

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

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

V.

**TERRY OTTIS MCDANIEL
TX-1328118-R ("RESPONDENT")**

**DOCKET NO.
329-12-6067.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 December 5, 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 January 7, 2013 found no reason to make changes to 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 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.

IT IS THEREFORE ORDERED by the Texas Appraiser Licensing and Certification Board that Terry Ottis McDaniel is assessed an administrative penalty of \$4,000.00, payable in full on or before twenty days after the date Terry Ottis McDaniel is notified of this Final Order.

IT IS FURTHER ORDERED that Board staff issue Terry Ottis McDaniel a first-time violator letter setting out the Findings of Fact and Conclusions of Law in the PFD.

IT IS FURTHER ORDERED that Terry Ottis McDaniel submit evidence to the Board of successful completion of a classroom course in USPAP with a minimum of fifteen (15) class hours and a classroom course in Residential Report Writing with a minimum of fifteen (15) class hours on or before February 15, 2014. All classes required by this Order must be classes approved by the Board. All classes must require in-class attendance and have an exam. Respondent must receive a passing grade on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for certification. Respondent is solely responsible for locating and scheduling classes to timely satisfy this Order and is urged to do so well in advance of any 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

December 5, 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. 329-12-6067.ALC; Texas Appraiser Licensing and Certification Board v. Terry Ottis McDaniel

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.

Sincerely,

A handwritten signature in cursive script that reads "Roy G. Scudday".

Roy G. Scudday
Administrative Law Judge

RGS/ap
Enclosure

xc: Kyle Wolfe, Staff Attorney, TALCB 1700 N. Congress Ave., Suite 400, Austin, TX - **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 - **VIA-INTERAGENCY**

**TEXAS APPRAISER LICENSING AND
CERTIFICATION BOARD,**
Petitioner

V.

TERRY OTTIS MCDANIEL,
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 seeking the revocation of the residential real estate appraiser certification held by Terry Ottis McDaniel (Respondent). The basis for this action was Respondent's alleged failure to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) in violation of Tex. Occ. Code § 1103.405 and 22 Tex. Admin. Code (TAC) §§ 153.8(b), 153.20(a)(2), (3), (4), (9), (16), (17) and (18), and 155.1(a). The Administrative Law Judge (ALJ) recommends that Respondent should be issued a first-time violator letter with agreement to take remedial course work, and that an administrative penalty in the amount of \$4,000 should be imposed on Respondent.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened September 24, 2012, before ALJ Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Staff was represented by Kyle Wolfe, attorney. Respondent was represented by attorney Ted Whitmer. The record closed November 12, 2012, after submission of briefs.

Staff offered competent evidence establishing jurisdiction and that appropriate notice of the hearing was provided to Respondent. Those matters are set out in the findings of fact and conclusions of law.

Staff offered the appraisal report at issue, Respondent's workfile, its expert witness's investigative report, and related documents into the record. Staff also offered the testimony of its expert witness Larry Ray 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.

II. REASONS FOR DECISION

A. Background and Applicable Law

Respondent is a state certified residential real estate appraiser. On November 17, 2009, Respondent performed a real estate appraisal that is the subject of this complaint.

Pursuant to Code § 1103.405, a certified real estate appraiser is required to comply with USPAP adopted by the Appraisal Standards Board of the Appraisal Foundation. Pursuant to Code § 1103.518, the Board may pursue disciplinary action against a licensed or certified appraiser who fails to comply with USPAP, including suspending or revoking the appraiser's license or certification and assessing an administrative penalty. Pursuant to 22 TAC § 153.8(b)(4) a certified real estate appraiser must associate with a state certified general real estate appraiser, who shall sign the appraisal report, to appraise non-residential properties.

B. Staff's Allegations

Staff's first allegation is that Respondent failed to comply with USPAP in violation of 22 TAC §§ 153.20(a)(3) and 155.1(a) in regard to the appraisal. Staff's second allegation is that Respondent violated 22 TAC § 153.20(a)(9) in regard to the appraisal. Staff's third allegation is that Respondent violated 22 TAC §§ 153.8(b) and 153.20(a)(2), (4), (16), (17), and 1(8) in regard to the appraisal.

