence did not establish that Respondent violated standards by not reporting the logs that needed replacement. Both Ms. Jacobs and Respondent stated that an appraiser would not normally have the expertise to evaluate whether logs needed replacement. That is something an inspector would have the expertise to do. The replacement of the logs was beyond the scope of the appraisal as identified by Respondent, and beyond the recognized methodology and expertise of an appraiser.

**d. USPAP Standards Rules 1-2(e)(iv) and 2-2(b)(viii):**

Standards Rule 1-2(e)(iv) requires an appraiser to identify the characteristics of a property that are relevant to the purpose and intended use of the appraisal, including any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature. Standards Rule 2-2(b)(viii) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Staff alleged that Respondent violated USPAP Standards Rules 1-2(e)(iv) and 2-2(b)(viii) by not correctly reporting the specific zoning for the Enon property and failing to report that the property was not subject to or protected by a zoning ordinance, and by not disclosing that the property was subject to a mineral lease, easements, and royalties.

**Evidence:**

Mr. McComb pointed out that Respondent in his report inaccurately characterizes the property as being zoned single family residential. In fact, the property was not subject to municipal zoning ordinances. Respondent should have checked the box for "no zoning" on the appraisal form. Likewise, Respondent failed to disclose that there was a mineral lease or easements in conjunction with the gas wells.

Respondent agreed with Mr. McComb that he should have checked the box for no zoning as opposed to stating that it was zoned for single-family residences. He stated it was an error, not an intentional misrepresentation. In regard to the gas well easements, Respondent noted in his report that he did not have a survey, and he explained that one cannot know what easements are present without a survey. His report cautions that the client will need to rely on a survey, which is a requirement before the loan is approved. Respondent explained that an appraiser normally relies on the client to provide a survey of the property, and that is why he stated in the

report that a survey had not been provided.

**Analysis:**

Respondent's statement in his report that the lender is advised to rely on the survey for title and legal conditions"<sup>28</sup> establishes that Respondent informed the client that he did not have sufficient information to include information about potential easements or other legal restrictions on title. However, the evidence reflects that Respondent did not include the correct zoning classification of the property in his appraisal report. Therefore, Staff proved this violation. The evidence, however, did not support a finding that the mistake affected the credibility of the report.

**e. USPAP Standards 1-3(a) and 2-2(b)(viii):**

Standards Rule 1-3(a) requires an appraiser, when forming an opinion as to market value, to identify and analyze the effect on use and value of existing land use regulations, economic supply and demand, physical adaptability of the real estate, and market area trends. Standards Rule 2-2(b)(viii) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Staff alleged that Respondent violated USPAP Standards Rules 1-3(a) and 2-2(b)(viii) by failing to identify and analyze factors affecting marketability, such as market trends and economic supply and demand. Specifically, Respondent allegedly misrepresented the sales prices, marketing, and neighborhood trends occurring in the area where the Enon property was located.

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<sup>28</sup> Petitioner Ex. 6 at 864.

**Evidence:**

Mr. McComb testified that Respondent's description of the neighborhood was inadequate because it did not state any of the boundaries or even any directions from area cities. Furthermore, Respondent described the neighborhood market conditions as a "healthy market" based on seller concessions of less than two percent and average days on the market as ninety to 120. Mr. McComb pointed out that the Enon property had been on the market for 227 days and the seller had made three percent concessions at the time of the appraisal. These facts suggested that either Respondent's description of the marketability of the neighborhood was wrong, or this property did not fit the norm for some reason. Respondent should have and failed to explain why this property didn't fit the norm of the neighborhood, assuming he had correctly described the norm. Respondent also failed to address oil and gas fracturing prevalent in the neighborhood. Mr. McComb felt that fact should have played a significant role in evaluating the marketability of the neighborhood.

Respondent denied that he misrepresented the market and area trends in his appraisal. He pointed out that market analysis for acreage property requires comparison to other acreage property, not the market for tract homes.

**Analysis:**

Staff provided sufficient evidence that Respondent failed to take into account the length of time the Enon Property had been on the market and the concessions the seller was offering when evaluating the marketability of the neighborhood. Respondent failed to address his failure in this regard or offer an explanation for his failure to include an analysis of the effect of gas production in the neighborhood on the marketing of the properties. Therefore, the ALJ finds that Staff proved this violation.

**f. USPAP Standards 1-3(b) , 2-2(b)(ix), 1-6(a) and (b), and 2-2(b)(viii):**

USPAP Standard 1-3(b) requires that when the value opinion to be developed is market value, an appraiser must develop an opinion of the highest and best use of the property. USPAP Standard 2-2(b)(ix) requires that, when reporting an opinion of market value, an appraisal report must summarize the support and rationale for the appraiser's opinion of the highest and best use of the property. USPAP Standards 1-6(a) and (b) provide that, in developing a real property appraisal, an appraiser must reconcile the quality and quantity of data available and analyzed within the approaches used and reconcile the availability or suitability of the approaches used to arrive at the value conclusion(s). USPAP Standard 2-2(b)(viii) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Staff alleged that Respondent failed to provide support for his determination of highest and best use or discuss the impact of the gas wells on his determination. He also failed, as alleged by Staff, to reconcile the presence of gas wells with the other data he used.

