

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

CHRIS ANDRE MCNUTT
TX-1334380-R

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DOCKETED COMPLAINT NO.
07-011 & 07-129

FINAL ORDER

On this 16th day of October, 2009, the Board considered the above-noted matter.

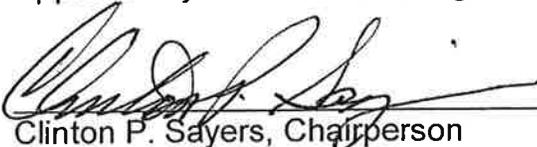
After proper notice was given, the above case was heard by an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH). The ALJ made and filed a proposal for decision containing findings of fact and conclusions of law. The proposal for decision was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record. No such exceptions or replies were filed.

The Texas Appraiser Licensing and Certification Board, after review and due consideration of the proposal for decision, attached as Exhibit A hereto, adopts the findings of fact and conclusions of law of the ALJ contained in the proposal for decision 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.

NOW, THEREFORE, IT IS ORDERED by the Texas Appraiser Licensing and Certification Board that the certification of Chris Andre McNutt in this matter is hereby **REVOKED**, effective twenty days after the date Chris Andre McNutt is notified of this Final Order. IT IS FURTHER ORDERED that Chris Andre McNutt shall not be entitled to apply for reinstatement in accordance with TEX.OCC.CODE §1103.522.

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

Approved by the Board and Signed this 16th day of October, 2009.



Clinton P. Sayers, Chairperson
Texas Appraiser Licensing and Certification Board

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 21, 2009

RECEIVED

AUG 24 2009

Texas Real Estate Commission

Loretta DeHay
Interim Administrator
Texas Appraiser Licensing and Certification Board
1101 Camino La Costa
Austin, Texas 78752

INTER-AGENCY

**RE: Docket No. 329-09-1925.ALC; Texas Appraiser Licensing and Certification Board
vs. Christopher Andre McNutt, TX-1334380-R**

Dear Ms. DeHay:

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, appearing to read "Renee M. Rusch".

Renee M. Rusch
Administrative Law Judge

RMR:nl
Enclosure
xc:

Ted Whitmer, Attorney, 4030 Highway 6 South, Ste. 325, College Station, TX 77845 - VIA REGULAR MAIL
Troy Beaulieu, 1101 Camino La Costa, Austin, TX 78752 - VIA-INTER-AGENCY

TEXAS APPRAISER LICENSING AND
CERTIFICATION BOARD,

Petitioner

V.

CHRISTOPHER ANDRE McNUTT,

Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

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SOAH DOCKET NO. 329-09-1925.ALC

TEXAS APPRAISER LICENSING AND
CERTIFICATION BOARD,
Petitioner

V.

CHRISTOPHER ANDRE McNUTT,
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BEFORE THE STATE OFFICE

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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 Christopher Andre McNutt (Respondent), 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's license be revoked.

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 June 29, 2009, before Administrative Law Judge (ALJ) Renee M. Rusch at the William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Staff was represented by its attorney Troy Beaulieu. Respondent appeared and was represented by attorney Ted Whitmer. The record closed on the same day.

II. DISCUSSION

A. Overview of the Allegations and the Parties' Positions

This case arose from complaints filed by consumers in connection with appraisal reports Respondent prepared for two properties: (1) proposed construction of a duplex at 1924 Belzise Terrace, Fort Worth, Texas (the Belzise property) and (2) a single family residential property located at 5917 Reiger Avenue, Dallas, Texas (the Reiger property).

Staff's Original Statement of Charges consists of two overarching charges: In its first charge, Staff alleges Respondent violated TEX. OCC. CODE ANN. (Code) § 1103.405 and 22 TEX. ADMIN. CODE (TAC) §§ 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.¹ In its second charge, Staff alleges Respondent violated 22 TAC § 153.20(a)(9) by making material misrepresentations and omissions of material facts in both appraisals. According to Staff, Respondent's conduct was more egregious than mere negligence. Staff contends Respondent deliberately appraised the Belzise and Reiger properties so as to achieve results that were predetermined, inflated, and misleading.

Respondent admits that there were "deficiencies" in the appraisal reports that could cause one to conclude that the reports were "unreliable."² But he but denies predetermining or inflating the value of the properties or engaging in any deliberate wrongdoing. At the time he prepared the appraisal reports, Respondent notes, he had had his residential certification for only two months. Respondent seeks an opportunity to take remedial education courses in real estate appraisal.³

¹ 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.

² Respondent's Original Answer to Charges at Para. 8.

³ Original Answer to Statement of Charges at Para. 14.

Respondent's certification expired on December 31, 2008. Under the Board's statutory scheme, in these circumstances, the Board may revoke Respondent's certification and/or deny him the right to reinstate his expired license prospectively.⁴ Staff seeks revocation, a recommendation that Respondent should be precluded from ever applying for reinstatement of his certification under Code § 1103.522,⁵ and the imposition of a \$5,000 administrative penalty.⁶

Staff offered the appraisal reports at issue, Respondent's work files, 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. Respondent testified on his own behalf and offered documentary evidence into the record.

B. Backgrounds and Qualifications of Respondent and the Board's Expert Witness

1. Respondent's Background and Qualifications

Respondent was first certified as a residential real estate appraiser on December 1, 2004. He allowed his certification to expire on December 31, 2008, because of the poor state of the real estate market. During the time period when his appraiser certification was in effect, Respondent performed appraisals in the Dallas - Fort Worth area. He did business as a sole proprietor and performed appraisals primarily for mortgage finance companies.

⁴ Pursuant to the Board's rules, an appraiser who does not timely renew a certification may, within one year of the expiration of his certification, apply to renew his certification, without having to again take the certification examination required of new applicants. 22 TEX. ADMIN. CODE (TAC) § 153.17(a)(3).

⁵ Code § 1103.522 permits a person whose certificate has been suspended or revoked to apply for reinstatement and sets forth time frames for applying for reinstatement.

⁶ The Board's current sanctions rule is found at 22 TAC § 153.24(h).

Before obtaining his appraiser certification, Respondent took courses in proper appraisal methods and appropriate methodologies for determining market value. He passed a certification examination and worked under the sponsorship of a certified appraiser for 2,500 hours. This was a multi-year process during which Respondent, at various times, worked under the sponsorship of two different appraisers, Robinson Wilson and Ronald Wayne. Before becoming an appraiser, Respondent worked on and off as a real estate agent in the Dallas – Fort Worth area. He had not yet taken any continuing education courses in appraisal methods at the time he performed the appraisals of the Belzise and Reiger properties.

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 35 years. He has a degree from Southern Methodist University and has sold real estate in the Fort Worth area. He has performed between 700 and 800 appraisals. He is currently employed as an appraiser investigator with the Board. He has testified on behalf of the Board in approximately a half dozen SOAH hearings; he has also testified in mortgage fraud cases in Texas state courts and the U.S. District Court for the Northern District of Texas.

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 consumer complaints that had been filed and Respondent's responses to Staff inquiries; reviewed Respondent's appraisal reports and work files; 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.

C. 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 "brackets sales" for characteristics such as 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.

Respondent testified that he would always place the greatest emphasis on comparable sales in performing appraisals, although he also used the other approaches. He testified, too, that he knows the least about the cost approach and attached the least weight to it in performing the appraisals at issue.

D. Analysis of the Allegations, Applicable Law and USPAP Standards, and Evidence

1. The Belzise Property

Respondent issued his appraisal report for the Belzise property on February 23, 2005, effective that date. Therefore, he was required to comply with the USPAP Standards effective January 1, 2005.⁷

The Belzise property consisted of a corner lot and proposed construction of a two-family duplex that was planned to comprise a total of 1992 square feet, with each unit having three bedrooms, one bathroom, and open, on-site parking. The site was one of 28 in-fill sites on which duplexes were to be built and marketed to out-of-state investors.⁸ On the Request for Appraisal form, Respondent's customer, Allegiance Mortgage, estimated the value of the property to be \$140,000, and indicated that the buyer/loan applicant, Sharon Foxworthy of Littleton, Colorado, was seeking a \$126,000 loan to finance the purchase. Respondent appraised the Belzise property at \$143,000 by the sales comparison approach. He was paid \$450 for performing the appraisal.⁹ Respondent testified that he performed other appraisals, besides the Belzise appraisal, for Alliance Mortgage, but he did not specify the number.

⁷ 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.

⁸ Ex. P7 at p. 351.

⁹ Ex. P5, Answer to Interrogatory No. 5.

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.

Respondent testified that he based his appraisal report on assumptions he made based on information he had been given about the planned construction. He contended that his February 23, 2005, appraisal report concerned only proposed improvements to be built on the site, and thus, his report was "meanless" [sic], *i.e.*, meaningless, until another appraiser performed a final inspection of the property after the improvements were completed.¹⁰ 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.

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

First Charge Allegation a: Respondent violated the USPAP Ethics Rule by communicating assignment results in a misleading and fraudulent manner.

USPAP Standard: The USPAP Ethics Rule pertaining to conduct provides in relevant part, "An appraiser must not accept an assignment that includes the reporting of predetermined opinions or conclusions."