C. Evidence

On November 17, 2009, Respondent issued a limited summary appraisal report for the commercial property, the Red Mesa Grill, consisting of a single-story brick building 3,254 square feet (sq. ft.) in size, located on a 32,844.24 sq. ft. lot at 2401 Gregg St., Big Spring, Texas.¹ The report was prepared for Keith D. McGuire, III's attorney to determine the value of the property in a divorce proceeding. The appraised market value was shown in the report as being \$325,000 based on the use of the comparable sales method.

The properties used by Respondent for comparable sales were as follows:

PROPERTY	BUILDING SIZE	LOT SIZE	DISTANCE	VALUE
Red Mesa Grill	3,254 sq. ft.	32,844.24 sq. ft.		\$325,000
Comp 1	1,839 sq. ft.	11,250 sq. ft.	13 blocks	\$300,000
Comp 2	2,760 sq. ft.	13,800 sq. ft.	7 blocks	\$260,000
Comp 3	2,250 sq. ft.	7,700 sq. ft.	8 blocks	\$120,000

The report states that it was intended for determining market value for divorce purposes and the intended user of the report was Keith McGuire (the owner of the property with his wife) and assigns. The report further states that the subject property was zoned R-Retail.

Larry Ray, an appraisal investigator for the Board, prepared an investigative report concluding that Respondent made the following errors in the appraisal:

- No documentation about the flood zone in the report or workfile;
- The Net Operating Income (NOI) analysis was not present in the report or workfile;
- The analysis of sales of vacant sites was not provided in the report or workfile;

¹ Staff Ex. 5B.

- There was limited documentation and no photographs to allow visualization of the three comparable sales sites in the report or workfile;
- There was insufficient documentation and analysis provided for adjustments for size, age, condition, and use and size of improvements made to the three comparable sales in the report or workfile;
- There was no analysis or comparison of the three comparable sales to current condition of the subject site in the report or workfile;
- There was no analysis that each comparable sale was considered to be similar in size to the subject in the report or workfile;
- There were no market data or analyses to estimate the value of the existing improvements and the tear-down costs in determining the final estimate per square foot of vacant land in the report or workfile;
- The report does not indicate whether the subject property was owner occupied or leased, thereby requiring analysis of the income stream.²

Respondent testified that he did not realize that he was not authorized to perform a commercial appraisal under his residential appraisal certificate. He stated that he changed his website as soon as he learned of the prohibition as a result of this complaint, and has not performed any commercial appraisals since the subject appraisal.

As for the omissions cited by Mr. Ray, Respondent pointed out that this was a summary appraisal for an attorney, not a self-contained appraisal, and is not required to be as detailed. He further testified that, although he did rely on several resources, he was not aware that he needed to have those references in his workfile.

C. Analysis and Recommendation

The rule at 22 TAC § 153.20(a)(3) provides that the Board may revoke a license when the appraiser has failed to comply with the version of USPAP in effect at the time of the appraisal. Staff has cited the specific USPAP standards that Respondent allegedly violated, which standards are set forth in the Appendix.

² Staff Ex. 6.

1. First Charge

In support of its first charge that Respondent violated the above-stated rules and standards, Staff made the following allegations regarding the appraisal:

- a. Respondent communicated assignment results in a misleading manner through the omission of material information and commission of significant errors in violation of the Ethics Rule (conduct);
- b. Respondent failed to maintain a workfile containing all data, information, and documentation necessary to support his opinions, analyses, and conclusions in violation of the Ethics Rule (record keeping);
- c. Respondent lacked the skills, education, experience, training, and knowledge necessary to do commercial real estate appraisals because he was not a general certified real estate appraiser and not permitted by law to conduct commercial real estate activities such as the subject appraisal in violation of Ethics Rule (competency);
- d. Respondent failed to support his work with the relevant evidence and logic to obtain credible assignment results in violation of the Ethics Rule (scope of work);
- e. Respondent failed to adequately identify and report the site description in violation of Standards 1-2(e)(i) and 2-2(b)(iii);
- f. Respondent failed to summarize whether the subject property's use was permitted by zoning regulations and whether the property was rented or owner-occupied in violation of Standards 1-2(e)(iv) and 2-2(b)(viii);
- g. Respondent failed to develop and report his analysis and the reasoning behind his determination of the property's highest and best use in violation of Standards 1-3(b) and 2-2(b)(ix);
- h. Respondent failed to use an appropriate technique to develop a site value determination and did not provide supporting documentation or data for his determination in violation of Standards 1-4(b)(i), 2-2(b)(viii), and 1-1(a);
- i. Respondent failed to collect, verify, analyze, and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach in violation of Standards 1-4(a), 2-2(b)(viii), and 1-1(a);
- j. Respondent failed to summarize whether the subject was leased in violation of Standard 2-2(b)(viii);
- k. Respondent failed to reconcile the quality and quantity of the data used in the sales comparison approach in violation of Standards 1-6(a) and (b), and 2-2(b)(viii);
- l. Respondent failed to report whether there was a lease on the property and