**Evidence:**

In the Site section of his original report, Respondent stated that the highest and best use of the Enon property was "present use." The Site section then references the Addendum, which states, "The only legal [sic] permissible use of the subject site is for residential use. The likelihood of a zoning change is remote. The only legally possible use that is also physically possible would be residential because of the surrounding similar uses."<sup>29</sup>

Mr. McComb testified that Respondent's statement in his report that the only legally permissible use of the property was residential was incorrect. Mr. McComb stated that the property was not zoned, therefore it could have been used as commercial property. This

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<sup>29</sup> Petitioner Ex. 20 at 864, 871.

representation, according to Mr. McComb, could have misled the lender into thinking that the property was protected by zoning restrictions from commercial development.

Respondent's statement regarding surrounding uses being residential was also false in Mr. McComb's opinion. An aerial photograph showed there was a commercial property four tracts distant from the site.<sup>30</sup> Furthermore, that same aerial photograph also showed that twenty to thirty percent of the Enon site was committed to the production of natural gas. This was all data that should have been reconciled and summarized in the report, under USPAP Standards. The failure to do so could have misled the client.

Respondent disagreed that he failed to support his rationale for highest and best use in his report. However, he agreed that he should have checked the no zoning box on the appraisal.

**Analysis:**

Staf provided sufficient evidence to show a violation of this standard. Respondent failed to offer any explanation of why he failed to acknowledge commercial uses nearby, or the presence of gas wells in the vicinity. Furthermore, he admitted erroneously stating on the report that the property was zoned residential. The error affected the credibility of the report. However, the evidence did not show that it was an intentional misrepresentation.

**i. USPAP Standards 1-4(b), 2-2(b)(viii), and 1-1(a):**

Standards Rule 1-4(b) sets out the actions required of an appraiser when a cost approach is necessary to the appraisal assignment in order to reach a credible result. Rule 1-4(b)(i) requires an appraiser to use an appropriate method or technique to develop a site value determination; Rule 1-4(b)(ii) requires an appraiser to analyze available comparable data to estimate the cost of new improvements; and Rule 1-4(b)(iii) requires the appraiser to analyze

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<sup>30</sup> Petitioner Ex. 18 (Aerial photograph of area)

available comparable data to estimate the difference between the cost new and the present worth of the improvements, or the accrued depreciation. Standards Rule 2-2(b)(viii) requires that an appraisal report summarize the information analyzed and the reasoning that supports the conclusions and opinions of the appraiser. Standards Rule 1-1(a) requires the appraiser to use recognized methods and techniques in developing an appraisal.

Staff alleged that Respondent violated these Standards by failing to provide any supporting data or documentation to support his failure to make a site value determination in the cost approach section of the Enon property appraisal. In addition, Staff alleged that Respondent failed to employ recognized methods and failed to properly collect, verify, and analyze the available data to reach his calculation of cost of new improvements. Finally, Staff alleged that Respondent failed to correctly calculate and provide support for his depreciation determinations in reaching his Cost Approach value.

**Evidence:**

Mr. McComb testified that he found no summary of the information analyzed by Respondent to reach a site value in the report and no records in his workfile to support such an analysis. Furthermore, he found no report of a site value reached by Respondent. Both the analysis and the report of value are required by USPAP. Mr. McComb also found that there was no mention in the report or workfile of cost of improvements verification from local builders of log cabins. Finally, Mr. McComb testified that Respondent did not include in his depreciation cost the cost of needed repairs, including the replacement of rotted logs disclosed by the seller. He testified that these omissions were all violations of USPAP Standards.

Respondent testified that he supported the site value with a comparable sale of a fifteen acre tract that sold within three months and was located a mile and half of the Enon property. In his opinion, it was a perfect comparable for this property because it was recent, it was far enough away from Fort Worth to avoid any economic influence from proximity to that market, and it had

no improvements. He referenced this comparable in his report and he included an MLS run that had the listing in the workfile he submitted to the Board. He stated that Mr. McComb ignored the supporting comparable in his investigation findings regarding site value. He also pointed out that Mr. McComb was unable to come up with any comparables that were better than the ones he used. Respondent also testified that he did not have the expertise to determine the cost of replacing rotten logs, and that he was not aware of the rotten logs.

Respondent stated that he used Marshall and Swift to calculate the cost of new improvements. His software automatically calculates the depreciation. He admitted that he used seventy-five years life when sixty years is the recognized figure. He agreed that he should have included his worksheet in the workfile.