Evidence: In Mr. McComb's opinion, Respondent produced a fraudulent, inflated appraisal report. Respondent's work file indicates he searched MLS data by price for multi-family properties with

¹⁰ Ex. P4 at pp. 133-134.

sales prices between \$125,000 and \$165,000 and comprising 2,500 or fewer square feet.¹¹ In its Request for Appraisal, Alliance Mortgage indicated that the amount of the loan being sought was \$126,000, and the estimated value of the Belzise property was \$140,000. Noting that \$126,000 is 90 percent of \$140,000, Mr. McComb expressed concern that Respondent bracketed the price in his search so as to enable a 90 percent loan loan-to-value loan to close. Mr. McComb concluded that Respondent had predetermined the value of the Belzise property to be within the \$125,000 - \$165,000, price range.

Respondent admitted that his search would not have identified properties that sold for less than \$125,000, but he denied that he bracketed his search as he did because he had predetermined the value of the property based on the information in Alliance Mortgage's Request for Appraisal. According to Respondent, if he had wanted to inflate the appraised value of the Belzise property, it would have made more sense to use \$140,000 as the bottom sales price in his search. He stated that he narrowed his MLS search in the manner he did so as not to produce results from the entire Fort Worth area and include ramshackle properties that would not have been comparable to new construction. Respondent stated that the MLS search contained in his work file was not the only search he performed, but, instead, the "last run" he performed after narrowing the search. He did not provide any information about prior searches he performed.

When Staff asked Respondent for his understanding of the term "loan-to-value ratio," he answered that he had heard the term but did not know what it means. Respondent introduced into the record a document reflecting the Tarrant County Appraisal District's five-year appraisal history, 2004 to 2009, of the Belzise property, which indicates that the site was appraised at \$1,500 in each of those years. The improvements were appraised at zero in 2004 and 2005, at \$113,500 in 2006, \$99,700 in 2007, and \$122,600 in 2008.¹²

¹¹ Ex. P4 at pp. 142-144.

¹² Ex. R2.

Analysis: Although Respondent testified that he ran other MLS searches besides the \$125,000 - \$165,000 search, that is the only search contained in his work file. The printout of the MLS screens identifies this search as Respondent's "initial search"¹³ The ALJ does not find credible his testimony that he has worked as both a real estate agent and an appraiser, but he does not understand the meaning of the term "loan-to-value ratio." Because Respondent's testimony on this simple point was not credible, she finds it difficult to accept, without substantiating evidence, his testimony that he did not bracket his search as he did because he had predetermined his value conclusion for the Belzise property. The ALJ, finds, therefore, that the preponderant credible evidence establishes the violation.

Allegation b: Respondent violated the USPAP Ethics Rule by failing to maintain a work file as required by USPAP's recordkeeping provisions.

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

[A]n appraiser must prepare a work file for each appraisal, appraisal review, or appraisal consulting assignment. The work file 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.

Evidence: The documents Respondent submitted to the Board as his work file for the Belzise property were marked as Exhibit P4. Mr. McComb's primary concerns about Exhibit P4 were two: (1) the file does not include copies of Settlement Statements or other verification for comparable sales 1, 2, and 3 (which were private, non-market-driven sales transactions involving the same seller as the seller of the Belzise property), and (2) it does not include plans and specifications for the proposed improvements to be built on the site of the Belzise property.

Respondent provided conflicting testimony about his work file. During portions of his testimony, he offered no explanation for the absence of the Settlement Statements and plans and

¹³ Ex. P4 at pp. 143 and 144.

specifications from his work file, other than to say he did not know he needed to retain them in the work file. Respondent also testified, however, that he did not rely on anything in preparing his appraisal reports that he did not include in his work file.

Analysis: Although Respondent identified Exhibit P4 as his work file for the Belzise appraisal, the contents of that file did not comply with the requirements of the USPAP Ethics Rule regarding recordkeeping. Respondent's work file lacked the Settlement Statements or other verification to support his comparable Sales 1, 2, and 3, as well as plans and specifications for the proposed improvements to the property. The documents missing from Respondent's work file were necessary to support the opinions and conclusions stated in his appraisal report. The ALJ, finds, therefore, that Staff proved the violation.

Allegation c: Respondent violated USPAP Standards 1-2(f) and 2-2(b)(vii) by failing to provide a specific discussion of the scope of work of the Belzise assignment.

USPAP Standards: USPAP Standard 1-2(f) requires an appraiser, in developing a real property appraisal, to identify the scope of work necessary to complete the assignment. Standard 2-2(b)(vii) requires that an appraisal report summarize sufficient information to disclose to the client and any intended users of the appraisal the scope of work used to develop the appraisal.

Evidence: Although Staff included this allegation in its Original Statement of Charges, Mr. McComb, in his investigative report, concluded that Respondent did in fact meet the applicable USPAP Standards.¹⁴ In a Supplemental Addendum to his appraisal report, Respondent included a paragraph entitled "Scope of the Appraisal."¹⁵

Analysis: Staff did not prove the violation.

¹⁴ Ex. P7 (Preliminary Investigative Findings and Determination) at p. 356.

¹⁵ Ex. P1 at p. 338.

Allegation d: Respondent violated USPAP Standards 1-2(e)(i) and 2-2(b)(iii) by failing to identify and report the site description adequately, providing erroneous information about the neighborhood, and failing to disclose and describe that the property was located in a well-known high crime area.

USPAP Standards: 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.

Additionally, Respondent drew the ALJ's attention to USPAP Advisory Opinion 16, which provides in relevant part:

An appraiser must ensure that his or her appraisal . . . opinions and conclusions are impartial and objective and do not illegally discriminate or contribute to illegal discrimination through subjective or stereotypical assumptions. The use of terms or descriptive phrases in place of factual information in a report imposes particular obligations on an appraiser to ensure that the user properly understands the report and is not misled. An appraiser needs to have, and should report wherever possible and appropriate, factual information to support the use of terms or descriptive phrases that reflect a scale or rating of a market or property that affects value or marketability considerations.

Appraisers should exercise care that comments made in a report will not be perceived as illegally biased or discriminatory. Factual descriptions, rather than subjective phrases, allow the user of a report to draw his or her own conclusions. . . .

“[H]igh-crime area” is a subjective term that may be understood by the appraiser but may mislead the client. This term does not provide the

evidence that the appraiser used in making the observation. The appraiser may provide a specific reference that is factual and objective (e.g., one crime per 100 people or one crime per 1,000,000 people) but may still mislead the client. If the appraiser is to be competent with these types of statistics, the crime ratio should be correlated to the actions of the market in reflecting a valuation adjustment or other indication of property demand.¹⁶

Evidence: In his appraisal report, Respondent reported the sales price range of single family housing in the neighborhood as being between \$70,000 and \$200,000, with the predominant prices being in the \$130,000 to \$160,000 range. Mr. McComb believed this information was inaccurate. The MLS reflected that there were 49 single family sales in the neighborhood around the Belzise property in the prior year and that sale prices ranged from \$6,500 to \$75,000, with the predominant sales price being \$30,300. Respondent reported the age of neighborhood improvements as being between new and 70 years, with the predominant age being 30 to 40 years. However, the average age of the 49 reported sales in the previous year was 76 years. Mr. McComb acknowledged that new duplexes were being built in an area adjacent to the Belzise neighborhood, not in the immediate vicinity of the Belzise property, but he testified that none of those new duplexes had been sold.

In his appraisal report, Respondent also described the neighborhood as receiving “average to good market acceptance” and “no apparent and measurable evidence of adverse location factors which might adversely affect marketing or value.” Mr. McComb believed Respondent’s description of the neighbor was misleading to the users of the report. According to Mr. McComb, the immediate area surrounding the Belzise property was known in real estate and police circles as “the fish bowl,” a neighborhood that had long been troubled by gangs and drugs and was considered a “high-crime area.” (When the duplex was constructed, the builder did not install the kitchen appliances, mini-blinds, or anything else that could be removed, until just before someone moved in.)¹⁷ According to Mr. McComb, Respondent had a duty to report what he knew to be true, *i.e.*, that the property was located in an area with a crime rate that affected the value of the property. Mr. McComb

¹⁶ Ex. R1.

¹⁷ Ex. P7 at pp. 351 - 352.

acknowledged that fair housing laws prohibit an appraiser from using terms or phrases, in place of factual information, that are or might be perceived as discriminatory or biased. He testified, too, that he takes USPAP Advisory Opinion 16 seriously. Although he maintained that Respondent had a duty to disclose the effect of the area crime rate on the Belzise property's value, he did not offer any suggestions as to how Respondent might have worded such a disclosure, stating that that was within the discretion of the individual appraiser.

Respondent offered no evidence to rebut Mr. McComb's assertions that the Belzise property was located in a high-crime area, although he provided vague testimony to the effect that he was not very familiar with the area. He maintained that there is no requirement that an appraiser describe an area as a high-crime area; indeed, Advisory Opinion 16 and fair housing laws require that an appraiser take care in describing a neighborhood so as to avoid even the appearance of illegal discrimination.

Analysis: Through Mr. McComb's work product, Staff introduced evidence that sales prices in the neighborhood of the Belzise property were significantly lower than Respondent reported. Mr. McComb attributed this disparity, in part, to the Belzise property's being located in a so-called high-crime area. Respondent did not effectively rebut Mr. McComb's assertions. His defense consisted primarily of reliance on the admonitions contained in Advisory Opinion No. 16 that an appraiser may not illegally discriminate or contribute to illegal discrimination through subjective or stereotypical assumptions. He noted, too, that Mr. McComb himself did not propose language that he believed Respondent should have included in his appraisal report to legally communicate the effect of neighborhood crime on the Belzise property's value.