consider, analyze, and report the effect on value of terms/conditions of the lease in an appraisal of the leased fee or leasehold estate in violation of Standards 1-4(d), 2-2(b)(viii), and 1-1(b);

- m. Respondent produced a misleading appraisal report for the subject property that contained several substantial errors of omission or commission by not employing correct methods and techniques resulting in an appraisal report that was not credible or reliable in violation of Standards 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b).

Starting with the allegations regarding violation of specific standards, Staff asserts in allegation (e) that Respondent failed to adequately identify and report the site description. Mr. Ray testified that Respondent had failed to mention the site dimensions or access to frontage roads, should have put his analysis of the flood map in his report or workfile, and that his workfile was missing data to support his site description.

As stated in the USPAP Standard 2-2(b)(iii), a Summary Appraisal Report should “summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment.” The comment to this Standard states that the real estate can be specified by a legal description, address, map reference, copy of a survey or map, and/or photographs.³

The appraisal report states that the subject property is part of Block 14 on the northeast corner of Gregg Street (U.S. Hwy 87) and 24th St., and consists of .754 acres.⁴ This location is shown on a map that gives the dimensions of the lot and, together with photographs of the property, shows the access to it. The workfile does not, however, contain a flood map of the area.

Based on the above-stated documentation in the report and/or workfile, Staff has failed to meet its burden regarding allegation (e) except for the lack of a flood map.

³ Staff Ex. 5B, p. 436.

⁴ Staff Ex. 5B, p. 480.

In regard to allegations (f) and (j), Mr. Ray testified that Respondent failed to summarize whether the property's use was permitted by the zoning regulations and did not report whether the property was rented or owner-occupied. Mr. Ray asserted that intended users of the property needed to know whether they needed to assume a lease.

Respondent pointed out that the intended users of the appraisal were the owners and their attorneys who knew that the subject property was owner-occupied and that there was no lease. The report also provided the zoning information as R-Retail, and Respondent stated that there was no need to explain it as the intended user knew what that meant.

As stated in the comment to Standard 2-2(b)(viii) the "Summary Appraisal Report must include sufficient information to indicate that the appraiser complied with the requirements of STANDARD 1." Standard 1-2(e)(iv) requires the appraisal report to provide information regarding encumbrances such as leases.

It is clear that this appraisal was intended for the owners of the property and their attorneys who knew that there was no lease on the property. Mr. Ray testified that not only the intended user, but the appraiser's peers must be able to understand the appraisal, and his review was based on that peer review standard. The USPAP Scope of Work Rule states that the "scope of work must include the research and analyses that are necessary to develop credible assignment results." The comment to this statement notes that the scope of work is acceptable when it meets or exceeds "what an appraiser's peers' actions would be in performing the same or similar assignment." Mr. Ray testified that he would have expected Respondent to write a summary report that not only the client but that his peers could understand. However, Mr. Ray did not state that Respondent's appraisal was insufficient for the intended user or even that his peers would have treated the question of the lease or zoning any differently in a similar summary appraisal report for a knowledgeable intended user.

Based on the above discussion, Staff has failed to prove allegations (f) or (j).

In regard to allegation (g), Mr. Ray testified that Respondent failed to develop and report his analysis and the reasoning behind his determination of the property's highest and best use, failed to report that the property's use was legally permissible, and failed to provide analysis and documents supporting the financial feasibility and maximally productive use of the property.