**Analysis:**

Staff proved that Respondent erroneously used seventy-five years instead of sixty years to calculate depreciation. The evidence was insufficient to prove that Respondent failed to make a site value calculation or support it in his report. The error did not affect the credibility of his report. Furthermore, the evidence did not establish that Respondent was required by USPAP to include in a depreciation calculation the cost of replacement of rotten logs that were not apparent from a visual inspection.

**j. USPAP Standards Rules 1-4(a), 1-1(a), and 2-2(b)(viii):**

According to USPAP Standards Rule 1-4(a), when a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion. USPAP Standards Rule 2-2(b)(viii) requires that an appraisal report summarize the information analyzed and the reasoning that supports the conclusions and opinions of the appraiser. USPAP Standards Rule 1-1(a) requires that an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary

to produce a credible appraisal.

Staff alleged that Respondent violated USPAP Standards Rules 1-1(a), 1-4(a), and 2-2(b)(viii) by failing to collect, verify, analyze, and reconcile comparable sales data adequately and by failing to employ recognized methods and techniques in his sales comparison approach. Staff alleged that Respondent failed to reconcile the Enon property seller's concessions on the sales price and the days on the market with his analysis of the market value and did not use similar sales comparables with gas wells in calculating market value.

**Evidence:**

Mr. McComb testified that he found in his investigation that Respondent collected adequate sales comparables from a wide area, but that he failed to reconcile the seller's offering price and the length of time on the market with the comparable sales. Based on the comparable sales, Respondent estimated the market value as \$230,000. Respondent noted in his report that the stated market value was higher than the listing price (\$199,900), but stated that the discrepancy was "unavoidable due to land value." Mr. McComb opined that this statement showed that the differences in land values were not correctly analyzed or adjusted. It also indicated that Respondent failed to take into account the reason for the property being on the market for so long and include that in his market analysis.

Mr. McComb criticized Respondent's methodology because Respondent did not use comparables with gas wells; some of his comparables were ten miles away; and some of his comparables did not have log cabins. According to Mr. McComb, Respondent should have analyzed and adjusted the comparables to account for the differences. Mr. McComb also criticized Respondent for using photos from MLS listings of comparables instead of taking his own photographs, as required by FHA (Federal Housing Administration) regulations.

Ms. Jacob testified that log homes are system built housing that is very difficult to appraise. For that reason, Fannie Mae permits appraisers to use other types of housing as comparables when there are not enough sales of log cabins in the area to use as comparables. She stated that Fannie Mae also expressly acknowledges that, in rural markets, the appraiser may have to use comparables that are further distances from the subject property because the market is not as dense.

Respondent testified that out of the nine comparables he chose, six were log cabins. The other three were similar in market appeal, in that they were ranch style homes and had wood siding. He pointed out that Mr. McComb did not offer any comparables that were better than those he found. In the appraisal report, Respondent disclosed that "because of the more limited sales comparisons available, coupled with the increased variables inherent in rural properties, the adjustment percentages for a single and net/gross line are above the recommended Fannie Mae guideline. This situation is unavoidable. Subject is a log construction. Limited sales available on similar sizes. The adjustment percentage are[sic] well above the recommended, but unavoidable. No other similar sales available in subject's market within prior twelve months that would allow lower adjustments percentages."<sup>31</sup>

**Analysis:**

The evidence was insufficient to establish that Respondent failed to use appropriate comparables in the sales approach to value on the Enon appraisal.

**k. USPAP Standards Rules 1-4(c)(i), 1-1(a), and 2-2(b)(viii):**

Standards Rule 1-4(c)(i) provides that when an income approach is applicable, an appraiser must analyze such comparable rental data as are available and/or the potential earnings capacity of the property to estimate the gross income potential of the property. Standards Rule

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<sup>31</sup> Petitioner Ex. 20 at 872.

2-2(b)(viii) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Staff alleged that Respondent violated Standards Rules 1-4(c)(i) and 2-2(b)(viii) by failing to explain and support the exclusion of the income approach to value in his report and by failing to analyze the potential earnings capacity of the property from the mineral lease.

**Evidence:**

Mr. McComb stated that Respondent failed to support or explain his exclusion of the Income Approach in his report, which is a violation of the Standards. Mr. McCombs noted that the report stated, “the [gross rent multiplier] method was considered but not used due to the lack of available and reliable lease data.” He admitted that Respondent explained through this statement why he did not do an income approach analysis. However, Mr. McCombs explained that the Income Approach requires the appraiser to analyze whatever income the property generates and the impact on the market value. He noted that Respondent treated the property as a typical residential property with no rental income, when in fact it had royalty income from the mineral leases which should have been analyzed in the report. Mr. McComb noted that the royalty income made the property unique, and it should have been treated differently than the traditional approach for residential property. Mr. McComb was not aware of what percentage of other properties in the area had producing gas wells.