The ALJ finds that neighborhood sales prices Respondent included in his appraisal report were not supported by the objective data available to Respondent at the time he conducted the appraisal. Although Respondent did not have an obligation to use the term "high-crime area," he did have an obligation to accurately report factors that affected the property's value. Instead of doing so, Respondent made an affirmative statement to the contrary in that he reported that there was "no

apparent and measurable evidence of adverse location factors which might adversely affect marketing or value.” On the record presented, the ALJ finds that Staff proved the violations.

Allegation e: Respondent violated USPAP Standards 1-3(a) and 2-2(b)(ix) by failing to identify and analyze factors affecting marketability, such as market trends and economic supply and demand. Specifically, Respondent failed to disclose and describe that the Belzise property was located in a well known high crime area.

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

Evidence: In the section of the appraisal report entitled “Factors that affect the marketability of the properties in the neighborhood,” Respondent made only positive general comments about market acceptance and the neighborhood offering a wide range of choices of living styles. Respondent did not address negative factors of crime, gangs, and drugs in the neighborhood. Indeed, Respondent stated, “The subject neighborhood is in close proximity to shopping facilities, transportation, churches, schools, employment centers and support services. There is no apparent and measurable evidence of adverse location factors which might adversely affect marketing or value.”¹⁸ Much of the evidence provided concerning allegation 1.d applies to this allegation too.

Analysis: The evidence does not support Respondent’s representation in the appraisal report that there was no apparent and measurable evidence of location factors that might adversely affect marketing or value. Not only did Respondent fail to report any negative factors whatsoever, but he

¹⁸ Ex. P1 at p. 31.

expressly reported that there was no apparent and measurable evidence of adverse location factors. For the same reasons as are discussed in connection with allegation 1.e, the ALJ finds Staff proved the violations.

Allegation f: Respondent violated USPAP Standards 1-3(b) and 2-2(b)(x) by failing to include in his appraisal report a brief summary of his rationale for determining the property's highest and best use.

USPAP Standards: 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)(x) 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.

Evidence: In an addendum to the appraisal report entitled "Scope of the Appraisal." Respondent stated that he analyzed the highest and best use of the Belzise property.¹⁹ However, the appraisal report does not include Respondent's analysis or conclusions as to the property's highest and best use. Respondent testified that he has not seen other appraisers do anything different when appraising single family residences.

Analysis: Because the Belzise property was a duplex, not a single family residence, its highest and best use was not necessarily obvious. However, no evidence was presented indicating that Respondent actually analyzed the highest and best use of the Belzise property and included his analysis in his appraisal report. Thus, the ALJ finds that Staff proved the violations.

Allegation g: Respondent violated USPAP Standards 1-4(b)(i) and 2-2(b)(ix) by failing to use an appropriate method or technique to develop a site value determination and did not provide support

¹⁹ Ex. P1 at p. 338.

for his determination. The market data available to Respondent at the time did not support his site value determination of \$25,000.²⁰

USPAP Standards: USPAP Standard 1-4(b)(i) requires that, when a cost approach is applicable, an appraiser must develop an opinion of site value by an appropriate appraisal method or technique. USPAP Standard 2-2(b)(ix) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Evidence: In his appraisal report, Respondent stated the market value of the Belzise site to be \$15,000 by the cost approach and that this figure was based on his consideration of land sales in the area.²¹ In his testimony, Respondent admitted that he did not actually do this, but instead, used a “canned statement” that he found on the computer. He testified that he not believe there had been any land sales in the immediate area, and that he came up with his estimate of site value by working backwards from the valuation figure he obtained using the comparable sales approach.

Mr. McComb testified that Respondent’s method of “backing into” his estimate of site value was not appropriate appraisal method or technique. Instead, Respondent should have researched the actual value of the site, for example, by researching prior site sales in the area. When Mr. McComb conducted an MLS search, he found that the site had previously been listed as part of a package of 28 lots that was listed for \$60,000, and that the Belzise site sold for \$2,000 on April 16, 2003. The MLS reflected four other residential site sales in the area in the year preceding the effective date of Respondent’s appraisal report. Sales prices ranged from \$1,600 to \$4,000. One site, located in the same subdivision as the Belzise property, sold for \$3,000.²² Based on the MLS information, Mr. McComb concluded that Respondent’s valuation of the Belzise site at \$15,000 was not

²⁰ This figure appears to be a typographical error in the Original Statement of Charges, as the site value determination contained in Respondent’s appraisal report is \$15,000.

²¹ Ex. P1 at p. 332.

²² Ex. P7 at p. 359.

reasonable. Respondent's use of a site value of \$15,000, instead of \$3,000, led to an inflated appraisal value.

Analysis: The preponderant evidence establishes the violations.

Allegation h: Respondent violated USPAP Standards 1-4(b)(ii) and 2-2(b)(ix) by failing to provide support for his determination of the cost new of improvements and failing to employ recognized methods and techniques. Respondent did not properly collect, verify, analyze, and recognize data that revealed a lower cost per square foot than Respondent used in his appraisal report.

USPAP Standards: USPAP Standard 1-4(b)(ii) requires that, when a cost approach is applicable, an appraiser must analyze such comparable cost data as are available to estimate the cost new of the improvements. USPAP Standard 2-2(b)(ix) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Evidence: Respondent admitted that he did not do a good job of appraising the Belzise property using the cost approach, but he testified that his calculations using the cost approach did not affect his final opinion of the value of the property.

Analysis: Respondent's admission established the violations.

Allegation i: Respondent violated USPAP Standards 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. Respondent misrepresented the distance between the Belzise property and the sales he used as comparables. The first three comparables Respondent used were located in different, distinct neighborhoods that were superior to the Belzise property area. Respondent used inappropriate sales as comparables even though similar,

more appropriate sales were readily available in the immediate area and should have been used and would have resulted in a significantly lower value conclusion. Respondent did not disclose, analyze, and account for the Belzise property's "crime ridden location."

USPAP Standards: USPAP Standard 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 USPAP Standard 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. And USPAP Standard 2-2(b)(viii) provides that a appraisal report must be consistent with the intended use of the appraisal and, at a minimum, clearly and conspicuously state all extraordinary assumptions and hypothetical conditions and state that their use might have affected the assignment results.

Evidence: In his appraisal report, Respondent presented five sales as comparables and reported that they were located 2.41, 1.43, 2.83, 2.83, and 2.83 miles, respectively, from the Belzise property. According to Mr. McComb, MapQuest reflected the same properties as being 2.62, 5.05, 4.62, 5.08, and 4.20 miles, respectively, from the Belzise property. Ex. R5, prepared by Respondent's attorney, reflected still different distances for comparables 1, 2, and 3. Respondent testified that the differences were not significant and did not affect the value of the property.

Respondent testified that he chose comparables 1, 2, and 3 because they represented new construction, and there was no new construction close to the Belzise property. Mr. McComb noted that Respondent's comparables 1, 2, and 3 were unpublished sales. In the appraisal report, Respondent represented that he had confirmed the sales of comparables 1, 2, and 3 by "settlement statements," but Respondent did not include those statements in his work file.

Mr. McComb determined, by searching the records of the Tarrant Appraisal District, that the entity named in Respondent's appraisal report as the seller of the Belzise property, Something Old Something New, was also the seller of comparables 2 and 3. According to Mr. McComb, that fact

indicates the seller had undue influence over the substance of Respondent's appraisal report. Moreover, Respondent's comparables 1, 2, and 3 were on the market zero days, which indicates that the sales did not reflect market-driven, arms' length transactions, and thus, did not meet the requirement that comparables reflect market sales. Although Respondent's comparables 4 and 5 were sales published on the MLS, both were located within several blocks of the Texas Christian University (TCU) campus. According to Mr. McComb, the area around TCU is a superior area, both in terms of sale prices and rental income, and thus, not comparable to the neighborhood surrounding the Belzise property.

In Mr. McComb's opinion, Respondent failed to correctly employ recognized methods and techniques that appraisers use to produce credible appraisal reports in that he ignored the market data in the neighborhood and used non-market transactions from a source that had influence over the sales data and the anticipated transaction. He also used two comparables from superior neighborhoods without making proper adjustments.

When Mr. McComb researched sales of rental properties in the neighborhood of the Belzise property that had occurred in the two years prior to the Belzise appraisal, he found three sales for properties ranging between 1,344 square feet and 3,672 square feet with sales prices between \$30,000 and \$40,000. Before the hearing, Mr. McComb provided Respondent with the addresses of these comparables, which he considered to be "better" comparables than those Respondent used.²³ On cross-examination, Mr. McComb admitted that two of his "better" comparable sales were duplexes constructed in 1925 and 1926, respectively, and the third was a four-plex built in 1930, whereas the Belzise appraisal was for proposed new construction; thus, Mr. McComb's comparables were not truly "comparable" to the Belzise property in some significant ways. Nonetheless, Mr. McComb believed that Respondent should, at a minimum, have taken them into consideration in projecting the income stream from the Belzise property. Moreover, he maintained that Respondent's reliance on comparables 1, 2, and 3 was inappropriate, as two of the comparables involved the same

²³ Ex. R4.

seller as the Belzise property and none of the three reflected arms' length transactions or market forces. Respondent's comparable sales 4 and 5 were both located in a "better" area and within walking distance of the TCU campus, whereas the Belzise property was "nowhere near" the TCU campus.