Standard 2-2(b)(ix) provides that, when an opinion of highest and best use is developed by the appraiser, he must describe the support and rationale for that opinion. Mr. Ray agreed that Respondent used the four tests of physically possible, legally permissible, financially feasible, and maximally productive to arrive at his opinion that the highest and best use of the improved property was to continue at its current retail/restaurant use. However, Mr. Ray asserted that Respondent failed to describe the support and rationale for his opinion.

As discussed above, the intended user would know whether a restaurant was legally permissible under the zoning requirements for the subject property. In the financial feasibility and maximally productive test analyses, the report refers to the City and Neighborhood analyses in an earlier part of the report, estimated the cost of new retail and commercial construction, and determined that the NOI was well below what would be considered feasible for new construction. However, neither the report nor the workfile provide documentation to support these conclusions. As a result, Staff has met its burden to prove allegation (g).

In regard to allegation (h), Mr. Ray testified that Respondent failed to use an appropriate technique to develop a site value determination and did not provide supporting documentation or data for his determination.

Standard 1-4(b)(i) provides that when a cost approach is applicable, an appraiser must develop an opinion of site value by an appropriate appraisal method or technique. Standard 1-1(a) provides that the appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

Mr. Ray pointed out that in determining the site value in his workfile, Respondent used the sales comparison of four land sales that ranged from \$0.95 per sq. ft. to \$1.85 per sq. ft. and a

fifth land sale on IH 20 that was \$3.36 per sq. ft. However, Respondent used a value of \$4.50 per sq. ft. for the subject property, which he testified was based on a property sale one block from the subject property. However, Respondent admitted that this sale was not referenced in either his report or his workfile.

As noted above, Standard 1-4(b) would not apply to this allegation because Respondent used the sales comparison approach. However, Respondent failed to supply the documentation for the single sale he relied upon for his appraised land value in either his report or workfile, thereby violating Standards 1-1(a) and 2-2(b)(viii). As a result, Staff has met its burden to prove allegation (h).

In regard to allegation (i), Mr. Ray testified that Respondent failed to collect, verify, analyze, and reconcile comparable sales data adequately, and has not employed recognized methods and techniques in his sales comparison approach.

Standard 1-4(a) provides that when a sales comparison approach is applicable an appraiser must collect, verify, and analyze all information necessary for credible assignment results, including such comparable sales data as are available to indicate a value conclusion.

Mr. Ray testified that Respondent provided three sales for comparison with the subject property, but did not provide any information about the condition or building sizes of the comparable sales, didn't provide any specifics about adjustments made to those comparable sales, did not provide an adjustment grid, and did not show verification of the comparable sales.

Respondent's report does contain the building areas of the three comparable sales.⁵ The report discussed adjustments for site size; age, condition, and use of the improvements; and size of the improvements.⁶ However, neither the report nor the workfile contains any indications of what adjustments were made to reach the value. Nor is there any reference to show that the

⁵ Staff Ex. 5B, pp. 461, 463, and 465.

⁶ Staff Ex. 5B, p. 467.

comparable sales were verified. As a result, Respondent violated Standards 1-1(a), 1-4(a), and 2.2(b)(viii). Accordingly, Staff has met its burden to prove allegation (i).

In regard to allegation (k), Mr. Ray testified that Respondent failed to reconcile the quality and quantity of the data used in the sales comparison approach as required by Standard 1-6(a). In addition Standard 1-6(b) provides that the appraiser must reconcile the availability and relevance of the approaches, methods, and techniques used to arrive at the value conclusion.

Mr. Ray testified that Respondent used gross sales rather than adjusted sales in his sales comparison reconciliation. However, this difference is not reconciled in the report and, therefore, violated Standard 1-6(a). On the other hand, the report does discuss why the sales comparison approach was used and therefore meets the requirements of Standard 1-6(b). For that reason, Staff met its burden to prove allegation (k) only as to a violation of Standards 1-6(a) and 2-2(b)(viii).