Ms. Jacob stated that, if Respondent’s failure to use the income approach resulted from the fact that he did not know there were wells on the property, it was not a violation of USPAP to not use the income approach to evaluate the royalty income. She also noted that to evaluate a mineral lease would require special expertise that most appraisers did not have. She stated that she would not be able to do such an analysis.

Respondent stated that he explained and supported the exclusion of the Income Approach

in the report based on the fact that he had no reliable data regarding leases on log homes, as well as no GRM. He did not mention mineral leases because he was not aware of any. Respondent stated that he was aware that the listing for the property said that mineral rights could be negotiated, but he did not take that to mean that there were operating wells or leases on the property. Every property had mineral rights, and this property was located in an area where there was gas production. He was not qualified to analyze mineral rights from an income standpoint, or any other approach to value. It did not occur to him that he would be required to do so on any property. His understanding was that he was assigned to appraise the fee simple interest, not any mineral rights. He pointed out that the listing did not say that the property being offered for sale included the mineral rights, only that they were negotiable in addition to the fee simple property described in the listing. He did not feel it was his assignment to appraise the value of the mineral rights when that was not even included in the property being listed.

**Analysis:**

Staff failed to submit sufficient evidence to show a violation of these standards as alleged. The evidence demonstrated that Respondent was not aware of the gas leases, and even if he had been aware of them, he would not have had the expertise to analyze them from an income standpoint. Respondent sufficiently explained his failure to include the Income approach in his report, based on his knowledge at the time.

**I. USPAP Standards Rules 1-6(a) and (b) and 2-2(b)(viii):**

USPAP Standards Rules 1-6(a) and (b) provide that, in developing a real property appraisal, an appraiser must reconcile the quality and quantity of data available and analyzed within the approaches used and reconcile the availability or suitability of the approaches used to arrive at the value conclusion(s). USPAP Standards Rules 2-2(b)(viii) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Staff alleged that Respondent failed to reconcile the quality and quantity of the data within the approaches to valuation he used.

### **Evidence**

Mr. McComb testified that Respondent performed a reconciliation, but that it was not properly “analyzed, supported and reported.”<sup>32</sup> Mr. McComb read aloud the portion of the addendum that addressed reconciliation and concluded that it was not supported in Respondent’s workfile.

Respondent testified that he did perform an adequate and appropriate reconciliation according to USPAP standards.

### **Analysis:**

The evidence was insufficient to establish a violation of this standard as alleged. Mr. McComb failed to explain how the addendum addressing the reconciliation was inadequate, or to offer any information or analysis regarding what was missing from the workfile.

### **m. USPAP Standards Rules 1-4(d) and (e) and 2-2(b)(viii):**

Standards Rule 1-4(d) requires an appraiser, when developing an opinion of the value of a leasehold estate, to analyze what effect the lease’s terms and conditions have on value. Standards Rule 1-4(e) requires the appraiser, when analyzing the various component parts of a property, to analyze their effect on value as assembled into one property, not merely as individual parts.

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<sup>32</sup> Transcript at 204, lines 18-20.

Staff alleged that Respondent failed to consider, analyze, and report the effect on value of the terms and conditions of the mineral lease arising from the gas wells.

### **Evidence**

Mr. McComb testified that Respondent failed to consider the mineral lease on the Enon property or its effect on the value of the property.

As stated above, Respondent and Ms. Jacob testified that an appraiser does not usually have the expertise to analyze mineral leases. Furthermore, Respondent testified that his assignment was to evaluate the fee simple, not the mineral estate, which was separated from the fee simple in the listing.

### **Analysis:**

Staff failed to present sufficient evidence to prove a violation of this standard as alleged. Standards Rule 1-2 states that an appraiser is to identify the real property interest to be valued. Respondent identified the interest as the fee simple, not the leasehold mineral estate. The comments to the Rule acknowledge that an appraiser is not required to value the whole when the subject of the appraisal is a partial holding. As pointed out by Respondent, the listing for the property stated that the mineral estate could be negotiated in addition to the listed property, but it was not included in the listing that Respondent was appraising. Therefore, his failure to appraise the mineral estate was not a violation of the Standards.