Analysis: Staff did not establish that the various distances between which Respondent's comparables and the Belzise property, in and of themselves, caused Respondent's comparables to be inappropriate or misleading. However, the preponderant evidence shows that Respondent's comparables 1, 2, and 3 did not represent arms' length, market-driven transactions, and comparables 4 and 5 were located in distinct, superior neighborhoods within walking distance of the TCU campus. (See discussions of allegations 1.d and 1.e for a discussion of the effect of the crime rate in the Belzise neighborhood.)

On this record, the ALJ concludes that Staff proved the violations.

Allegation j: Respondent violated USPAP Standards 1-4(c)(iv) and 2-2(b)(ix) by failing to base his projections of future rent and expenses on reasonable, clear, and appropriate evidence. Respondent used an incorrect vacancy rate that was not supported by the market data, and he failed to include taxes and insurance costs in his expense projections, which would have significantly lowered the Belzise property's net operating income.

USPAP Standards: USPAP Standard 1-4(c)(iv) provides that when an income approach is applicable, an appraiser must base projections of future rent and/or income potential and expenses on reasonably clear and appropriate evidence. USPAP Standard 2-2(b)(ix) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Evidence: In Mr. McComb's opinion, Respondent did not base projections of future rent and expenses on reasonable, clear, and appropriate evidence. The rental comparables Respondent used

were located between 3.28 and 8.77 miles from the Belzise property. Respondent did not analyze operating statements from comparable properties. Respondent reported the vacancy rate in the area of the Belzise property as being three percent, projected annual expenses of \$750, and annual net operating income of \$17,002.²⁴ The MLS, however, reported three rental contracts in the area of the Belzise property. These rental properties were on the market 45, 68, and 98 days, respectively, leading Mr. McComb to calculate a vacancy rate of 19 percent. Respondent's expense projections did not include annual property taxes and insurance. Based on available data, Mr. McComb estimated annual property taxes at \$3,065 and insurance at \$750. Thus, by Mr. McComb's calculations, annual net operating income would be \$6,083, instead of \$17,002, as Respondent indicated in his appraisal report.

Respondent admitted that he violated USPAP standards in performing his income approach analysis. His work file reflects that he searched MLS lease listings search for properties that were listed for \$600 or more per month.²⁵ Respondent admitted that this search would not have identified any properties similar to the Belzise property that were listed for less than \$600 per month.

Analysis: Respondent did not identify the bases on which he determined the vacancy rate or projected annual expenses. He projected annual net operating income by searching MLS lease listings for properties that were listed for \$600 or more per month. Respondent acknowledged, in general terms, that that he violated USPAP standards in performing his income approach analysis, but did not explain why he did what he did. The ALJ does not believe that, if Respondent had made any effort whatsoever to comply with the applicable USPAP standards, he could reasonably have believed that property taxes and insurance on the Belzise property, which he appraised as having a market value of \$143,000, would total only \$750, as he reported. In contrast, the evidence Staff presented regarding vacancy rate, projected expenses, and projected net annual income was credible. The ALJ finds that Staff proved the violations.

²⁴ Ex. P1 at pp. 144 – 146.

²⁵ Ex. P4 at pp. 145-146.

Allegation k: Respondent violated USPAP Standards 1-5(b) and 2-2(b)(vii) by failing to analyze a prior sale of the Belzise property that should have been reported and analyzed.

USPAP Standards: USPAP Standard 1-5(b) provides that an appraiser, in developing a real property appraisal when the value opinion to be developed is market value, must analyze all sales of the subject property that occurred within the three years prior to the effective date of the appraisal. USPAP Standard 2-2(b)(vii) provides that the content of an appraisal report must be consistent with the intended use of the appraisal and, at a minimum, summarize sufficient information to disclose to the client and any intended users of the appraisal the scope of work used to develop the appraisal.

Evidence: Respondent did not include in his appraisal report the site sale of the Belzise property for \$2,000, which occurred on April 16, 2003, i.e., within three years of the effective date of his appraisal. Respondent testified that he had understood, based on statements from one of his sponsors, Ronald Wayne, that it was "ok" for him not to disclose the prior sales, on the theory that the underwriter either already had that information or had access to it.

Mr. McComb rejected Respondent's contention that it was "ok" for him not to disclose certain information, such as the prior sale price, on the theory that the underwriter already had the information or had access to it. According to Mr. McComb, most underwriters do not have access to MLS data. Moreover, the reason underwriters hire appraisers is so that they will not have to research the value of potential collateral themselves.

Analysis: Standard 1-5(b) expressly requires that an appraiser analyze all sales of the subject property that occurred within the three years prior to the effective date of the appraisal; however, Respondent failed to disclose and analyze the 2003 sale of the Belzise site for \$2,000. Thus, Staff proved the violation of Standard 1-5(b). Staff did not, however, offer evidence as to how Respondent's failure in this regard constituted a violation of Standard 2-2(b)(vii), which relates to the appraiser's scope of work.

Allegation 1: Respondent violated USPAP Standards 1-1(a), 1-1(b), 1-1(c), and 2-1(a) in that he produced a misleading appraisal report for the Belzise property that contained several substantial errors of omission or commission. Because he did not use correct methods and techniques, Respondent produced an inflated appraisal report that was not credible or reliable.

USPAP Standards: USPAP Standard 1-1(a) provides that, in a developing a real property appraisal, an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal. USPAP Standard 1-1(b) provides that an appraiser must not commit a substantial error of omission or commission that significantly affects and appraisal. USPAP Standard 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. USPAP Standard 2-1(a) requires each appraisal report must clearly and accurately set forth the appraisal in a manner that is not misleading.

Evidence: Mr. McComb believes that Respondent was aware of and understood recognized methods and techniques for performing a credible appraisal, but that he failed to correctly employ them. By using three non-market sales, using two market sales from a significantly superior area, and failing to use similar market data from the immediate area, though such data were available, Respondent inflated his value opinion, thereby creating a report that was not credible.

In Mr. McComb's opinion, Respondent made substantial errors by not properly analyzing the neighborhood dynamics or addressing their effect on the market in the area. He believes Respondent failed to comply with the USPAP requirement that appraisal services not be rendered in a careless or negligent manner, in that Respondent made many careless errors, for example, he used sales from significantly superior neighborhoods, did not adjust for differences in site values, and did not properly develop the cost and income approaches to value. It was negligent for Respondent to render an opinion of value based on dissimilar data from superior locations and to ignore data that would have indicated a more accurate value opinion.

In Mr. McComb's view, the following facts are "red flags" that suggest to him that Respondent was not only negligent and careless, but that Respondent had predetermined an inflated value for the Belzise property: Respondent searched the MLS for properties between \$125,000 and \$160,000; he used an inaccurate lot value (\$15,000 instead of \$3,000); he used unpublished, private sales data for three comparables and did not retain settlement documents reflecting the sales prices in his work file; he searched for rental income that may not have been representative of the market; and he did not retain plans and specifications for the proposed improvements in his work file. Mr. McComb concluded that Respondent purposefully inflated the appraised value, with the result that the users of the report did not receive useful data about the value of the collateral on which they could rely.

Mr. McComb also rejected Respondent's argument that he was paid so little for performing the Belzise appraisal (\$450), that one cannot reasonably infer that he purposefully inflated the appraisal. In Mr. McComb's opinion, the anticipation of future business from the same mortgage brokers would likely be a larger incentive than the actual appraisal fee.

Analysis: Based on the evidence presented and the analyses pertaining to the individual elements comprising the first charge, the ALJ finds that Staff proved the violations. The ALJ struggled with the issue of whether the preponderant evidence establishes that Respondent acted deliberately, as such a finding necessarily implicates integrity. Ultimately, however, the cumulative evidence leads to no other conclusion. Respondent offered no credible explanation for making so many material mistakes, all of which led to his forming an inflated value opinion.

Second Charge Allegation: Respondent violated 22 TAC § 153.20(a)(9) by making the following material misrepresentations and omissions of material fact in his appraisal of the Belzise property: he failed to disclose the property's high crime area location, failed to report a prior sale of the property, and failed to accurately report vacancy rates and operating expenses in his income approach analysis.

Legal Standard: 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.

Evidence: See sections II. D.1.d, e, i, j, and k above.

Analysis: Staff proved the violation, as discussed in sections II. D.1.d, e, i, j, and k above.

2. The Reiger Property

Respondent issued his appraisal report for the Rieger property on December 23, 2004, effective that date. Therefore, he was required to comply with the USPAP Standards effective January 1, 2004.

The Reiger property was a single family residence built in 1931 and reported to contain 2,657 square feet, comprising eight rooms, including four bedrooms and two bathrooms, plus a two-car garage. The improvements were located on a 7,500 square foot interior site. The appraisal was requested by Sunset Mortgage Company. Respondent appraised the Reiger property at \$360,000 in "as is" condition by the sales comparison approach.²⁶ He believes he was paid \$350 for performing the Reiger appraisal.²⁷

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

²⁶ Ex. P2 at p. 220.

²⁷ Ex. P5, Answer to Interrogatory No. 5.

First Charge Allegation a: Respondent violated the USPAP Ethics Rule by communicating assignment results in a misleading and fraudulent manner.

USPAP Standard: The USPAP Ethics Rule pertaining to conduct provides in relevant part, “An appraiser must not accept an assignment that includes the reporting of predetermined opinions or conclusions.”

Evidence: In the opinion of Staff’s expert witness, Mr. McComb, Respondent produced a misleading and fraudulent report. Because the documentation in Respondent’s work file reflects that Respondent searched MLS sales data by sales price between \$300,000 and \$425,000, Mr. McComb concluded that Respondent had predetermined the value of the Reiger property to be within that price range.