In regard to allegation (l), Mr. Ray testified that Respondent failed to report whether there was a lease on the property and consider, analyze, and report the effect on value of terms/conditions of the lease in an appraisal of the leased fee or leasehold estate in violation of Standards 1-4(d), 2-2(b)(viii), and 1-1(b). However, as discussed above, there was no reason to discuss a non-existent lease in this summary report, and Staff has failed to prove this allegation.

In regard to allegation (m), Mr. Ray testified that Respondent produced a misleading appraisal report for the subject property that contained several substantial errors of omission or commission that resulted in an appraisal report that was not credible or reliable.

Standard 1-1(b-c) provides that an appraiser should not commit a substantial error of omission or commission that significantly affects an appraisal, and should not render 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 affect the credibility of those results. Standard 2-1(a-b) provides that an appraiser should clearly and accurately set forth the appraisal in a manner that will not be misleading; and provide an

appraisal report that contains sufficient information to enable the intended users of the appraisal to understand the report properly.

As discussed above, while many of the requirements of a summary appraisal were met for the intended users, the workfile does not contain a flood map of the area, neither the report nor the workfile provided documentation to support the conclusions about financial feasibility and maximally productive test analyses, neither provided documentation for the single sale relied upon for the appraised land value, neither contained any indications of what adjustments were made to the comparable sales in order to reach the appraisal value, nor any reference to show that the comparable sales were verified, and neither reconciled the use of gross sales rather than adjusted sales in the sales comparison. While not in itself being misleading, this series of errors in the report in the aggregate affect the credibility of the appraisal results in violation of Standards 1-1(a), 1-1(b), 1-1(c), and 2-1(b). Accordingly, Staff has met its burden to prove allegation (m).

Based on the above discussions, Staff has also met its burden to prove allegations (b) regarding record keeping and (d) regarding scope of work because of the lack of sufficient information in the report or workfile to support the credibility of the report. However, because there is insufficient evidence that the report was misleading, and there is no evidence that it was fraudulent, Staff has not met the burden to prove allegation (a). In addition, just because Respondent did not have the proper license, he did have the background and experience in performing commercial appraisals to perform the appraisal competently, despite the many record keeping errors in the report and workfile. This is particularly the case based on Respondent's testimony that much of the information he relied upon was in his general file, but was not transferred to the appraisal workfile. Accordingly, there is insufficient evidence to prove allegation (c).

2. Second Charge

The Rule at 22 TAC § 153.20(a)(9) provides that the Board may suspend or revoke the certification of an appraiser who has made a material misrepresentation or omission of material

fact. Staff has alleged that Respondent made such material misrepresentations and omissions in the appraisal. As discussed above, Respondent did make several omissions in his report and workfile, although because he was experientially competent there were no specific misrepresentations. As a result, Staff has failed to prove this charge.

3. Third Charge

Staff alleges that Respondent violated 22 TAC § 153.8(b) and 153.20(a)(2), (4), (16), (17), and (18) by conducting commercial real estate appraisal activity for the subject property, even though he was only a certified residential real estate appraiser, and lacks the appropriate credential level to perform such work, thereby misusing his residential certification, misrepresenting his legal authority to do such work to his clients, and engaging in appraisal activity outside the scope of practice permitted by his residential certification.

Respondent's testimony was that he was not aware that he could not legally perform the appraisal with his certificate, that he had the experience to conduct the appraisal, and that he performed a good summary appraisal. There is no question that Respondent violated 22 TAC §§ 153.8(b) and 153.20(a)(2) and (18) because he was not certified to appraise commercial properties under his certification. In addition, even though he never held himself out as a certified general real estate appraiser, he did act as one in violation of 22 TAC §§ 153.20(a)(4) and (17).

Respondent admitted that his website did advertise that he could perform commercial real estate appraisals. However, his testimony was that he did not know he couldn't do so until it was brought to his attention as part of this investigation, at which time he changed it. As a result he did not knowingly engage in false or misleading advertising in violation of 22 TAC § 153.20(a)(16).

Staff has recommended revocation of Respondent's certification and the imposition of an administrative penalty in the amount of \$5,000, or, in the alternative, the imposition of an administrative penalty, the requiring of remedial education or mentorship, and/or suspension or

probated revocation of Petitioner's certification. Respondent states that the appropriate sanction for a first-time violation such as this would be a warning.