### **n. USPAP Standards Rules 1-1(a),(b) and (c) and 2-1(a) and (b):**

Standards Rule 1-1(a) requires the appraiser to use recognized methods and techniques in developing an appraisal. Standards Rule 1-1(b) states that an appraiser must not make a significant error of omission or commission that significantly affects the appraisal. Standards

Rule 1-1(c) prohibits an appraiser from rendering appraisal services in a careless or negligent manner, such as by making a series of errors that, individually, might not significantly affect the results of an appraisal, but, in the aggregate, affect the credibility of the results. Standards Rule 2-1(a) requires each appraisal report to clearly and accurately set forth the appraisal in a manner that is not misleading. Standards Rule 2-1(b) prohibits an appraiser from rendering appraisal 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 an appraisal, in the aggregate affects the credibility of those results.<sup>33</sup>

Staff alleged that, based on the other violations alleged, Respondent produced a deliberately misleading appraisal report for the Enon property that contained several substantial errors of omission or commission by choosing not to employ correct methods and techniques. Staff alleged that this conduct resulted in an inflated appraisal report that was not credible or reliable. Staff also alleged that Respondent rendered an appraisal report in a careless and negligent manner by making a series of errors that affect the credibility of the report.

**Evidence:**

Mr. McComb found that Respondent failed to consider information available to him in producing the Enon report. Specifically, Respondent purposely omitted that there were three producing gas wells, that most of the property was not zoned, and that two logs needed repair, and he misstated market trends. These omissions or incorrect statements were not corrected in the final report, according to Mr. McComb. Mr. McComb noted that Respondent stated in his report, "The value is based on the assumption that the property is not negatively affected by the existence of hazardous substances or adverse conditions." Mr. McComb opined that the gas wells could be an adverse condition that affected the value of the property. Respondent's failure to include the existence of the gas wells in the report was the basis of the violation of Standard 2-

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<sup>33</sup> The comment to the Standards Rule 1-1 states that while perfection is not required for competence, the appraiser must use due diligence and due care.

1(b), because it omitted information needed to enable the intended user to understand the report.

Mr. McComb testified that he did not know why Respondent inflated the value of the property in his appraisal. In his experience, appraisers generally inflate the value to assist the loan underwriting of the property.

Respondent stated that it was not his assignment to analyze the mineral lease and he would not have been competent to do so. He stated the information necessary to know that there was a mineral lease—a survey—was not available to him. He stated that he did not intentionally fail to include the gas wells and that he had no reason to inflate the value of the property. He agreed that he reduced the value of the property by \$10,000 when he corrected the appraisal to include the gas wells, but he did not analyze the effect of the mineral leases in the corrected report as he was not competent to do so.

**Analysis:**

As discussed in detail above, Staff did not submit evidence to prove that Respondent intentionally omitted the gas wells from his report. However, the evidence was sufficient to demonstrate that he was negligent or careless in failing to determine that there were gas wells on the property, and that his error had an effect on the credibility of the appraisal.

**o. 22 Tex. Admin Code § 153.20(a)(9):**

Board Rule 153.20(a)(9) provides that the Board may suspend or revoke a license, certification, authorization or registration or deny issuing a license, certification, authorization or registration to any applicant at any time when it has determined that the person applying for or holding the license, certification, or registration has made a material misrepresentation or omission of material fact.

Staff alleges that in regard to the Enon appraisal, the violations discussed above all constitute violations of Board Rule 153.20(a)(9). Therefore, if the violations are found, the only issue left to decide is whether the violations constituted a misrepresentation or omission of material fact.

**Analysis:**

Staff relied on the evidence submitted above to demonstrate that Respondent intentionally omitted that there were gas wells on the property. The ALJ has found that the omission was careless or negligent, but not that it was intentional. Therefore, the ALJ finds that Staff has failed to prove an intentional misrepresentation or omission of material fact. The Rule itself, however, does not require evidence of an intentional misrepresentation or omission. Because the omission of the gas wells affected the credibility of the report, the ALJ finds that it was an omission of a material fact, in violation of the Board Rule.

**F. Recommendation**

The ALJ has found the following violations:

<b>WESLEY PROPERTY</b>	
<b>USPAP Ethics Rule (Record Keeping)</b>	Respondent failed to include copies of the Marshall and Swift worksheets in his workfile. However, the failure to do so did not affect the credibility of his final appraisal report.
<b>USPAP Standards Rules 1-2(e)(iv) and 2-2(b)(viii)</b>	Respondent failed to use the correct zoning code. However, the evidence did not prove that this was an intentionally misleading statement, or that it would have been misleading to the user of the appraisal. It did not affect the credibility of the appraisal.
<b>ENON PROPERTY</b>	
<b>USPAP Standards Rules 1-2(e)(i) and 2-2(b)(iii); USPAP Standards Rules 1-1(a),(b) and (c)</b>	Respondent was not acting with due care in performing appraisal services when he submitted an appraisal without noting that