Respondent denied that he predetermined the value of the Reiger property. He explained that properties in the neighborhood of the Reiger property were “all over the place;” he searched for properties with sales prices between \$300,000 and \$425,000 in order to narrow down his search; otherwise, he “might have gotten 100 hits.” He testified that he did more research before narrowing his search criteria to the \$300,000 - \$425,000 sales price range, but he did not retain records of those searches in his work file, and he did not describe the other searches he performed. When Staff asked Respondent whether it was ever appropriate to search by price, Respondent answered that he did not know and may have made a mistake. He insisted, however, that sales price was not the only criteria by which he searched for comparable sales.

Respondent introduced into the record a document generated by the Dallas Central Appraisal District reflecting that, for 2004, the district determined the market value of the Reiger property to be \$221,180 (\$24,000 appraised value of site plus \$197,180 appraised value of improvements).²⁸

²⁸ Ex. R3.

Analysis: The printout of the MLS screens identifies the \$300,000 - \$425,000 search as Respondent's "initial search." This search would not have picked up the Reiger property, as it was listed on the MLS for \$234,900 at the time Respondent performed his appraisal. As discussed elsewhere in this Proposal for Decision, numerous aspects of Respondent's testimony were not credible. Thus, his testimony that he performed more research before narrowing his search to the \$300,000 - \$425,000 price range was not persuasive, as he provided no specifics, and there was nothing in his work file that supported his assertion. On the evidentiary record provided in this case, the ALJ finds that Staff proved the violation.

Allegation b: Respondent violated USPAP Standards 1-2(e)(i) and 2-2(b)(iii) by failing to identify and report the site description adequately and incorrectly reporting the property as having a concrete foundation.

USPAP Standards: 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 purpose and intended use of the appraisal, including its location and physical, legal, and economic attributes. USPAP 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.

Evidence: In his appraisal report, Respondent described the Reiger property as having a concrete foundation; however, four MLS listing sheets described the foundation as "pier and beam" and the records of the Dallas County Appraisal District describe the foundation as "posts." According to Mr. McComb, a foundation described as "posts" usually comprises cedar posts that serve as piers to support beams. Respondent testified that he personally visited the Reiger property in connection with his appraisal and observed that it had concrete piers and a crawl space, but no concrete slab.

Analysis: The ALJ could not determine, from the evidence presented, whether the term “concrete foundation” has an accepted definition in the construction industry and whether the concrete piers Respondent observed fit within that definition. Mr. McComb never inspected the foundation of the Reiger property; he based his opinion on information he found in MLS listing sheets and the records of the Dallas County Appraisal District. Respondent, however, actually visited the property and testified that the house was supported by concrete piers. Because the ALJ could not determine which party’s assertions were more credible, she finds that Staff did not prove the violation.

Allegation c: Respondent violated USPAP Standards 1-2(e)(iv) and 2-2(b)(ix) by not correctly reporting the specific zoning for the property.

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

Evidence: In the section of the appraisal report that calls for a property’s “specific zoning and classification,” Respondent reported “single family residential.”²⁹ Mr. McComb considered this to be a violation of USPAP Standards because Respondent did specify that the property was in an area zoned R-7.5, which means the area was zoned for single family residences on sites having a minimum size of 7,500 square feet. (The site of the Reiger property comprised 7,500 square feet.) Respondent acknowledged that he omitted the Reiger property’s specific zoning classification from his appraisal report, but he did not believe this omission was significant, as the Reiger property was a single family residence and the area was zoned for single family residences.

²⁹ Ex. P2 at p. 219.

Analysis: The evidence reflects that Respondent did not include the specific zoning classification of the property in his appraisal report; however, the violation appears to be *de minimis*, as Respondent reported that the neighborhood was zoned for single family residences. The ALJ appreciates the merit of Respondent's contention that no one was injured by the omission of information about the property's zoning, but she finds that Staff proved the violation.

Allegation d: Respondent violated USPAP Standards 1-3(a) and 2-2(b)(ix) by failing to identify and analyze factors affecting marketability, such as economic supply and demand and market trends. Specifically, he misrepresented the price range for single family houses in the Reiger property's neighborhood.

USPAP Standards: USPAP Standard 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. USPAP Standard 2-2(b)(ix) requires that any appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Evidence: Respondent represented that the sales prices of single family houses in the neighborhood ranged from \$100,000 to \$700,000, with the predominant sales price being between \$300,000 and \$400,000.³⁰ MLS records reviewed by Mr. McComb reflected 248 sales in the area in the year before the effective date of Respondent's appraisal report; sales prices ranged between \$7,000 and \$519,500, with the average being \$183,536.

Analysis: The preponderant evidence does not support the sales price range Respondent reported. The ALJ concludes, therefore, that Staff proved the violations.

³⁰ Ex. P2 at p. 219.

Allegation e: Respondent violated USPAP Standards 1-4(b)(i) and 2-2(b)(ix) by failing to use an appropriate method or technique to develop a site value determination and not providing support for his determination. The market value data available to Respondent at the time did not support his site value determination, and instead, indicated a lower value.

USPAP Standards: USPAP Standard 1-4(b)(i) requires that, when a cost approach is applicable, an appraiser must develop an opinion of site value by an appropriate appraisal method or technique. USPAP Standard 2-2(b)(ix) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Evidence: In the appraisal report, Respondent stated that he estimated the site value to be \$29,000 “from land prices based on land sold in the subject’s local market area.” However, neither the appraisal report nor Respondent’s work file contained evidence of any recent land sales. Nor did Respondent address this issue in his testimony.

Analysis: No evidence was presented as to how Respondent made his determination as to the value of the site, as neither Respondent’s documentation nor his testimony identified any land sales on which he based his \$29,000 estimate. On this record, the ALJ finds Staff proved the violations.

Allegation f: Respondent violated USPAP Standards 1-4(b)(ii) and 2-2(b)(ix) by failing to provide support for his determination of the cost new of the improvements, failing to employ recognized methods and techniques, and not properly collecting, verifying, analyzing, and reconciling data, that revealed a lower price per square foot than Respondent used in his appraisal report.

USPAP Standards: USPAP Standard 1-4(b)(ii) requires that, when a cost approach is applicable, an appraiser must analyze such comparable cost data as are available to estimate the cost new of the improvements. USPAP Standard 2-2(b)(ix) requires that an appraisal report summarize the

information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Evidence: In his appraisal report, Respondent reported that the improvements were of average quality construction, in average condition, and that their replacement cost was \$155 per square foot.³¹ However, in August 2004, the Marshall Valuation Service, considered to be an industry standard, indicated that the replacement cost for frame construction between average and good quality was between \$60.72 and \$84.27 per square foot. (Indeed, according to Mr. McComb, the Marshall Valuation Service replacement costs at that time did not go as high as \$155 per square foot, even for high-end construction, which the Reiger property was not.) In Mr. McComb's opinion, the Reiger property could have been reproduced for \$60 to \$85 per square foot in December 2004.

Respondent stated, in the appraisal report, that replacement costs he reported were abstracted from recent new construction sales and from data collected from builders, developers, and suppliers. However, neither the appraisal report nor Respondent's work file contain support for the figures he used. Respondent admitted that he did not provide support for the cost of improvements and that there were deficiencies in his calculations using the cost approach, but he maintained that, in making his value determination, he placed the greatest reliance on comparable sales.

Analysis: Staff's detailed evidence regarding replacement cost was more credible than the generalities Respondent included, without support, in the appraisal report. Accordingly, the ALJ finds Staff proved the violations.

Allegation g: Respondent violated USPAP Standards 1-4(b)(iii) and 2-2(b)(ix) by failing to provide support for his depreciation determinations.

³¹ Ex. P2 at pp. 219 – 220.

USPAP Standard: USPAP Standard 1-4(b)(iii) requires that, when a cost approach is applicable, an appraiser must analyze such comparable cost data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation). USPAP Standard 2-2(b)(ix) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Evidence: In the Reiger appraisal report, Respondent depreciated the improvements by \$201,220 and stated this figure was calculated by the age/life method and assumed a remaining economic life of 40 years. Staff criticized Respondent for not presenting data to support the depreciation figure he used. Mr. McNutt admitted, generally, making errors in the cost approach (of which the calculation of depreciation is a part), but he did not provide an explanation of his thought processes in determining depreciation.

Analysis: Staff did not present evidence as to the types of data it contends Respondent should have provided in addition to the statements contained in his appraisal report. Therefore, the ALJ finds that Staff did not establish the violation.

Allegation h: Respondent violated USPAP Standards 1-1(a), 1-4(a), and 2-2(b)(viii) by failing to collect, verify, analyze, and reconcile comparable sales data adequately and not employing recognized methods and techniques in his sales comparison approach. Respondent used inappropriate comparable sales that were superior in terms of characteristics such as gross living area, site value, condition, and other qualities, even though more appropriate, more similar sales were readily available in the area and should have been used, which would have resulted in a significantly lower value conclusion.

USPAP Standards: USPAP Standard 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 USPAP Standard 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. And USPAP Standard 2-2(b)(viii) provides that an appraisal report must be consistent with the intended use of the appraisal and, at a minimum, clearly and conspicuously state all extraordinary assumptions and hypothetical conditions and state that their use might have affected the assignment results.