Although it is true that this appraisal represents only a single one of the many appraisals performed by Respondent, it does show that he has not kept abreast of the Board rules and regulations regarding certification, and was negligent in his record keeping and discussion of the analyses used in reaching his opinion of value. Accordingly, based on the specific violations and pursuant to the range set forth in the second tier of first-time violations in the Board's penalty matrix, Respondent should be issued a first-time violator letter with agreement to take remedial course work specifically regarding record keeping and jurisprudence. In addition, an administrative penalty in the amount of \$4,000 should be imposed on Respondent, based on the eight proven violations at \$500 for each violation.

III. FINDINGS OF FACT

1. Terry Ottis McDaniel (Respondent) holds a certificate as a state certified residential real property appraiser issued by the Texas Appraiser Licensing and Certification Board (Board).
2. On September 4, 2012, staff of the Board (Staff) sent a First Amended Statement of Charges to Respondent proposing revocation of the license referred to in Finding of Fact No. 1.
3. On June 7, 2012, a notice of hearing was mailed 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 was held on September 24, 2012, before Administrative Law Judge (ALJ) Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. All parties appeared and participated in the hearing.
6. On November 17, 2009, Respondent issued a limited summary appraisal report (Report) for the commercial property, the Red Mesa Grill, consisting of a single-story brick building 3,254 square feet (sq. ft.) in size, located on a 32,844.24 sq. ft. lot at 2401 Gregg St., Big Spring, Texas. The report was prepared for Keith D. McGuire, III's attorney to

determine the value of the property in a divorce proceeding. The appraised market value was shown in the report as being \$325,000 based on the use of the comparable sales method.

7. Respondent's Report and workfile adequately identified and reported the site description except for the inclusion of a flood map of the area.
8. Respondent's Report summarized whether the subject property's use was permitted by zoning regulations and was not required to state whether the property was leased or owner-occupied because its intended user was the owner who occupied the site.
9. Respondent's Report and workfile failed to develop and report his analysis and reasoning behind his determination of the property's highest and best use, specifically regarding the financial feasibility and maximally productive test analyses.
10. Respondent's Report and workfile failed to use an appropriate technique to develop a site value determination and did not provide supporting documentation or data for his determination, specifically by failing to supply the documentation for the single sale he relied upon for his appraised land value.
11. Respondent's Report and workfile failed to reconcile the quality and quantity of the data used in the sales comparison approach, specifically by failing to contain any indications of what adjustments were made to comparable sales to reach the value, or to show that the comparable sales were verified.
12. Respondent's Report and workfile failed to reconcile the quality and quantity of the data used in the sales comparison approach, specifically by using gross sales rather than adjusted sales in the sales comparison reconciliation.
13. Respondent's Report and workfile contained several substantial errors of omission by not providing sufficient support for the methods and techniques used, which errors affected the credibility of the Report.
14. Respondent failed to maintain a workfile containing all data, information, and documentation necessary to support the opinions, analyses, and conclusions set forth in his Report.
15. Respondent failed to support his work with the relevant evidence and logic to obtain credible assignment results.
16. Respondent did not communicate his results in a misleading or fraudulent manner.
17. Respondent did not lack the skills, education, experience, training, and knowledge necessary to do commercial real estate appraisals.

18. Respondent was not a general certified real estate appraiser and was not permitted by law to conduct commercial real estate activities.
19. Respondent never held himself out as a certified general real estate appraiser, but he did act as one.
20. Respondent did not knowingly or willfully engage in false or misleading advertising, because at the time he was advertising on his website that he did commercial real estate appraisals, he was not aware that he could not do so under his certification.