<p><b>and 2-1(a) and (b); 22 Tex. Admin Code § 153.20(a)(9)</b></p>	<p>there were gas wells present on the property. The omission affected the credibility of the report.</p>
<p><b>USPAP Standards Rules 1-2(e)(iv) and 2-2(b)(viii).</b></p>	<p>Respondent did not include the correct zoning classification of the property in his appraisal report. No effect on credibility.</p>
<p><b>USPAP Standards 1-3(a) and 2-2(b)(viii).</b></p>	<p>Respondent failed to take into account the length of time the Enon Property had been on the market and the concessions the seller was offering when evaluating the marketability of the neighborhood.</p>
<p><b>USPAP Standards 1-3(b) , 2-2(b)(ix), 1-6(a) and (b), and 2-2(b)(viii)</b></p>	<p>In determining highest and best use, Respondent failed to acknowledge commercial uses nearby, or the presence of gas wells in the vicinity. Furthermore, he erroneously stated on the report that the property was zoned residential.</p>
<p><b>USPAP Standards 1-4(b), 2-2(b)(viii), and 1-1(a)</b></p>	<p>Respondent erroneously used seventy-five years instead of sixty years to calculate depreciation. No effect on credibility.</p>

Staff seeks revocation of Respondent’s certification and a \$5,000 administrative penalty. While some of Respondent’s violations are more important than others, the most serious violations are those regarding his failure to use due care in the Enon appraisal by failing to determine that there were operating gas wells on the property. The ALJ has not found any intentional or ethical violations. Based on the evidence and the findings, the ALJ finds that the above listed violations, collectively, do not constitute evidence of a serious inability or unwillingness to comply. Respondent has had two previous disciplinary orders, both of which were agreed orders, in the last ten years. According to the Board’s penalty matrix, a third occurrence of a violation that meets the definition found warrants an administrative penalty of up to \$1,500.00 per violation, with the requirement to take remedial in-class course work or to adopt preventive policies and procedures or both.

The ALJ notes that in several instances, Respondent testified that he has changed his workfile and other documentation habits, based on what he has learned from this process and

from recent courses. It appears to the ALJ that Respondent is attempting to comply with standards and that he could address his deficiencies with additional supervision.

The Board's rules also provide for discretion in assessing sanctions. The ALJ notes that in several Board orders, appraisers have been assigned mentors. Ms. Jacob described this process as one-on-one review of an appraiser's work with an expert appraiser trained in USPAP standards. Since Respondent has had two Board orders involving remedial education, but none involving a mentor, it stands to reason that assigning him a mentor may be a way to insure that he understands the requirements.

The ALJ recommends an administrative penalty of \$3,500.00 (one \$1,500 penalty for failure to use due care in determining the existence of the gas wells, and two \$1,000 penalties for failing to correctly analyze the market conditions of the Enon property and failing to correctly analyze the best and highest use of the Enon property), one four-hour day of mentorship each calendar quarter with a Board-approved mentor for the next seven quarters, and submission of a completed mentorship affidavit to the Board following completion of each mentorship session.

### III. FINDINGS OF FACT

1. Clifford Parvin Dobson (Respondent) currently holds and held general real estate appraiser certification number TX-1337922-G issued by the Texas Appraiser Licensing and Certification Board (Board) at all times material to the allegations in this case.
2. On May 22, 2012, staff of the Board (Staff) sent an Original Statement of Charges to Respondent proposing revocation of the certification referred to in Finding of Fact No. 1, and an administrative penalty of \$5,000. On August 20, 2012, a First Amended Statement of Charges was sent to Respondent.
3. On May 23, 2012, Staff sent Notice of Hearing to Respondent.
4. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the matters asserted.

5. The hearing on the merits convened on August 27-29, 2012, at the State Office of Administrative Hearings, William P. Clements Office Building, 300 West 15th Street, Austin, Texas. Staff appeared through attorneys Kyle Wolfe and Troy Beaulieu. Respondent was represented by attorney Ted Whitmer. After the taking of evidence and written argument, the record closed on September 28, 2012.
6. Before and after obtaining his general real estate appraiser certification, Respondent took courses in proper appraisal methods and appropriate methodologies for determining market value.
7. Respondent has practiced as an appraiser for sixteen years, primarily in the Fort Worth/Mesquite, Texas area.
8. Respondent entered into two previous agreed disciplinary orders with the Board, one in 2002 and one in 2008. The 2002 Order required a two-year probated suspension of Respondent's certification, suspension of sponsorship of trainees, a \$5,000.00 administrative penalty, and a promise to comply with the regulations in the future. The 2008 Order required an eighteen-month probated suspension, remedial education, and a promise to comply with regulations in the future.
9. In the 2002 Order, Respondent was found to have signed an appraisal report "that was not substantially produced by the person." In the 2008 Order, the Board found that Respondent submitted "a draft report without identifying it as a draft report, and this report lacked the signature of a certified general appraiser. A subsequent report was eventually submitted with the signature of a general appraiser."
10. Market value is properly defined as the most probable price that a property should bring in a competitive and open market under conditions requisite to a fair sale, with a willing buyer and seller each acting prudently and knowledgably, and assuming the price is not affected by undue stimulus.
11. Appraisers use three primary approaches or methodologies to determine value: the sales comparison, income, and cost approaches.
12. Under the sales comparison approach, the appraiser "brackets sales" for characteristics such as improvement size (square footage), lot size, quality of construction, and location, thereby seeking to find the sale of the property that is most similar, *i.e.*, most comparable, to the property being appraised.
13. Using the income approach, an appraiser determines the likely income stream and expenses associated with rental property.