Evidence: At the time Respondent performed the appraisal, the Reiger property was on the market, as a foreclosure, with a listing price of \$234,900. The property had been on the market for 146 days but not sold. The house had sold for \$185,000 in December 2002. The 2002 MLS listing for the property described it as an “original Glasgow home” in Junius Heights, with lots of charm, two bathrooms, a master upstairs bedroom with a large walk-in closet with two skylights, recent foundation work, “roof to be replaced shortly,” and needing “a little cosmetic work.”³² The house had wood siding.

Respondent included four comparable sales in his appraisal report. In Mr. McComb’s opinion, Respondent’s comparables were not truly comparable. According to Mr. McComb, Respondent used homes of superior quality and location as comparables, without making proper adjustments. One sale Respondent used as a comparable (comparable 1) was located in a historic district, where homes have high prices because they have been maintained or upgraded. The others were located in pockets of better quality homes or where properties that had been maintained or upgraded. Two of Respondent’s comparables were similar to the Reiger property in that they had wood siding, but two had brick veneer exteriors.

Although Respondent’s four comparables were .76, .76, .98, and .65 miles, respectively, from the Reiger property, none were on the east side of Abrams Road in the immediate neighborhood of the Reiger property. In 2004, the assessed value of the Reiger site was \$24,000, whereas the assessed value of the sites of comparables 1, 2, and 3 was \$125,000, and the assessed value of the site for comparable 4 was \$136,000. Notwithstanding these differences, Respondent made only

³² Ex. P8.

minimal adjustments to the site value of the Reiger property: For example, he adjusted the site value for comparable 3 (which comprised 15,000 square feet) by \$7,500 and comparable 4 (which comprised 11,560 square feet) by \$4,000.

The MLS listing described Respondent's comparable 1, located at 6009 Bryan Parkway, Dallas, as a Craftsman-style home in the Swiss Avenue historic district, carefully restored and improved with the addition of 21st century amenities, top-of-the-line appliances in an oversized kitchen, including double ovens, a sub-zero refrigerator, a gas cook top in an island, French brown hardwood floors, granite countertops, a tumbled marble backsplash, and a full-size picture window above sink with a view of patios and a garden. The MLS listing described comparable 2, located at 6089 Bryan Parkway, Dallas, as an updated, "gorgeous neo-classical home in historic neighborhood," with three bathrooms, a Viking gas range, sub-zero refrigerator, granite countertops, wood floors, plantation shutters, master suite with fireplace and walk-in closet, and recently replaced Lennox furnaces and air conditioning units. The MLS described comparable 3, located at 2603 Abrams Road, Dallas, as a "charming, classic brick and stone Tudor on fabulous double corner lot" with a beautiful, original stained glass window, an island kitchen with slate floor, gas cook top, a breakfast area/study off an owner's retreat, three bathrooms, an electric gate to large yard and garage, a separate play area, and a wood deck. And the MLS listing described comparable 4, located at 6159 La Vista, Dallas, as a "lovely old brick lady" located in a historic district, with three full bathrooms, enclosed porch with arches, two staircases, a garage with guest quarters, a new roof and needing TLC.³³

The improvements on the Reiger property comprised 2,657 square feet. Respondent's comparables 1, 2, 3, and 4 comprised 2,764, 2,642, 2,697, and 3,384 square feet of living area, respectively. Respondent adjusted differences in gross living area exceeding 50 square feet by \$20 per square foot.

³³ Ex. P3 at pp. 187 - 190.

In December 2004, Respondent appraised the Reiger property "as is." Although he made some adjustments to his valuation of the Reiger property to reflect some of the differences between the Reiger property and his comparables, Mr. McComb considered these adjustments to be inadequate. For example, although Respondent's comparable 4 needed some updating, it had a guest house that Respondent did not disclose in the appraisal report and for which he did not make an adjustment. Mr. McComb noted, too, that Respondent's comparable 4 was 27 percent larger and was located on a superior site. Respondent made only a \$4,060 adjustment for the superior site and an adjustment of \$15,100 for the 727 square feet more of living area.

The MLS reported 11 sales in the same area as the Reiger property located on less than one-half acre sites, with wood siding, built between 1910 and 1940, comprising between 2,200 and 3,000 square feet. These 11 sales averaged 2,516 square feet and sold for an average price of \$258,763. The five houses Mr. McComb considered to be most similar to the Reiger property averaged 2,621 square feet and sold for \$268,200. Mr. McComb considered it inappropriate that Respondent did not consider any of these houses in his appraisal of the Reiger property.

Mr. McComb testified that by failing to consider the most similar comparables and to make appropriate adjustments for obvious differences, Respondent failed to correctly use proven appraisal techniques. In Mr. McComb's opinion, it was unlikely that the market value of the Reiger property had doubled to \$360,000 since December 2002, when it sold for \$185,000.³⁴ Mr. McComb concluded Respondent acted deliberately, because Respondent selected the comparables he did, without making appropriate adjustments, and overlooked multiple sales that were more comparable.

Respondent was aware that he was appraising the Reiger property at a value significantly above the price at which it was listed, as Respondent wrote in the addendum to his appraisal report:

³⁴ Ex. P6.

The subject was sold in 08/2004 below market value. The conditions and terms were unavailable to the appraiser. The subject is listed in the MLS below tax value as well as market value. Since Texas is a non-disclosure state, a complete history is not always available in public records. The subject property sale price has increased in value due to the market and immediate neighborhood sale prices increase.³⁵

In his appraisal report, Respondent reported, in conclusory terms, that the comparables he used were in "acceptable proximity" to the Reiger property, that they were "considered the best comparables available," and that they represented recent sales of property that was similar to the Reiger property. He did not elaborate on those conclusions in his testimony, but argued that an appraiser uses judgment in selecting comparables and making value opinions.

Analysis: The preponderant evidence supports Mr. McComb's conclusions. The MLS listings for Respondent's comparables, contained in Respondent's work file, strongly suggest that the comparables Respondent used were superior to the Reiger property. Although the only evidence in the record about the sales Mr. McComb considered to be better comparables were contained in Mr. McComb's testimony and his investigative report, the ALJ found Mr. McComb to be a credible witness. She agrees with Mr. McComb's assessment that it was unlikely that the Reiger property, which was in foreclosure, had actually doubled in market value, from \$185,000 to \$360,000, between December 2002 and December 2004, and that an informed buyer would have been willing to pay \$360,000 for it at a time when it was listed for \$234,900. Accordingly, the ALJ finds that Staff proved the violations alleged.

Allegation i: Respondent violated USPAP Standards 1-5(a), 1-6(a) and (b), 2-2(b)(ix) by failing to report his analysis of the agreement of sale and failing to disclose that the Reiger property had been on the market for nearly six months at a price significantly lower than the value at which Respondent appraised it. Respondent failed to analyze, discuss, or reconcile this important market data in his appraisal report.

³⁵ Ex. P2 at p.225.

USPAP Standard: USPAP Standard 1-5(a) provides that, in developing a real property appraisal, when the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business, analyze all agreements of sale, options, or listings of the subject property current as of the effective date of the appraisal. 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)(ix) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Evidence: Respondent stated in the appraisal report that the property was listed on the MLS at below market value and was under contract at the time of the appraisal. He did not, however, disclose that the property had been on the market for 146 days at a price of \$234,900. Respondent testified that he did not know that USPAP standards required him to disclose and analyze current listing information. He claimed that his prior sponsor, Ronald Wayne, had told him it was "ok" not to include such information in an appraisal report, because the underwriter has access to the MLS and can ascertain that information for herself or himself. When asked why a buyer would pay \$360,000 for the Reiger property, at a time when it had been listed for \$234,900 for 146 days without selling, Respondent offered no explanation, other than to comment that he believed the listing price was below market value.

Analysis: The evidence shows that Respondent did not analyze and include in the appraisal report information that was available to him and required by the applicable USPAP standards. His testimony that he did not know he had a duty to do so was not credible in the circumstances presented here, namely, where the listing price of the property was approximately 65 percent of his valuation conclusion.

Allegation j: Respondent violated USPAP Standards 1-5(b), 1-6(a) and (b), and 2-2(b)(ix) by failing to disclose information he had about the purchase price of the property in a prior sale. This information was material to Respondent's appraisal report and should have been disclosed and analyzed in the report.

USPAP Standards: USPAP Standard 1-5(b) provides that, in developing a real property appraisal, when the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business, analyze all sales of the subject property that occurred within the three years prior to the effective date of the appraisal. USPAP Standard 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)(ix) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

Evidence: On December 30, 2002, the Reiger property sold for \$185,000.³⁶ The original listing price had been \$215,000, but the asking price had been reduced to \$199,000, before the property sold for \$185,000. The MLS listing described the house as needing some work.³⁷ Respondent admitted that he did not know whether the property had been updated since the December 2002 sale. Although Respondent acknowledged that past market reaction to a property is a good indicator of its value, he claimed that he "did not know to disclose" and analyze the prior sale in his appraisal report.

Analysis: Respondent failed to analyze and report information about the 2002 sale of the Reiger property, although USPAP Standards 1-5(a) and (b) and Standards 2-2b(ix) required that he do so.

³⁶ Ex. P3 at p. 197.

³⁷ Ex. P8.

Thus, the preponderant evidence establishes that Respondent violated these standards.³⁸

Allegation k: Respondent violated USPAP Standards 1-1(a); 1-1(b), 1-1(c), and 2-1(a) by producing a misleading appraisal report for the Reiger property that contained several substantial errors of omission or commission. Because he did not use correct methods and techniques, Respondent produced an inflated appraisal report that was not credible or reliable.