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 ch. 2003.
3. Notice of the complaint and of the hearing on the merits was provided as required by the Administrative Procedure Act, Tex. Gov't Code §§ 2001.051 and 2001.052.
4. Petitioner had the burden of proving the case by a preponderance of the evidence pursuant to 1 Tex. Admin. Code (TAC) § 155.427.
5. Based on Finding of Fact No. 7, Respondent violated Uniform Standards of Professional Appraisal Practice (USPAP) Standards Rules 1-2(e)(i) and 2-2(b)(iii).
6. Based on Finding of Fact No. 8, Respondent did not violate USPAP Standards Rules 1-1(b), 1-4(d), 1-2(e)(iv), and 2-2(b)(viii).
7. Based on Finding of Fact No. 9, Respondent violated USPAP Standards Rule 2-2(b)(ix).
8. Based on Finding of Fact No. 10, Respondent violated USPAP Standards Rules 1-1(a) and 2-2(b)(viii).
9. Based on Finding of Fact No. 11, Respondent violated USPAP Standards Rules 1-1(a), 1-4(a), and 2-2(b)(viii).
10. Based on Finding of Fact No. 12, Respondent violated USPAP Standards Rules 1-6(a) and 2-2(b)(viii).
11. Based on Finding of Fact No. 13, Respondent violated USPAP Standards Rules 1-1(a), 1-1(b), 1-1(c), and 2-1(b).

12. Based on Findings of Fact Nos. 14 and 15, Respondent violated USPAP Ethics Rule-Record Keeping and Scope of Work.
13. Based on Findings of Fact Nos. 16 and 17, Respondent did not violate USPAP Ethics Rule-Conduct and Competency.
14. Based on Findings of Fact Nos. 18 and 19, Respondent violated 22 TAC §§ 153.8(b), 153.20(a)(2), (4), (9), (17) and (18).
15. Based on Finding of Fact No. 20, Respondent did not violate 22 TAC § 153.20(a)(16).

V. RECOMMENDATION

Respondent should be issued a first-time violator letter with agreement to take remedial course work, specifically regarding record keeping and jurisprudence. In addition, an administrative penalty in the amount of \$4,000 should be imposed on Respondent.

SIGNED December 5, 2012.



ROY G. SCUDDAY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

APPENDIX

- Ethics Rule-To promote and preserve the public trust inherent in professional appraisal practice, an appraiser must observe the highest standards of professional ethics.
- Conduct:
 - An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.
- Record Keeping
 - An appraiser must prepare a workfile for each appraisal, or appraisal review, or appraisal consulting assignment. The workfile must include:
 - the name of the client and the identity, by name or type, of any other intended users;
 - true copies of any written reports, documented on any type of media;
 - summaries of all oral reports or testimony, or a transcript of testimony, including the appraiser's signed and dated certification; and
 - all other 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.
- Competency:
 - Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently;
- Scope of Work:
 - The scope of work must include the research and analyses that are necessary to develop credible assignment results.
- Standards Rule 1-1-In developing a real property appraisal, an appraiser must:

- (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.
 - (b) not commit a substantial error of omission or commission that significantly affects an appraisal.
 - (c) not render 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 affect the credibility of those results.
- Standards Rule 1-2(e)- 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: (i) its location and physical, legal, and economic attributes; and (iv) any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature.
 - Standards Rule 1-3-When necessary for credible assignment results in developing a market value opinion, an appraiser must
 - (b) develop an opinion of the highest and best use of the real estate.
 - Standards Rule 1-4-In developing a real estate appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.
 - (a) When a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.
 - (b) When a cost approach is applicable, an appraiser must (i) develop an opinion of site value by an appropriate appraisal method or technique; (ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and (iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).
 - (d) When developing an opinion of the value of a leased fee estate or a leasehold estate, an appraiser must analyze the effect on value, if any, of the terms and conditions of the lease(s).
 - Standards Rule 1-6-In developing a real property appraisal, and appraiser must:
 - (a) Reconcile the quality and quantity of data available and analyzed within the approaches used; and
 - (b) reconcile the availability and relevance of the approaches,

methods, and techniques used to arrive at the value conclusion(s).

- Standards Rule 2-1- Each written or oral real property appraisal report must:
 - (a) clearly and accurately set forth the appraisal in a manner that will not be misleading;
 - (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly.

- Standards Rule 2-2-Each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report.
 - (b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum: . . .
 - (iii) describe information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment; . . .
 - (viii) describe the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained;
 - (ix) state the use of the real estate as of the date of value and the use of the real estate reflected in the appraisal; and, when an opinion of highest and best use was developed by the appraiser, describe the support and rationale for that opinion.