14. Under the cost approach, an appraiser considers the cost of the land, plus the cost of constructing or reconstructing the improvements, less depreciation.

**Respondent's Appraisal of the Wesley Property**

15. Respondent issued an appraisal report for a single-family residence at 1517 Wesley Drive, Mesquite, Texas (the Wesley property) on March 17, 2011, effective March 16, 2011.
16. The Wesley property consisted of a single-family residence with a total of 1,571 square feet living area and a site of 6360 square feet, located in the Spring Ridge Estates subdivision which is located west of Interstate Highway (IH) 635.
17. The purpose of the appraisal as set out in the assignment was for a mortgage finance transaction in which the lender, who was Respondent's client, was seeking to determine the value of the property so the lender/client could make a lending decision.
18. The transaction was subject to Federal Housing Administration (FHA) regulations.
19. Respondent appraised the Wesley property at \$104,000 using the sales comparison approach.
20. Respondent employed appropriate and recognized methods and techniques in his sales comparison approach to valuation of the Wesley property.
21. Respondent's use of comparables from different neighborhoods was acceptable because more similar comparables in the specific neighborhood were not available and the neighborhood from which the comparables were chosen was a competing neighborhood.
22. The sales comparables used by Respondent supported his appraisal value.
23. Respondent did not retain in his workfile Marshall and Swift worksheets reflecting his calculations of the cost of improvements.
24. In forming his value opinion of the Wesley property, Respondent referenced in his file to Multiple Listing Service (MLS) data that he viewed on the internet in calculating his Sales Comparable value. He later printed those records out to include in his workfile.
25. Respondent utilized photographs of comparables from MLS listings in his report, one of which was photo-shopped to remove the for sale sign from the picture, in violation of FHA requirements.

26. Respondent failed to use the appropriate zoning code, R-3, for residential zoning utilized by the City of Mesquite on his appraisal report. He stated instead the more detailed description denoting single-family residence (SF) used on the tax assessment records.
27. The evidence was insufficient to prove that Respondent failed to identify and analyze significant and material information concerning economic supply and demand and market area trends, or that Respondent misrepresented sales prices and general market area trends in the area which were misleading to the client.
28. Respondent erroneously used seventy-five years as his depreciation factor and failed to compare local builder's sales with the Marshall and Swift figures in his cost approach analysis.
29. The evidence did not establish that the cost approach was necessary to a credible result in the Wesley appraisal.
30. The evidence was insufficient to establish that Respondent misrepresented the predominant price of similar construction in the neighborhood.
31. Respondent's appraisal report of the Wesley property was credible and reliable.
32. Respondent did not misrepresent or omit any material fact in regard to the Wesley appraisal.
33. Respondent did not intentionally inflate his value opinion of the Wesley property or use a predetermined value.

#### **Respondent's Appraisal of the Enon Property**

34. On November 19, 2010, Respondent issued an appraisal report for an eleven acre rural property with a log cabin construction located at 4420 E. Enon Road, Fort Worth, Texas (the Enon property), effective November 18, 2010, that valued the property at \$230,000.
35. On December 28, 2010, Respondent issued a corrected report for the Enon property that included three operating gas wells that had been omitted from the original report and valued the property at \$220,000 and added "negative view."
36. The appraisal was requested by AmeriPro Funding, Inc. and both reports and invoice were sent to Valore Management, as requested in the assignment.
37. Both reports were signed and certified by Respondent. Both were dated November 18, 2010.

38. The appraisal assignment was a rush job, and Respondent was required to do the appraisal the same day he received the assignment.
39. Respondent did not use due care to determine that there were gas wells on the property when he did his inspection.
40. Respondent disclosed in his report that he did not have a survey of the property at the time of the inspection and appraisal and that the client/lender would need to rely on a survey for title and legal conditions. A survey would have revealed the existence of gas wells on the property.
41. Respondent described the neighborhood market as a healthy market based on seller concessions of less than two percent and average days on the market as ninety to 120.
42. At the time Respondent performed the appraisal, the seller of the Enon property had made a three point concession in offering price and the property had been on the market for 227 days.
43. Respondent failed to explain in his appraisal why the Enon property did not fit the marketability parameters described in his report.
44. Respondent failed to address the effect of gas production in the neighborhood on the marketability of the property.
45. Respondent failed to disclose and analyze in the appraisal report that there was commercial property nearby.
46. Respondent erroneously stated on the appraisal report that the property was zoned residential when in fact there was no zoning.
47. In forming his value opinion based on the sales comparable approach, Respondent employed recognized methods and techniques and analyzed the comparable sales data that was available.
48. Log cabins are unusual and unique properties and typically require analysis of comparables that are further in distance and that have similar structures but not necessarily a log cabin in formulating a value based on sales comparable approach.
49. Appraisal of rural properties typically requires analysis of sales comparables that are further in distance.
50. Respondent used nine sales comparables, six of which were log cabins and three of which, while not log cabins, were similar in market appeal.