USPAP Standards: USPAP Standard 1-1(a) provides that, in a developing a real property appraisal, an appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal. USPAP Standard 1-1(b) provides that an appraiser must not commit a substantial error of omission or commission that significantly affects and appraisal. USPAP Standard 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. USPAP Standard 2-1(a) requires that an appraisal report must clearly and accurately set forth the appraisal in a manner that is not misleading.

Evidence: Mr. McComb believes Respondent understood how to perform a credible appraisal, but purposely did not analyze the most similar sales. Specifically, Mr. McComb believes Respondent violated USPAP Standard 1-1(b) by making substantial errors of omission and commission that seriously affected the appraisal; most importantly, Respondent failed to disclose the listing price history and the prior sales price; he failed to disclose significant differences between the Reiger property and the sales Respondent used as comparables; and he failed to adequately reconcile comparable sales data. He violated USPAP Standard. 1-1(c), relating to carelessness and negligence by an appraiser, by failing to comply with USPAP Standards in numerous ways, for example, by not

³⁸ Although Staff also alleged that Respondent violated USPAP Standards 1-6(a) and (b), it did not include in its Original Statement of Charges allegations that Respondent failed to reconcile and analyze the various approaches he used to arrive at his value conclusion. Therefore, the ALJ makes no findings regarding such violations.

including the Reiger property's zoning classification and supporting his estimate of site value. And he violated USPAP Standard 2-1(a) by deliberately preparing a misleading, inflated appraisal report.

Mr. McComb considered the following to be "red flags" or indicators that Respondent used market data improperly to deliberately inflate the appraised value of the Reiger property: he searched by sales price between \$300,000 and \$425,000 to identify better houses from which to select his comparables; he used comparables of superior quality and located in better neighborhoods without making proper adjustments; he failed to disclose the 2002 sale of the property and the fact that it was, at the time of the appraisal, listed for \$234,900.

Mr. McComb rejected Respondent's argument that he was paid so little for performing the Reiger appraisal (\$350), that one cannot reasonably infer that he deliberately inflated the appraisal. In Mr. McComb's opinion, the anticipation of future business from the same mortgage brokers would likely be a larger incentive than the actual appraisal fee.

Analysis: These allegations repeat, essentially, many of the allegations analyzed in detail in the preceding sections of this Proposal for Decision. For the reasons set forth above, the ALJ finds that Staff proved the violations.

Second Charge Allegation: Respondent violated 22 TAC § 153.20(a)(9) by making the following material misrepresentations and omissions of material fact in his appraisal of the Reiger property: not disclosing the prior listing price history and prior sales price, and not disclosing significant differences between the Reiger property and the sales Respondent used as comparables, especially with respect to differences in the sites, quality of construction, and gross living area.

Legal Standard: 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.

Evidence: This allegation pertains to the evidence presented in connection with allegations II.D.2.h, i, and j discussed above.

Analysis: For the reasons set forth in the analyses of allegations II.D.2.h, I, and j, the ALJ finds that Staff proved the violation.

E. Recommendation

Staff seeks revocation of Respondent's expired certification. While some of Respondent's violations are more important than others, the most serious violations are those regarding violations of the Ethics Rule, using inappropriate comparable sales even though more appropriate and more similar sales were readily available, searching for sales that would support a predetermined value, and producing purposefully inflated and misleading appraisal reports that contained substantial errors of both omission and commission that affected the appraisal reports. Although Respondent admitted making mistakes, he did not acknowledge that the effect of his mistakes in both appraisals was to increase the appraised values of the properties.

Although an appraiser's search criteria, selection of comparables, and value opinion all involve judgment, Respondent's choices and opinions were so far off the mark that Mr. McComb reasonably concluded that they must have been deliberate. The ALJ found Mr. McComb to be a credible witness, for example, he conceded that the comparables he considered to be "better" than Respondent's comparables for the proposed Belzise property were not truly comparable to proposed new construction in that they reflected properties that were 75-80 years old. In contrast, significant portions of Respondent's testimony were simply not believable. The ALJ cites here only three of many possible examples: (1) Respondent asserted that, although he has worked as both a real estate agent and appraiser, he does not know the meaning of the term "loan-to-value ratio;" (2) he testified that he did not know he should have disclosed the 2002 \$185,000 sale price and 2004 \$234,900 listing price of the Reiger property in his appraisal report; and (3) he insisted that he did not rely on anything that he did not include in his work files, yet he used as comparables 1, 2, and 3 in the

Belzise appraisal report unpublished transactions about which there is no information in his work file. The ALJ is concerned, too, that Respondent has not acknowledged the seriousness of his misconduct. If one is to believe Respondent's testimony, all of the deficiencies in his appraisal reports were honest mistakes due to his not knowing what the applicable USPAP standards required. On the record presented here, the ALJ concludes that Respondent's acts and omissions support the revocation of his appraiser certification.

Staff also seeks a recommendation that Respondent should not be entitled to apply for reinstatement of his certification pursuant to Code § 1103.522. Staff did not, however, provide evidence regarding the factors the Board generally takes into account in deciding whether an appraiser whose certification has been revoked should be permitted to apply for reinstatement at some point in the future. The ALJ does not have the information needed to make a recommendation to the Board as to whether Respondent should be permitted to apply for reinstatement if his certification is revoked. She notes, however, that Section 1103.522 does not provide for automatic reinstatement. Thus, if Respondent should ever apply for reinstatement, the Board will be in the best position to determine whether, at that point, he has the competencies, objectivity, and honesty necessary to deserve a second chance.

Finally, Staff asked the ALJ to recommend sanctions in the amount of \$5,000, based on the penalty matrix set forth at 22 TAC § 124.24(h). While the Board may have been authorized to impose administrative penalties in 2004 and 2005, when Respondent committed the violations, the penalty matrix to which Staff referred the ALJ became effective April 6, 2008. As Staff did not present any other evidence or legal support for the imposition of an administrative penalty, the ALJ does not recommend that an administrative penalty be assessed.

III. FINDINGS OF FACT

1. From December 1, 2004, through December 31, 2008, Christopher Andree McNutt (Respondent) held certification number TX-1334380-R issued by the Texas Appraiser Licensing and Certification Board (Board).
2. On January 5, 2009, 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.
3. On January 7, 2009, 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 June 29, 2009, at the State Office of Administrative Hearings, William P. Clements Office Building, 300 West 15th Street, Austin, Texas. Staff appeared through attorney Troy Beaulieu. Respondent and was represented by attorney Ted Whitmer. After the taking of evidence and argument, the record closed that day.
6. Before obtaining his appraiser certification, Respondent took courses in proper appraisal methods and appropriate methodologies for determining market value.
7. 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.
8. Appraisers use three primary approaches or methodologies to determine value: the sales comparison, income, and cost approaches.
9. Under the sales comparison approach, the appraiser "brackets sales" for characteristics such as 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.
10. Using the income approach, an appraiser determines the likely income stream and expenses associated with rental property.
11. 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 Belzise Property

12. Respondent issued an appraisal report for proposed construction of a duplex at 1924 Belzise Terrace, Fort Worth, Texas (the Belzise property) on February 23, 2005, effective that date.
13. The Belzise property consisted of a corner lot and proposed construction of a two-family duplex that was planned to comprise a total of 1992 square feet, with each unit having three bedrooms, one bathroom, and open, on-site parking. The site was one of 28 in-fill sites on which duplexes were to be built and marketed to out-of-state investors.
14. On the Request for Appraisal form for the Belzise property, Respondent's customer, Allegiance Mortgage, estimated the value of the property to be \$140,000, and indicated that the buyer/loan applicant, Sharon Foxworthy of Littleton, Colorado, was seeking a \$126,000 loan to finance the purchase.
15. Respondent appraised the Belzise property at \$143,000 by the sales comparison approach.
16. Respondent failed to employ appropriate and recognized methods and techniques in his sales comparison approach to valuation of the Belzise property.
17. In forming his value opinion of the Belzise property, Respondent searched Multiple Listing Service (MLS) data by price for multi-family properties with sales prices between \$125,000 and \$165,000.
18. Respondent did not retain in his work file information or documentation reflecting any prior MLS searches or other research he may have conducted.
19. Respondent used sales data from inappropriate comparables in his appraisal.
20. The sales Respondent used as comparables 1, 2, and 3 were private, unpublished sales that did not reflect arms' length, market-driven transactions.
21. The seller of the Belzise property, Something Old and Something New, was the seller of the properties Respondent used as comparables 2 and 3, and therefore, had undue influence over the substance of Respondent's appraisal.
22. Although Respondent stated, in the appraisal report, that he confirmed the sales prices of comparables 1, 2, and 3 by "settlement statements," no such statements or other verification of sales prices were included in his work file, although such documentation was necessary to support the opinions and conclusions stated in his appraisal report.