51. Respondent disclosed in the report that there were limited sales comparisons available due to the log construction type and the rural property.
52. Respondent provided sufficient supporting data in his workfile to support his determination of the site value of the Enon property when evaluating the cost approach to the appraisal value.
53. Respondent utilized the Marshall and Swift data, which is a recognized source and methodology, to calculate the cost of improvements in his cost approach.
54. Respondent used seventy-five year life in his depreciation analysis, which is not a recognized technique under the cost approach analysis.
55. Respondent did not retain in his workfile the Marshall and Swift worksheet he used to calculate the cost approach to value.
56. Respondent did not describe the effect of the gas leases on the income approach in his appraisal in part because he was not aware of the gas leases, and even if he had been aware of them, he would not have had the expertise to analyze them from an income standpoint.
57. Respondent sufficiently explained his failure to include the income approach in his report, based on his knowledge at the time.
58. Respondent performed an adequate and appropriate reconciliation of the data he used.
59. Respondent was not required by the terms of his assignment to evaluate the mineral estate in his appraisal.
60. Respondent did not make an intentional misrepresentation, purposefully inflate the value, or attempt to reach a predetermined value in his appraisal of the Enon property.
61. Respondent made a significant error of omission that affected the credibility of the appraisal report by failing to ascertain that the property had three producing gas wells when doing his inspection of the property.
62. Respondent made an omission of material fact from his appraisal report by failing to include the gas wells.

#### **Findings Common to Both Appraisals**

63. The evidence did not establish that Respondent's conduct represented serious inability or unwillingness to comply with the standards.

#### IV. CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board (Board) has jurisdiction over this matter pursuant to Tex. Occ. Code (Code) ch. 1103.
2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code chs. 2001 and 2003.
3. Respondent received adequate and timely notice of the hearing, as required by Tex. Gov't Code §§ 2001.051 and 2001.052.
4. Staff had the burden of proof on its allegations. 1 Tex. Admin. Code § 155.427
5. Appraisals must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) developed and published by the Appraisal Foundation and in effect at the time the appraisal is performed. Code § 1103.405 and 22 Tex. Admin. Code § 155.1(a).
6. Based on the above Findings of Fact, Respondent violated the following USPAP Standards in effect in 2010-2011: The Ethics Rules regarding recordkeeping; Rules 1-1(a); 1-2(e)(i)and(iv); 1-3(a) and (b); 1-4(a); 1-4(b)(i) and (ii); 1-4(c)(iv); 1-5(b); 1-6(a) and (b); 2-1(a); and 2-2(b)(iii), (viii), (ix), and (x).
7. By making omissions of material facts in the Enon appraisal, Respondent violated 22 Tex. Admin. Code § 153.20(a)(9)<sup>34</sup>.
8. The Board may suspend or revoke the certification of an appraiser who has failed to comply with the applicable USPAP Standards. Code § 1103.518(2)(B) and 22 Tex. Admin. Code § 155.20(a)(3).
9. Based on the foregoing Findings of Fact and Conclusions of Law, and the Board's penalty matrix, the Board should assess an administrative penalty of up to \$1,500.00 per violation, with the requirement to take remedial in-class course work or to adopt preventive policies and procedures or both. 22 Tex. Admin. Code § 153.24(9).
10. The Board may reduce or increase the recommended penalty based on documented factors that support the deviation, including but not limited to the number or seriousness of the violation(s); and degree of harm to the public; probate all or a portion of a sanction or administrative penalty for a period not to exceed five years; require additional reporting requirements; such other recommendations, with documented support, as will achieve the

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<sup>34</sup> This rule was renumbered without substantive changes effective December 27, 2012, and is now located at 22 Tex. Admin. Code § 153.20(a)(12).

purposes of the Act (Code ch. 1103) , the Rules (22 Tex. Admin. Code ch. 153, 154, and 155), and/or USPAP. 22 Tex. Admin. Code § 153.24(9)(B).

**V. RECOMMENDATION**

Based on the above Findings of fact and Conclusions of Law, the ALJ recommends an administrative penalty of \$3,500.00, one four-hour day of mentorship each calendar quarter with a Board-approved mentor for the next seven quarters, and submission of a completed mentorship affidavit to the Board following completion of each mentorship session.

**SIGNED November 27, 2012.**



**JOANNE SUMMERHAYS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**