23. Respondent's comparables 4 and 5 for the Belzise property were both located within several blocks of Texas Christian University, a neighborhood that was superior, both in terms of sales prices and rental income, but Respondent failed to make appropriate adjustments in his sales comparison approach to reflect these differences.
24. Respondent's work file did not include plans and specifications for the proposed improvements to the property, although such documents were necessary to support the opinions and conclusions stated in his appraisal report.
25. Sales prices in the neighborhood of the Belzise property were significantly lower than Respondent reported in his appraisal report.
26. In his appraisal report, Respondent stated that the sales price range of single family housing in the neighborhood was between \$70,000 and \$200,000, with the predominant prices being in the \$130,000 to \$160,000 range, whereas, in the prior year, sales prices ranged from \$6,500 to \$75,000, with the predominant sales price being \$30,300.
27. Respondent reported the age of neighborhood improvements as being between new and 70 years, with the predominant age being 30 to 40 years, whereas the average age of the 49 reported sales in the previous year was 76 years.
28. The Belzise property was located in an area in which neighborhood dynamics, such as crime, had an adverse effect on marketing and value.
29. Respondent reported that the Belzise neighborhood had "average to good" market acceptance and that there were no apparent and measurable adverse location factors that might affect marketing or value.
30. Respondent failed to analyze neighborhood dynamics, such as crime, and address their effect on the market and property values.
31. Respondent failed to analyze the highest and best use of the Belzise property.
32. In April 2003, the Belzise site sold for \$2,000.
33. Respondent reported the market value of the Belzise site as being \$15,000 by the cost approach and represented that he obtained this figure by considering land sales in the area. In fact, the latter statement was a "canned statement" that Respondent found on the computer.
34. Respondent developed his estimate of site value by working backwards from the valuation figure he obtained using the comparable sales approach to value the property.

35. The Belzise site sold for \$2,000 in April 2003, and in the year before the appraisal, one site located in the same subdivision as the Belzise property sold for \$3,000. Sales prices of sites in the area, in the year before the effective date of the appraisal, ranged from \$1,600 to \$4,000.
36. Respondent's valuation of the Belzise site at \$15,000 was not reasonable; a more reasonable valuation would have been \$3,000.
37. Respondent failed to employ appropriate and recognized methods and techniques in his cost approach to valuation of the Belzise property.
38. In performing the income approach to value, Respondent searched for rental listings of \$600 and above.
39. The rental comparables Respondent selected were located between 3.28 and 8.77 miles from the Belzise property. Respondent did not analyze operating statements from comparable properties that were located closer to the Belzise property and were more representative of the market.
40. Respondent incorrectly reported the vacancy rate in the area of the Belzise property as being three percent, whereas the vacancy rate was approximately 19 percent.
41. Respondent projected annual expenses of \$750, a figure that failed to include taxes and insurance costs.
42. Respondent estimated annual net operating income of \$17,002, although a more reasonable estimate, which took into account the expense of property taxes and insurance premiums, would have been \$6,083.
43. Respondent failed to base his projections of future rent and expenses on reasonable, clear and appropriate evidence.
44. Respondent failed to employ appropriate and recognized methods and techniques in his income approach to valuation of the Belzise property.
45. Respondent deliberately inflated his value opinion of the Belzise property.
46. Respondent predetermined the value of the Belzise property to be between \$125,000 and \$165,000.
47. Because Respondent did not use appropriate and recognized methods and techniques in appraising the Belzise property, the appraisal report was not credible and reliable.
48. Respondent's appraisal report for the Belzise property was misleading and contained several substantial errors of omission or commission.

49. By failing to disclose the effect of adverse neighborhood dynamics, such as crime, on the value of the property, failing to report the prior sale of the site, and failing to accurately report vacancy rates and operating expenses in his income approach analysis, Respondent made material misrepresentations and omissions of material fact in his appraisal of the Belzise property.

Respondent's Appraisal of the Reiger Property

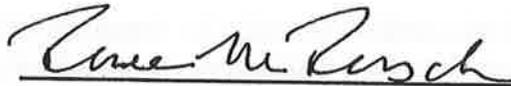
50. On December 23, 2004, Respondent issued an appraisal report for a single family residential property located at 5917 Reiger Avenue, Dallas, Texas (the Reiger property), effective that date.
51. The Reiger property was a single family residence reported to contain 2,657 square feet, comprising eight rooms, including four bedrooms and two bathrooms, plus a two-car garage. The improvements were located on a 7,500 square foot interior site.
52. The appraisal was requested by Sunset Mortgage Company.
53. Respondent appraised the Reiger property at \$360,000 in "as is" condition by the sales comparison approach.
54. In December 2002, the Reiger property sold for \$185,000.
55. Respondent failed to disclose and analyze in the appraisal report that the Reiger property had sold for \$185,000 in December 2002.
56. At the time Respondent performed the appraisal, the Reiger property was in foreclosure and was listed on the MLS for \$234,900. The property had been listed at that price for 146 days without selling.
57. Respondent failed to disclose and analyze in the appraisal report that the Reiger property had been on the market for 146 days at a price of \$234,900 without selling.
58. In forming his value opinion, Respondent searched the MLS sales data by sales price between \$300,000 and \$425,000.
59. Respondent did not retain in his work file information or documentation reflecting any prior MLS searches or other research he may have conducted.
60. Respondent misrepresented the price range for single family houses in the Reiger property's neighborhood. Respondent represented that the price range for single family houses in the neighborhood ranged from \$100,000 to \$700,000, with the predominant price being between \$300,000 and \$400,000, when in fact, in the preceding year, sales prices ranged between \$7,000 and \$519,500, with the average being \$183,536.

61. Respondent predetermined the value of the Reiger property to be between \$300,000 and \$425,000.
62. Respondent did not include in the appraisal report that the Reiger property was located in an area zoned R-7.5, although he did report that it was a single family residence located in an area zoned for single family residences.
63. Respondent failed to use an appropriate and recognized method or technique to develop a site value determination.
64. Respondent failed to provide support for his site valuation of \$29,000.
65. The improvements on the Reiger property were of average quality and in average condition.
66. Respondent failed to employ recognized methods and techniques in determining the cost new of the improvements.
67. Respondent failed to provide support for his estimate that the replacement cost new of the improvements was \$155 per square foot.
68. The replacement cost of the improvements at the time of the appraisal was between \$60 and \$85 per square foot.
69. Respondent selected as comparables homes of superior quality and location without making appropriate adjustments.
70. In 2004, the assessed value of the Reiger site was \$24,000, whereas the assessed value of the sites of comparables 1, 2, and 3 was \$125,000, and the assessed value of the site for comparable 4 was \$136,000. Respondent made only minimal, inadequate adjustments to the site value of the Reiger property to account for these differences.
71. The improvements on the Reiger property comprised 2,657 square feet. Respondent's comparables 1, 2, 3, and 4 comprised 2,764, 2,642, 2,697, and 3,384 square feet of living area, respectively. Respondent adjusted differences in gross living area exceeding 50 square feet by \$20 per square foot.
72. Respondent's comparable 1 was superior to the Reiger property in that it was a carefully restored and improved Craftsman-style home in a historic district; the house had top-of-the-line appliances, an oversized kitchen with an island, French brown hardwood floors, granite countertops, a tumbled marble backsplash, and a full-size picture window above the sink with a view of patios and a garden.

73. Respondent's comparable 2 was superior to the Reiger property in that it was an updated, neo-classical home in an historic neighborhood; the house had three bathrooms, upgraded appliances, granite countertops, wood floors, plantation shutters, a master suite with fireplace and walk-in closet, and recently replaced Lennox furnaces and air conditioning units.
74. Respondent's comparable 3 was superior to the Reiger property in that it was a classic brick and stone Tudor located on a double corner lot; the house had an original stained glass window, an island kitchen with slate floor, a gas cook top, a breakfast area/study off an owner's retreat, three bathrooms, an electric gate to large yard and garage, a separate play area, and a wood deck.
75. Respondent's comparable 4 was superior to the Reiger property in that it was a brick home located in a historic district; the house had three full bathrooms, an enclosed porch with arches, two staircases, a garage with guest quarters, and a new roof.
76. Respondent did not adequately reconcile the comparable sales data to account for the superior construction, features, location, and size of comparables 1, 2, 3, and 4.
77. Respondent did not consider, as comparables, homes that were located in the same area as the Reiger property, of similar construction, built on less than one-half acre sites, averaging 2,621 square feet and that sold for an average price of \$268,200 in the previous year.
78. By failing to consider more similar comparables and failing to adequately reconcile the comparable sales data he did use, Respondent failed to employ appropriate and recognized methods and techniques.
79. It was unlikely that the market value of the Reiger property had increased to \$360,000 in the two years since it sold for \$185,000 in December 2002.
80. It is unlikely that a buyer, acting prudently and knowledgably, would have been willing to pay \$360,000 for the Reiger property at a time when it had been listed for \$234,900 for 146 days without selling.
81. Because Respondent did not employ appropriate and recognized methods and techniques in appraising the Belzise property, the appraisal report was not credible and reliable.
82. Respondent's appraisal report for the Reiger property was misleading and contained several substantial errors of omission or commission.
83. By failing to disclose the prior listing history and prior sales price of the Reiger property, and not properly adjusting for significant differences between the Reiger property and the sales Respondent used as comparables, Respondent made material misrepresentations and omissions of material fact in his appraisal of the Reiger property.

8. Based on the foregoing Findings of Fact and Conclusions of Law Nos.6 and 7, Respondent violated Code § 1103.405 and 22 TAC § 155.1(a).
9. By making material misrepresentations and omissions of material facts in both appraisals, Respondent violated 22 TAC § 153.20(a)(9).
10. 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 TAC § 155.20(a)(3).
11. Based on the foregoing Findings of Fact and Conclusions of Law, the Board should revoke Respondent's appraiser certification.

SIGNED August 21, 2009.



RENEE M. RUSCH

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS