Texas Appraiser Licensing & Certification Board

BOARD MEETING

February 15, 2013

Stephen F. Austin Building

Room 170

1700 N. Congress Ave

Austin, Texas

MEETING AGENDA

Texas Appraiser Licensing & Certification Board
Room 170, TALCB Headquarters Office
Stephen F. Austin State Office Building
1700 North Congress, Austin, Texas 78701

Friday, February 15, 2013, 10:00 a.m.

CALL TO ORDER

1. Call to order and pledges of allegiance
2. Roll call and discussion and possible action to excuse Board member absences, if any
3. Recognition of Service by Donna Walz

ELECTIONS AND APPOINTMENTS

4. Election of Officers
5. Committee appointments
6. Discussion and possible action regarding appointments to Peer Investigative Committees
7. Discussion and possible action regarding appointment of Mentors
8. Discussion and possible action to set responsibilities for TALCB's liaison to the Texas Real Estate Commission

MINUTES

9. Approval of minutes of the August 17, 2012 Board meeting
10. Approval of minutes of the November 9, 2012 Board meeting

PUBLIC COMMENTS

11. Comments from members of the public regarding non-agenda items

ENFORCEMENT MATTERS

12. Executive session to receive advice of counsel pursuant to Texas Government Code §551.071

13. Discussion and possible action to approve agreed final orders and surrenders in the matter of :
    a. Complaint #12-243 (Bart Landon Gardner, TX-1333054-R)
    b. Complaint #11-212 (Israel R. Galindo, TX-1337664-R)
    c. Complaint #10-379 (Ruth Launa Stodghill, TX-1322509-G)
    d. Complaint #11-408 (Ronald John Guerrera, TX-1332869-R)
    e. Complaint #12-296 (James Elmer Partin III (Unlicensed)
    f. Complaint #12-245 (Felicia A. Hall, TX-1328738-L)
    g. Complaint #12-313 (Eric Elder, TX-1336851-R)
    h. Complaint #09-110 (William Douglas Askew, TX-1325858-G)
    i. Complaint #s10-251 & 12-250 (Richard M. Fetsch, TX-1323512-R)
    j. Complaint #s12-024 & 12-174 (Ted Norman Lear, TX-1321121-G)
    k. Complaint #s10-173 & 12-038 (Robert W. Hawkins, TX-1335830-R)
    l. Complaint #12-209 (John Arenas, Jr., TX-1323843-R)
    m. Complaint #13-073 (David Louis Smedley, TX-1338373-G)

14. Discussion and possible action on proposal for decision from the State Office of Administrative Hearings in the matter of:
    a. Complaint #08-065 (Ronald Craig Lewis, TX-1329836-G)
    b. Complaint #10-376 (Terry Ottis McDaniel, TX-1328118-R)
    c. Complaint #s 11-203 & 11-280 (Clifford Parvin Dodson, Jr., TX-1337922-G)

COMMITTEE REPORTS

15. Report by Enforcement Committee

STAFF REPORTS

16. Staff reports by Commissioner, Deputy Commissioner, and Division Directors, which may include reports on processes, monthly activities and statistical data for communications, licensing, education, information technology, staff services, and enforcement; current topics related to regulation of real estate appraisers; discussion of topics raised by monthly reports; introduction of new employees; and questions by Board members to staff regarding issues raised by the staff reports

RULES FOR POSSIBLE ADOPTION

17. Discussion and possible action to adopt new rule 22 TAC §155.2 concerning Work Relating to Property Tax Protests

18. Discussion and possible action regarding amendments to 22 TAC §153.24 concerning Complaint Processing

19. Discussion and possible action to adopt amendments to 22 TAC §157.10 concerning Right to Counsel, Right to Participate

RULES FOR POSSIBLE PROPOSAL

20. Discussion and possible action to propose amendments to 22 TAC §153.24 concerning Complaint Processing

21. Discussion and possible action to propose amendments to 22 TAC §153.21 concerning Appraiser Trainees and Sponsors

PENDING BUSINESS

22. Discussion and possible action on recommendations from the Enforcement Committee

NEW BUSINESS

23. Discussion and possible action to approve revised Certification of License History Form LHR3

24. Discussion and possible action regarding Investment Policy

25. Discussion and possible action regarding Budget Policy

26. Discussion and possible action regarding the agency's Compact With Texans

27. Discussion regarding legislative matters

OTHER BUSINESS

28. Discussion and possible action regarding the use of electronic minutes with a bookmarked video recording of Board meetings as the official record of meetings

29. Discussion and possible action regarding development of a tracking system for staff implementation of Board directives

30. Request for new business agenda items

31. Discussion and possible action to schedule future meeting dates

32. Adjourn

The Texas Appraiser Licensing and Certification Board may meet with its attorney in executive session on any item listed above as authorized by the Texas Open Meetings Act, Tex. Gov't Code, §551.071.

AGENDA ITEM 1

Call to order and pledges of allegiance.

Texas Pledge
"Honor the Texas flag, I pledge allegiance to thee, Texas, one state under God, one and indivisible."

AGENDA ITEM 2

Roll call and discussion and possible action to excuse Board member absences, if any.

RECOMMENDED MOTION

MOVED, that the absence(s) of _____ for the February 15, 2013 Board meeting is/are hereby excused.

AGENDA ITEM 3

Recognition of Service by Donna Walz

AGENDA ITEM 4

Election of Officers

AGENDA ITEM 5

Committee Appointments

AGENDA ITEM 6

Discussion and possible action regarding appointments to Peer Investigative Committees

Peer Review Applications 2013
Bobby Crisp
Robert F. Hetrick
Glenn Garoon
Deloris Kraft-Longoria
Jim Pearson
Dane Sever
Gregory Stephens
James B. Vine, Jr.
Gregory Robert Reynolds*
Peter Mark Loftus*
James Melvin Synatzske*
Robbie Wilson

* New applicants as of 2013; all others served on peer investigative committees in 2012

SUMMARY

This agenda item allows for the presiding officer of the Board, with the advice and consent of the executive committee, to make appointments to peer investigative committees.

STAFF RECOMMENDATION

To be presented.

RECOMMENDED MOTION

MOVED, that that the Board Chair, with the consent of the executive committee appoints [insert names of those selected] to peer investigative committees.

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

P.O. Box 12188 • Austin, Texas 78711-2188 • www.talcb.texas.gov

Application to Serve on a TALCB Peer Investigative Committee (PIC)/Act as Mentor

Applicants must meet the following minimum requirements:

- Texas-certified as an appraiser
- In good standing in Texas and any other state of licensure/certification
- Certified USPAP instructor
- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

Bobby W. Crisp		TX-1325704-R	
Name		Texas Appraiser Certification #	
19806 Lloyds Park	Garden Ridge	TX	78266-2116
Street address **or** P.O. Box	City	State	Zip Code
210-651-3291	N/A	crispappraisal@gmail.com	
Work Phone Number	Fax Number	Email	

2. Are you licensed/certified in any other state? If so, list: yes - Colorado

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
   Yes ☐ No ■ (If yes, explain) _____

4. What market area(s) do you serve? Counties of Bexar, Guadalupe, Comal, Wilson, Kendall

5. What property type(s) do you appraise? Residential

6. I wish to be appointed to ☐ serve on the PIC ☐ act as a Mentor ■ both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

Bobby W. Crisp — Signature of Applicant

November 19, 2012 — Date Signed

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

This document is available on the TALCB website at www.talcb.texas.gov

TALCB Form N PPIC-0 (10/5/2012)

PRIVACY NOTICE

The following notice about certain information, laws, and practices is given in accordance with Chapter 559, Texas Government Code.

(1) With few exceptions, an individual is entitled on request to be informed about the information that a state governmental body collects about the individual.

(2) Under Sections 552.021 and 552.023 of the Government Code, the individual is entitled to receive and review the information.

(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.

Agreement to Serve on a Peer Investigative Committee ("Service Agreement")

This Agreement for service on a Peer Investigative Committee ("PIC") is between the Texas Appraiser Licensing and Certification Board ("Board") and Bobby W. Crisp ("PIC Member") for his/her service for a term beginning upon appointment and ending one year later.

Upon appointment, the PIC Member agrees to do the following:

1. Promptly review proposed assignments to identify any conflicts of interest and to determine whether he or she is competent to complete the assignment.

2. Immediately notify the PIC Coordinator in writing (e-mail is acceptable) if the PIC Member cannot accept any assignment for any reason.

3. Provide, within one week of assignment, certification to the Board regarding competence to complete the assignment and the absence of conflicts of interest.

4. Conduct investigative reviews in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP") in effect at the time of the review, utilizing the appropriate version of USPAP in effect at the time of the appraisal(s) that is/are the subject of the complaint. No significant assistance may be provided by any other appraiser or appraiser trainee.

5. Specifically address whether the subject appraisal report(s) comply(ies) with the version of USPAP in effect at the time of the appraisal report or appraisal services rendered.

6. Specifically state any identified non-compliance, the rationale, reasoning and explanation for any conclusion that there was non-compliance with a particular standard or provision, and all supporting data and research for these conclusions.

7. Attach all supporting data (including, but not limited to, MLS data sheet printouts, county appraisal district records, deed records, public records, or other information relied upon) to the report and provide the original version of your report and attached data.

8. Report findings on a typewritten, signed report form (to be provided by Board with each assignment) using the applicable version of USPAP, laws and rules for the date of the subject appraisal.

9. Complete each review within 30 days of assignment, or up to 90 days for more complex reports at the discretion of the Presiding Officer; with the member forwarding the required report to the Board member who serves as the Presiding Officer of the PIC. The Presiding Officer will review the report, and authorize the member to finalize the report and forward it to the Beverly Arnold, the PIC Coordinator.

10. Register and qualify as a vendor with the Board's purchasing department and establish an account to accept electronic funds transfers for payment to the member of earned stipends.

The Board agrees to do the following:

1. Provide instructions and training as needed to PIC Member before assigning the first review.

2. Provide prompt written notice of any proposed assignments and make available sufficient information about the assignment for PIC Member to determine whether he/she is competent to complete the assignment and to identify any immediately apparent conflicts of interest.

3. Provide guidance from the PIC Presiding Officer as needed throughout the review process.

4. Send PIC Member a stipend of $75 upon completion of an assignment and submission of a proper invoice acceptable to the Texas Real Estate Commission's purchasing office (form to be provided).

If these terms are acceptable, please sign and date below and return a signed copy to:
Beverly Arnold, PIC Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you with forms requesting banking data needed to establish an automated payment method via electronic funds transfer for paying your stipend invoices.

Notice of each proposed assignment will be sent to you via e-mail with an acceptance form attached. Once accepted by you, the documentation necessary for you to begin a review assignment will be made available via e-mail or the agency's FTP site. Once the Presiding Officer has notified you that the final review reports have been forwarded to TALCB, your services for that assignment are deemed completed and your stipend invoice(s) should be sent to the PIC Coordinator, who will forward each to the agency's Purchaser for payment.

For any questions, please contact Beverly Arnold, PIC Coordinator at (512) 936-3652, Sandy Jones, Purchaser at (512) 936-3589 or Mark Mrnak, TALCB SES Director at (512) 936-3624.

Thank you for volunteering to be of service in this important process.

Agreed: Bobby W. Crisp Date: January 17, 2012
[Print Name here & Sign above]
[Company info] Bobby W. Crisp - Crisp Appraisal Service

Confirmation of Appointment (Chair's signature indicates appointment for 1 year from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

CRISP APPRAISAL SERVICE
19806 Lloyds Park
Garden Ridge, TX 78266-2116
crispappraisal@gmail.com
(210) 651-3291 (Office)

Bobby W. Crisp, MAA, ATA-R
Texas State Certified Residential Real Estate Appraiser, TX-1325704-R
AQB Certified USPAP Instructor, #10287
Charter Member, Past Director, National Association of Appraisers (NAA)
Director (Past-President), Association of Texas Appraisers (ATA)
Texas Appraiser Licensing & Certification Board (TALCB) Peer Investigative Committee
Residential Real Estate Appraisals, Consultations, Analyses, and Instruction

January 17, 2013

Texas Appraisal Licensing & Certification Board
P.O. Box 12188
1700 N. Congress Ave. Suite 400
Austin, TX 78711-2188

Attn: Beverly Arnold, PIC Coordinator

RE: Peer Investigative Committee

This letter is submitted, along with the attached application form, to volunteer as a Peer Investigative Committee member.

I have been a certified appraiser in Texas for approximately twenty-one years and have been an instructor of qualifying appraisal courses and continuing education appraisal courses for the past thirteen years, including being an AQB Certified USPAP Instructor since March 2004. I have performed many types of appraisals and appraisal reviews over the past twenty-one years with several different types of scope of work.
I previously volunteered (and was selected) to be a member of a Peer Investigative Committee in 2007, 2010, 2011, and 2012.

I do everything that I can in keeping informed regarding the appraisal profession. I am one of the four founding members of the National Association of Appraisers (NAA) and served on the Board of Directors from its inception until my term ended this past year. I have also served as a Director on other national appraisal organization boards. I am one of the ten founding members of the Association of Texas Appraisers (ATA) in 2006 where I was elected to their Board of Directors and elected President in 2007. I have served on the ATA Board of Directors since its inception. I write articles regarding USPAP issues for the ATA quarterly newsletter. I am an appraisal instructor with Columbia

Institute and Real Property Counselors. I was a guest speaker/presenter at the Appraisal Summit held in Las Vegas in December 2009 and again in September 2010. I was asked to participate in a state coalition round table at the 2012 Appraisal Summit representing the State of Texas. It has always been my desire to help train, aid, and inform real estate appraisers by keeping them up to date with their educational needs.

I believe that the majority of appraisers in Texas take our profession seriously and want to be good appraisers; however, there are those that would do harm to our profession. I am volunteering to be a PIC member in an effort to help possibly identify those that could be causing harm. I know that the Appraisal Subcommittee keeps a close eye on appraisal complaints and the turn-around time to get them resolved. I consider volunteering as a PIC member as a way to help the appraisal profession, identify those in need of appraisal education, and help TALCB with ASC protocol.

Sincerely,

Bobby W. Crisp
AQB Certified USPAP Instructor #10287
Appraisal Instructor
National Association of Appraisers (NAA)
Association of Texas Appraisers (ATA)
Certified Residential Real Estate Appraiser
TX-1325704-R

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

P.O. Box 12188 • Austin, Texas 78711-2188 • www.talcb.texas.gov

Application to Serve on a TALCB Peer Investigative Committee (PIC)/Act as Mentor

RECEIVED
TEXAS REAL ESTATE COMMISSION
JAN 30 2013
CASHIER'S SECTION
OPERATOR 13

Applicants must meet the following minimum requirements:

- Texas-certified as an appraiser
- In good standing in Texas and any other state of licensure/certification
- Certified USPAP instructor
- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

ROBERT F. HETRICK — Name
TX-1324853-G — Texas Appraiser Certification #
8546 BROADWAY, SUITE 165 — Street address or P.O. Box
SAN ANTONIO — City
TX — State
78217 — Zip Code
210-824-8822 — Work Phone Number
210-804-0212 — Fax Number
ROBERTHETRICK0067@SBCGLOBAL.NET — Email

2. Are you licensed/certified in any other state? If so, list: NO

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
Yes ☐ No ☒ (If yes, explain) _____

4. What market area(s) do you serve? SAN ANTONIO METRO AREA & SURROUNDS

5. What property type(s) do you appraise? RESIDENTIAL, EMINENT DOMAINE, SMALL COMM.

6. I wish to be appointed to ☒ serve on the PIC ☐ act as a Mentor ☐ both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

Signature of Applicant — Date Signed: 1/28/13

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

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TALCB Form N PPIC-0 (10/5/2012)

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3. Provide, within one week of assignment, certification to the Board regarding competence to complete the assignment and the absence of conflicts of interest.

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5. Specifically address whether the subject appraisal report(s) comply(ies) with the version of USPAP in effect at the time of the appraisal report or appraisal services rendered.

6. Specifically state any identified non-compliance, the rationale, reasoning and explanation for any conclusion that there was non-compliance with a particular standard or provision, and all supporting data and research for these conclusions.

7. Attach all supporting data (including, but not limited to, MLS data sheet printouts, county appraisal district records, deed records, public records, or other information relied upon) to the report and provide the original version of your report and attached data.

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9. Complete each review within 30 days of assignment, or up to 90 days for more complex reports at the discretion of the Presiding Officer; with the member forwarding the required report to the Board member who serves as the Presiding Officer of the PIC. The Presiding Officer will review the report, and authorize the member to finalize the report and forward it to the Beverly Arnold, the PIC Coordinator.

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For any questions, please contact Beverly Arnold, PIC Coordinator at (512) 936-3652, Sandy Jones, Purchaser at (512) 936-3589 or Mark Mrnak, TALCB SES Director at (512) 936-3624.

Thank you for volunteering to be of service in this important process.

Agreed: _____ Date: 1/28/13
[Print Name here & Sign above]
[Company info] ROBERT F. HETRICK

Confirmation of Appointment (Chair's signature indicates appointment for 1 year from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

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- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

Glenn Garoon — TX1320376-G

Name — Texas Appraiser Certification #

3303 Hulen Street — Fort Worth — Texas — 76107

Street address **or** P.O. Box — City — State — Zip Code

817-229-4224 — 817-732-0300 — ggaroon@sbcglobal.net

Work Phone Number — Fax Number — Email

2. Are you licensed/certified in any other state? If so, list: No

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
Yes ☐ No ☒ (If yes, explain) _____

4. What market area(s) do you serve? Primarily north Texas (D/FW and surrounding area)

5. What property type(s) do you appraise? All but business interests

6. I wish to be appointed to ☒ serve on the PIC ☐ act as a Mentor ☐ both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

Signature of Applicant — Date Signed 1/28/13

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

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(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.

Glenn Garoon
Real Estate Appraiser and Consultant
3303 Hulen Street
Fort Worth, Texas 76107
817-229-4224
ggaroon@sbcglobal.net

January 28, 2013

Texas Appraiser Licensing and Certification Board
P.O. Box 12188
Austin, Texas 78711-2188

Re: PIC Application

Dear Board Members,

As requested on the attached "Application to Serve on TALCB Peer Investigative Committee", also attached is a copy of my Qualifications as a real property appraiser. Please note my qualification as a Certified Instructor of USPAP from The Appraisal Foundation.

You have also asked for my rationale for requesting appointment. As you are no doubt aware, I have served on the PIC since the inception of the program. This continues my interest in helping with fair peer review of Texas appraisers. As a regular attendee of the TALCB meetings and a Certified Instructor, I have continually made myself available for this work.

I am still willing to be of service to the Texas appraisal community and the Board to provide review and examination of appraisals that are part of the complaint process.

Sincerely,

Glenn Garoon, MAI, CCIM

GG/hs
Attachments

QUALIFICATIONS

GLENN GAROON, MAI, CCIM, MBA
3303 Hulen Street, Fort Worth, Texas 76107
817-229-4224/ggaroon@sbcglobal.net

PROFESSIONAL EXPERIENCE:

Glenn Garoon Real Estate – self-employed independent fee appraiser and market analyst performing appraisals, appraisal reviews, feasibility and market studies, and business problem solutions. Mr. Garoon has qualified as an expert witness in federal and district courts.

Western Rim Property Services – November 2006 to April 2008 – Vice President of Acquisitions responsible for researching and contracting for sites suitable for multi-family development and construction.

Tarrant Appraisal District – September 2003 to October 2006 – Senior Litigation Specialist designated as expert witness on multiple law suits against county appraisal district

Fort Worth National Bank/Texas American Bank (now part of JP Morgan Chase) – Assistant Vice President and Trust Officer – engaged in the management of a varied portfolio of real property assets; including urban real property, sales activities, cash flow analysis, financial analysis, and property acquisition, appraisal and inspection for employee benefit and personal trust accounts, etc.

J.R. Kimball, Inc. and Hagood & Associates – staff appraiser; various appraisal projects

PROFESSIONAL AFFILIATIONS:

The Appraisal Institute – Designated MAI (Admissions Committee Chair, Education Committee Chair, Secretary-Treasurer, Vice President, President, Regional Representative. Currently Government Relations Chair and Member of the National Government Relations Committee. Member and chair of several regional experience rating committees as well as a member of regional Ethics and Counseling Committee.)

The Appraisal Foundation – Board of Trustees – 2005-2007

Certified Commercial Investment Member of the CCIM Institute – recognizing achievement in the disciplines of commercial and investment real estate

State Certified General Real Estate Appraiser - Texas - Certificate Number TX-1320376-G

Property Tax Consultant – Registration Number 698; Texas Department of Licensing and Regulation

Licensed Real Estate Broker in the State of Texas – Texas Real Estate Commission

Realtor member of the Greater Fort Worth Association of REALTORS

Appraisal Review Board, Tarrant Appraisal District

Foundation Appraisers Coalition of Texas: Secretary, Vice President, President

EDUCATION/TEACHING:

Bachelor of Arts - History - University of Illinois, Chicago, Illinois

Master of Business Administration - University of Texas at Arlington, Arlington, Texas

Completed various courses and seminars presented by the Society of Real Estate Appraisers, the American Institute of Real Estate Appraisers, and the Appraisal Institute

Graduate of the Texas School of Trust Banking, Arlington, Texas

Graduate of the Southwestern Graduate School of Banking, Southern Methodist University, Dallas, Texas

Lecturer, University of Texas at Arlington, instructing real estate and finance courses – 12 years

Adjunct Professor, M.J. Neely School of Business, Texas Christian University – 5 years

Certified by the Appraisal Qualifications Board of The Appraisal Foundation as an instructor of the Uniform Standards of Professional Appraisal Practice

A partial list of clients Mr. Garoon has served as either appraiser or consultant include:

Bank of America
Brusniak Blackwell PC
Cain & Skarnulis
Cantey Hanger L.L.P.
City of Fort Worth
Cullen/Frost Bankers, Inc.
Fee, Smith, Sharp & Vitullo
Geary, Donovan, & Porter
Harris Methodist Health Services
JP Morgan Chase Bank
JPS Health Network
Kelly Hart & Hallman, LLC
Legacy Bank
Moses, Palmer & Howell, L.L.P.
Pennington & Associates
Pennington Hill, L.L.P.
Property Tax Advocates
Provident Realty Advisors
Realty Capital Corporation
Shackelford Melton & McKinely
Summit National Bank
Tarrant Appraisal District
Tarrant County
Teague Nall and Perkins
Texas Bank
Texas Department of Transportation
Theshold Development Company
U.S. Postal Service
Van Kerrebrook & Associates P.C.
Wells Fargo Bank
Winn-Dixie, Incorporated
Youth Orchestra of Greater Fort Worth

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

P.O. BOX 12188 • AUSTIN, TEXAS 78711-2188 • WWW.TALCB.TEXAS.GOV

Application to Serve on a TALCB Peer Investigative Committee (PIC)/Act as Mentor

Applicants must meet the following minimum requirements:

- Texas-certified as an appraiser
- In good standing in Texas and any other state of licensure/certification
- Certified USPAP instructor
- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

Deloris Kraft-Longoria — TX-1323246-G
Name — Texas Appraiser Certification #

P.O. 310189 — New Braunfels — TX — 78131
Street address **or** P.O. Box — City — State — Zip Code

210-573-8245 — 830-606-2834 — lonestarvaluation@satx.rr.com
Work Phone Number — Fax Number — Email

2. Are you licensed/certified in any other state? If so, list: No

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
Yes ☐ No ☒ (If yes, explain) _____

4. What market area(s) do you serve? San Antonio & Austin MSA's

5. What property type(s) do you appraise? Commerical, Farm & Ranch

6. I wish to be appointed to ☐ serve on the PIC ☐ act as a Mentor ☒ both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

Deloris K. Kraft-Longoria — February 1, 2013
Signature of Applicant — Date Signed

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

This document is available on the TALCB website at www.talcb.texas.gov

TALCB Form N PPIC-0 (10/5/2012)

PRIVACY NOTICE

The following notice about certain information, laws, and practices is given in accordance with Chapter 559, Texas Government Code.

(1) With few exceptions, an individual is entitled on request to be informed about the information that a state governmental body collects about the individual.

(2) Under Sections 552.021 and 552.023 of the Government Code, the individual is entitled to receive and review the information.

(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.

Agreement to Serve on a Peer Investigative Committee ("Service Agreement")

This Agreement for service on a Peer Investigative Committee ("PIC") is between the Texas Appraiser Licensing and Certification Board ("Board") and Delonis L. Kraft-Longoria ("PIC Member") for his/her service for a term beginning upon appointment and ending one year later.

Upon appointment, the PIC Member agrees to do the following:

1. Promptly review proposed assignments to identify any conflicts of interest and to determine whether he or she is competent to complete the assignment.

2. Immediately notify the PIC Coordinator in writing (e-mail is acceptable) if the PIC Member cannot accept any assignment for any reason.

3. Provide, within one week of assignment, certification to the Board regarding competence to complete the assignment and the absence of conflicts of interest.

4. Conduct investigative reviews in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP") in effect at the time of the review, utilizing the appropriate version of USPAP in effect at the time of the appraisal(s) that is/are the subject of the complaint. No significant assistance may be provided by any other appraiser or appraiser trainee.

5. Specifically address whether the subject appraisal report(s) comply(ies) with the version of USPAP in effect at the time of the appraisal report or appraisal services rendered.

6. Specifically state any identified non-compliance, the rationale, reasoning and explanation for any conclusion that there was non-compliance with a particular standard or provision, and all supporting data and research for these conclusions.

7. Attach all supporting data (including, but not limited to, MLS data sheet printouts, county appraisal district records, deed records, public records, or other information relied upon) to the report and provide the original version of your report and attached data.

8. Report findings on a typewritten, signed report form (to be provided by Board with each assignment) using the applicable version of USPAP, laws and rules for the date of the subject appraisal.

9. Complete each review within 30 days of assignment, or up to 90 days for more complex reports at the discretion of the Presiding Officer; with the member forwarding the required report to the Board member who serves as the Presiding Officer of the PIC. The Presiding Officer will review the report, and authorize the member to finalize the report and forward it to the Beverly Arnold, the PIC Coordinator.

10. Register and qualify as a vendor with the Board's purchasing department and establish an account to accept electronic funds transfers for payment to the member of earned stipends.

The Board agrees to do the following:

1. Provide instructions and training as needed to PIC Member before assigning the first review.

2. Provide prompt written notice of any proposed assignments and make available sufficient information about the assignment for PIC Member to determine whether he/she is competent to complete the assignment and to identify any immediately apparent conflicts of interest.

3. Provide guidance from the PIC Presiding Officer as needed throughout the review process.

4. Send PIC Member a stipend of $75 upon completion of an assignment and submission of a proper invoice acceptable to the Texas Real Estate Commission's purchasing office (form to be provided).

If these terms are acceptable, please sign and date below and return a signed copy to:
Beverly Arnold, PIC Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you with forms requesting banking data needed to establish an automated payment method via electronic funds transfer for paying your stipend invoices.

Notice of each proposed assignment will be sent to you via e-mail with an acceptance form attached. Once accepted by you, the documentation necessary for you to begin a review assignment will be made available via e-mail or the agency's FTP site. Once the Presiding Officer has notified you that the final review reports have been forwarded to TALCB, your services for that assignment are deemed completed and your stipend invoice(s) should be sent to the PIC Coordinator, who will forward each to the agency's Purchaser for payment.

For any questions, please contact Beverly Arnold, PIC Coordinator at (512) 936-3652, Sandy Jones, Purchaser at (512) 936-3589 or Mark Mrnak, TALCB SES Director at (512) 936-3624.

Thank you for volunteering to be of service in this important process.

Agreed: Deloris L. Kraft-Longoria Date: February 1, 2013
[Print Name here & Sign above] Deloris L. Kraft-Longoria, MAI
[Company info] Lone Star Valuation, Inc.

Confirmation of Appointment (Chair's signature indicates appointment for 1 year from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

Pearson Appraisal Company, Inc.

- P.O. Box 3459 ~ McKinney, TX 75070-8190 Phone 972 562-9787
- Web Page: PearsonAppraisal.com Email: Jim@PearsonAppraisal.com

November 18, 2012

Beverly Arnold
PIC Coordinator
Texas Appraiser License and Certification Board
P.O. Box 12188
Austin, TX 78711-2188

VIA E-mail: beverly.arnold@talcb.state.tx.us

RE: Appointment Request

As requested I am including this appointment request letter along with the application and agreement.

The opportunity to serve on the PIC is two fold 1) allows me to help the TALCB reduce its backlog of complaints to comply with the ASB but mainly reduce the time that appraisers might wait to get a hearing or have a complaint dropped and 2) the TALCB review process is a great tool for me as an appraiser to keep my skills sharp.

Mentoring allows the mentor to have one on one communication giving the student appraiser the specialized training to specifically fit their needs.

I started teaching real estate principles and appraisal in 1983 and taught for Massey Realty College, Dallas County Community College District, as well as USPAP for the Institute for Real Estate Professionals during 2000 through 2002. Certified as an AQB Certified USPAP Instructor in May 2003 and have taught USPAP several times each year for the National Association of Independent Fee Appraisers. I am also a course provider for TAF. My work assignments for the past few years have been predominately single family residential for litigation purposes. I also served on the Collin County Appraisal District's Appraisal Review Board (ARB) for the years 2007 through 2009 serving 2008 and 2009 as Chair of a commercial property panel. I have testified in State and Federal courts on appraiser standards of practice as well as my assignments regarding property valuation. Most of my appraisal assignments are in the Dallas – Fort Worth metropolitan area but have completed assignments across Texas including the Houston area, Texas panhandle, central Texas, and east Texas. If reappointed to the PIC I would expect to do field reviews in the Dallas – Fort Worth area.

Respectfully submitted,

Jim D. Pearson, IFAS, IFA

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- In good standing in Texas and any other state of licensure/certification
- Certified USPAP instructor
- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

Jim D. Pearson — Name
TX-1320421-G — Texas Appraiser Certification #

P.O. Box 3459 — Street address **or** P.O. Box
McKinney, TX 75070-8190 — City, State, Zip Code

972-562-9787 — Work Phone Number
N/A — Fax Number
Jim@PearsonAppraisal.com — Email

2. Are you licensed/certified in any other state? If so, list: No

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
Yes ☐ No ☒ (If yes, explain) _____

4. What market area(s) do you serve? Depends upon the assignment

5. What property type(s) do you appraise? Mostly residential

6. I wish to be appointed to ☐ serve on the PIC ☐ act as a Mentor ☒ both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

Jim D. Pearson — Signature of Applicant
November 18, 2012 — Date Signed

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

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(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.

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- Certified USPAP instructor
- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

DANE SEVER — Name

TX-1322148-R — Texas Appraiser Certification #

4747 RESEARCH FOREST DR #180 — Street address or P.O. Box

THE WOODLANDS — City

TX — State

77381 — Zip Code

281-923-3263 — Work Phone Number

281-298-7800 — Fax Number

DANESEVER@ATT.NET — Email

2. Are you licensed/certified in any other state? If so, list: N/A

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
Yes ☐ No ☒ (If yes, explain) N/A

4. What market area(s) do you serve? GREATER HOUSTON

5. What property type(s) do you appraise? 1-4 FAMILY RESIDENTIAL

6. I wish to be appointed to ☐ serve on the PIC ☐ act as a Mentor ☒ both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

Signature of Applicant

1/29/13
Date Signed

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

This document is available on the TALCB website at www.talcb.texas.gov

Agreement to Serve on a Peer Investigative Committee ("Service Agreement")

This Agreement for service on a Peer Investigative Committee ("PIC") is between the Texas Appraiser Licensing and Certification Board ("Board") and DAVE SEVER ("PIC Member") for his/her service for a term beginning upon appointment and ending one year later.

Upon appointment, the PIC Member agrees to do the following:

1. Promptly review proposed assignments to identify any conflicts of interest and to determine whether he or she is competent to complete the assignment.

2. Immediately notify the PIC Coordinator in writing (e-mail is acceptable) if the PIC Member cannot accept any assignment for any reason.

3. Provide, within one week of assignment, certification to the Board regarding competence to complete the assignment and the absence of conflicts of interest.

4. Conduct investigative reviews in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP") in effect at the time of the review, utilizing the appropriate version of USPAP in effect at the time of the appraisal(s) that is/are the subject of the complaint. No significant assistance may be provided by any other appraiser or appraiser trainee.

5. Specifically address whether the subject appraisal report(s) comply(ies) with the version of USPAP in effect at the time of the appraisal report or appraisal services rendered.

6. Specifically state any identified non-compliance, the rationale, reasoning and explanation for any conclusion that there was non-compliance with a particular standard or provision, and all supporting data and research for these conclusions.

7. Attach all supporting data (including, but not limited to, MLS data sheet printouts, county appraisal district records, deed records, public records, or other information relied upon) to the report and provide the original version of your report and attached data.

8. Report findings on a typewritten, signed report form (to be provided by Board with each assignment) using the applicable version of USPAP, laws and rules for the date of the subject appraisal.

9. Complete each review within 30 days of assignment, or up to 90 days for more complex reports at the discretion of the Presiding Officer; with the member forwarding the required report to the Board member who serves as the Presiding Officer of the PIC. The Presiding Officer will review the report, and authorize the member to finalize the report and forward it to the Beverly Arnold, the PIC Coordinator.

10. Register and qualify as a vendor with the Board's purchasing department and establish an account to accept electronic funds transfers for payment to the member of earned stipends.

The Board agrees to do the following:

1. Provide instructions and training as needed to PIC Member before assigning the first review.

2. Provide prompt written notice of any proposed assignments and make available sufficient information about the assignment for PIC Member to determine whether he/she is competent to complete the assignment and to identify any immediately apparent conflicts of interest.

3. Provide guidance from the PIC Presiding Officer as needed throughout the review process.

4. Send PIC Member a stipend of $75 upon completion of an assignment and submission of a proper invoice acceptable to the Texas Real Estate Commission's purchasing office (form to be provided).

If these terms are acceptable, please sign and date below and return a signed copy to:
Beverly Arnold, PIC Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you with forms requesting banking data needed to establish an automated payment method via electronic funds transfer for paying your stipend invoices.

Notice of each proposed assignment will be sent to you via e-mail with an acceptance form attached. Once accepted by you, the documentation necessary for you to begin a review assignment will be made available via e-mail or the agency's FTP site. Once the Presiding Officer has notified you that the final review reports have been forwarded to TALCB, your services for that assignment are deemed completed and your stipend invoice(s) should be sent to the PIC Coordinator, who will forward each to the agency's Purchaser for payment.

For any questions, please contact Beverly Arnold, PIC Coordinator at (512) 936-3652, Sandy Jones, Purchaser at (512) 936-3589 or Mark Mrnak, TALCB SES Director at (512) 936-3624.

Thank you for volunteering to be of service in this important process.

Agreed: _____ Date: 1/29/13
[Print Name here & Sign above] DAVE SEVEK
[Company info]

Confirmation of Appointment (Chair's signature indicates appointment for 1 year from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

Appraisal Seminars

January 29, 2013

Luis F. De La Garza, Chair
Texas Appraiser Licensing and Certification Board
P.O.Box 12188
Austin, TX 78711

Application for acceptance on the TALCB PIC and Mentor

Please find attached the application documentation for Greg Stephens, AQB Certified USPAP Instructor # 10550.

As a previous member of the PIC I very much appreciated the opportunity to serve the TALCB in matters brought before the Board relating to the credibility of appraisal reports completed by Texas licensed and certified appraisers.

I am also conducting numerous 2012-2013 USPAP 7 Hour Course update classes around the country and remain current on USPAP standards, state and federal laws relating to appraisal services and best practices and wish to continue providing services to the TALCB as a member of the Peer Investigative Committee.

Respectfully Submitted,

Greg E. Stephens, SRA
Appraisal Seminars
Metro-West Appraisal Company

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

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- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

Gregory E. Stephens — 1331529
Name — Texas Appraiser Certification #

9500 Moss Haven Drive — Dallas — TX — 75231
Street address or P.O. Box — City — State — Zip Code

214-500-4742 — 888-676-6708 — gstephens@metrowestappr.com
Work Phone Number — Fax Number — Email

2. Are you licensed/certified in any other state? If so, list: California AG005622

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
Yes ☐ No ☒ (If yes, explain) _____

4. What market area(s) do you serve? Dallas/Fort Worth (DFW) Collin, Dallas, Denton, Tarrant Co.

5. What property type(s) do you appraise? Residential

6. I wish to be appointed to ☐ serve on the PIC ☐ act as a Mentor ☒ both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

Gregory E. Stephens — 1/29/2013
Signature of Applicant — Date Signed

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

This document is available on the TALCB website at www.talcb.texas.gov

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(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.

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This Agreement for service on a Peer Investigative Committee ("PIC") is between the Texas Appraiser Licensing and Certification Board ("Board") and Gregory E. Stephens ("PIC Member") for his/her service for a term beginning upon appointment and ending one year later.

Upon appointment, the PIC Member agrees to do the following:

1. Promptly review proposed assignments to identify any conflicts of interest and to determine whether he or she is competent to complete the assignment.

2. Immediately notify the PIC Coordinator in writing (e-mail is acceptable) if the PIC Member cannot accept any assignment for any reason.

3. Provide, within one week of assignment, certification to the Board regarding competence to complete the assignment and the absence of conflicts of interest.

4. Conduct investigative reviews in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP") in effect at the time of the review, utilizing the appropriate version of USPAP in effect at the time of the appraisal(s) that is/are the subject of the complaint. No significant assistance may be provided by any other appraiser or appraiser trainee.

5. Specifically address whether the subject appraisal report(s) comply(ies) with the version of USPAP in effect at the time of the appraisal report or appraisal services rendered.

6. Specifically state any identified non-compliance, the rationale, reasoning and explanation for any conclusion that there was non-compliance with a particular standard or provision, and all supporting data and research for these conclusions.

7. Attach all supporting data (including, but not limited to, MLS data sheet printouts, county appraisal district records, deed records, public records, or other information relied upon) to the report and provide the original version of your report and attached data.

8. Report findings on a typewritten, signed report form (to be provided by Board with each assignment) using the applicable version of USPAP, laws and rules for the date of the subject appraisal.

9. Complete each review within 30 days of assignment, or up to 90 days for more complex reports at the discretion of the Presiding Officer; with the member forwarding the required report to the Board member who serves as the Presiding Officer of the PIC. The Presiding Officer will review the report, and authorize the member to finalize the report and forward it to the Beverly Arnold, the PIC Coordinator.

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The Board agrees to do the following:

1. Provide instructions and training as needed to PIC Member before assigning the first review.

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3. Provide guidance from the PIC Presiding Officer as needed throughout the review process.

4. Send PIC Member a stipend of $75 upon completion of an assignment and submission of a proper invoice acceptable to the Texas Real Estate Commission's purchasing office (form to be provided).

If these terms are acceptable, please sign and date below and return a signed copy to:
Beverly Arnold, PIC Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

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For any questions, please contact Beverly Arnold, PIC Coordinator at (512) 936-3652, Sandy Jones, Purchaser at (512) 936-3589 or Mark Mrnak, TALCB SES Director at (512) 936-3624.

Thank you for volunteering to be of service in this important process.

Agreed: Gregory E. Stephens Date: 1/29/2013
[Print Name here & Sign above] Gregory E. Stephens
[Company info]

Confirmation of Appointment (Chair's signature indicates appointment for 1 year from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

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- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

James B. Vine, Jr. — Name
TX 1320126 G — Texas Appraiser Certification #

6106 Vance Jackson #2 — Street address **or** P.O. Box
San Antonio, Texas 78230-3373 — City, State, Zip Code

210-696-8909 — Work Phone Number
210-568-6215 — Fax Number
jbvine@satx.rr.com — Email

2. Are you licensed/certified in any other state? If so, list: None

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
Yes ❑ No ☒ (If yes, explain) _____

4. What market area(s) do you serve? All of Texas, New Mexico, Oklahome, Kansas, and Colorado

5. What property type(s) do you appraise? Farms, Ranches, Grain Elevators, Feed Yards, Gins, Water Rights, Mineral Righs, and Special Purpose Agricultural Prop

6. I wish to be appointed to ☒ serve on the PIC ❑ act as a Mentor ❑ both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

_____ Signature of Applicant

16 Jan 2013 — Date Signed

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

This document is available on the TALCB website at www.talcb.texas.gov

PRIVACY NOTICE

The following notice about certain information, laws, and practices is given in accordance with Chapter 559, Texas Government Code.

(1) With few exceptions, an individual is entitled on request to be informed about the information that a state governmental body collects about the individual.

(2) Under Sections 552.021 and 552.023 of the Government Code, the individual is entitled to receive and review the information.

(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.

Agreement to Serve on a Peer Investigative Committee ("Service Agreement")

This Agreement for service on a Peer Investigative Committee ("PIC") is between the Texas Appraiser Licensing and Certification Board ("Board") and James B. Vine, Jr.("PIC Member") for his/her service for a term beginning upon appointment and ending one year later.

Upon appointment, the PIC Member agrees to do the following:

1. Promptly review proposed assignments to identify any conflicts of interest and to determine whether he or she is competent to complete the assignment.

2. Immediately notify the PIC Coordinator in writing (e-mail is acceptable) if PIC Member cannot accept any assignment for any reason.

3. Provide, within one week of assignment, certification to the Board regarding competence to complete the assignment and the absence of conflicts of interest.

4. Conduct investigative reviews in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP") in effect at the time of the review, utilizing the appropriate version of USPAP in effect at the time of the appraisal(s) that is/are the subject of the complaint. No significant assistance may be provided by any other appraiser or appraiser trainee.

5. Specifically address whether the subject appraisal report(s) comply(ies) with the version of USPAP in effect at the time of the appraisal report or appraisal services rendered.

6. Specifically state any identified non-compliance, the rationale, reasoning and explanation for any conclusion that there was non-compliance with a particular standard or provision, and all supporting data and research for these conclusions.

7. Attach all supporting data (including, but not limited to, MLS data sheet printouts, county appraisal district records, deed records, public records, or other information relied upon) to the report and provide the original version of your report and attached data.

8. Report findings on a typewritten, signed report form (to be provided by Board with each assignment) using the applicable version of USPAP, laws and rules for the date of the subject appraisal.

9. Complete each review within 30 days of assignment, or up to 90 days for more complex reports at the discretion of the Presiding Officer; with the member forwarding the required report to the Board member who serves as the Presiding Officer of the PIC. The Presiding Officer will review the report, and authorize the member to finalize the report and forward it to the Beverly Arnold, the PIC Coordinator.

10. Register and qualify as a vendor with the Board's purchasing department and establish an account to accept electronic funds transfers for payment to the member of earned stipends.

The Board agrees to do the following:

1. Provide instructions and training as needed to PIC Member before assigning the first review.

2. Provide prompt written notice of any proposed assignments and make available sufficient information about the assignment for PIC Member to determine whether he/she is competent to complete the assignment and to identify any immediately apparent conflicts of interest.

3. Provide guidance from the PIC Presiding Officer as needed throughout the review process.

4. Send PIC Member a stipend of $75 upon completion of an assignment and submission of a proper invoice acceptable to the Texas Real Estate Commission's purchasing office (form to be provided).

If these terms are acceptable, please sign and date below and return a signed copy to:
Beverly Arnold, PIC Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you with forms requesting banking data needed to establish an automated payment method via electronic funds transfer for paying your stipend invoices.

Notice of each proposed assignment will be sent to you via e-mail with an acceptance form attached. Once accepted by you, the documentation necessary for you to begin a review assignment will be made available via e-mail or the agency's FTP site. Once the Presiding Officer has notified you that the final review reports have been forwarded to TALCB, your services for that assignment are deemed completed and your stipend invoice(s) should be sent to the PIC Coordinator, who will forward each to the agency's Purchaser for payment.

For any questions, please contact Beverly Arnold, PIC Coordinator at (512) 465-3938, Sandy Jones, Purchaser at (512) 465-3922 or Troy Beaulieu, acting TALCB SES Director at (512) 465-3949.

Thank you for volunteering to be of service in this important process.

Agreed: James B. Vine, Jr._____ Date: _January 23, 2013__
[Print Name here & Sign above]
{Company info]

Confirmation of Appointment (Chair's signature indicates appointment for 1 year from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

P.O. BOX 12188 • AUSTIN, TEXAS 78711-2188 • WWW.TALCB.TEXAS.GOV

RECEIVED
TEXAS REAL ESTATE COMMISSION
JAN 22 2013
CASHIER'S SECTION
OPERATOR 15

Application to Serve on a TALCB Peer Investigative Committee (PIC)/Act as Mentor

Applicants must meet the following minimum requirements:

- Texas-certified as an appraiser
- In good standing in Texas and any other state of licensure/certification
- Certified USPAP instructor
- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

Gregory Robert Reynolds — Name
1325685-R — Texas Appraiser Certification #

6300 Bradley Lane — Street address or P.O. Box
Plano — City
Tx — State
75023 — Zip Code

2145722530 — Work Phone Number
Fax Number
reynolds.gr@gmail.com — Email

2. Are you licensed/certified in any other state? If so, list: Arizona, Nevada

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
Yes ☐ No ☒ (If yes, explain) _____

4. What market area(s) do you serve? AMC Managing director

5. What property type(s) do you appraise? SFR, 1-4 investment

6. I wish to be appointed to ☒ serve on the PIC ☒ act as a Mentor ☒ both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

Signature of Applicant — 1/21/13 Date Signed

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

This document is available on the TALCB website at www.talcb.texas.gov

TALCB Form N PPIC-0 (10/5/2012)

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(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

DOUGLAS E. OLDMIXON, COMMISSIONER

Agreement to Serve on a Peer Investigative Committee ("Service Agreement")

This Agreement for service on a Peer Investigative Committee ("PIC") is between the Texas Appraiser Licensing and Certification Board ("Board") and Gregory R. Reynolds ("PIC Member") for his/her service for a term beginning upon appointment and ending one year later.

Upon appointment, the PIC Member agrees to do the following:

1. Promptly review proposed assignments to identify any conflicts of interest and to determine whether he or she is competent to complete the assignment.

2. Immediately notify the PIC Coordinator in writing (e-mail is acceptable) if the PIC Member cannot accept any assignment for any reason.

3. Provide, within one week of assignment, certification to the Board regarding competence to complete the assignment and the absence of conflicts of interest.

4. Conduct investigative reviews in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP") in effect at the time of the review, utilizing the appropriate version of USPAP in effect at the time of the appraisal(s) that is/are the subject of the complaint. No significant assistance may be provided by any other appraiser or appraiser trainee.

5. Specifically address whether the subject appraisal report(s) comply(ies) with the version of USPAP in effect at the time of the appraisal report or appraisal services rendered.

6. Specifically state any identified non-compliance, the rationale, reasoning and explanation for any conclusion that there was non-compliance with a particular standard or provision, and all supporting data and research for these conclusions.

7. Attach all supporting data (including, but not limited to, MLS data sheet printouts, county appraisal district records, deed records, public records, or other information relied upon) to the report and provide the original version of your report and attached data.

8. Report findings on a typewritten, signed report form (to be provided by Board with each assignment) using the applicable version of USPAP, laws and rules for the date of the subject appraisal.

9. Complete each review within 30 days of assignment, or up to 90 days for more complex reports at the discretion of the Presiding Officer; with the member forwarding the required report to the Board member who serves as the Presiding Officer of the PIC. The Presiding Officer will review the report, and authorize the member to finalize the report and forward it to the Beverly Arnold, the PIC Coordinator.

10. Register and qualify as a vendor with the Board's purchasing department and establish an account to accept electronic funds transfers for payment to the member of earned stipends.

The Board agrees to do the following:

1. Provide instructions and training as needed to PIC Member before assigning the first review.

2. Provide prompt written notice of any proposed assignments and make available sufficient information about the assignment for PIC Member to determine whether he/she is competent to complete the assignment and to identify any immediately apparent conflicts of interest.

3. Provide guidance from the PIC Presiding Officer as needed throughout the review process.

4. Send PIC Member a stipend of $75 upon completion of an assignment and submission of a proper invoice acceptable to the Texas Real Estate Commission's purchasing office (form to be provided).

If these terms are acceptable, please sign and date below and return a signed copy to:
Beverly Arnold, PIC Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you with forms requesting banking data needed to establish an automated payment method via electronic funds transfer for paying your stipend invoices.

Notice of each proposed assignment will be sent to you via e-mail with an acceptance form attached. Once accepted by you, the documentation necessary for you to begin a review assignment will be made available via e-mail or the agency's FTP site. Once the Presiding Officer has notified you that the final review reports have been forwarded to TALCB, your services for that assignment are deemed completed and your stipend invoice(s) should be sent to the PIC Coordinator, who will forward each to the agency's Purchaser for payment.

For any questions, please contact Beverly Arnold, PIC Coordinator at (512) 936-3652, Sandy Jones, Purchaser at (512) 936-3589 or Mark Mrnak, TALCB SES Director at (512) 936-3624.

Thank you for volunteering to be of service in this important process.

Agreed: Greg Reynolds Date: 1/21/13
[Print Name here & Sign above]
[Company info]

Confirmation of Appointment (Chair's signature indicates appointment for 1 year from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

A1 CLOSING SERVICES LTD.

Greg Reynolds

RE: TALCB PIC/Mentor Program

01/20/2013

To whom it may concern,

Please accept this correspondence as documentation of my qualifications and experience as an appraiser, educator, and mentor. I have held an appraiser certification for two decades, hold a MS in Economics, have served as an educator at the collegiate level (adjunct RE and Economics Instructor at TAMU-Commerce and Grayson County College) as well as the state CE level (served as a CE instructor for The Columbia Institute for several years). I am certified as an appraiser in three states, hold a CE instructor permit from the state of Texas, and am an AQB Certified USPAP Instructor. I currently manage a national AMC and, as such, am forced to stay abreast of current regulatory issues related to residential appraisal. The areas I am expected to be proficient, if not an expert, in include current agency (Fannie/Freddie) appraisal guidelines, current HUD/USDA appraisal guidelines, USPAP appraisal guidelines, state and national regulatory guidelines, and state & national AMC regulatory guidelines. I believe this unique mix of education, educator experience, and industry specific knowledge creates a really well-rounded ability to provide critical, yet objective review of peer appraisal work – with the ultimate goal being to appropriately equip those appraisers who have the potential to serve our industry well, as well as to partner with fellow appraisers in a mentorship capacity for the purpose of remedying deficiencies and assisting our state in developing well versed, critically thinking, and methodically sound appraisers.

Sincerely,

Greg Reynolds

vices, Ltd. 14801 Quorum Drive #120, Dallas, TX 75254 Ph. 877.451.5645

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

P.O. BOX 12188 • AUSTIN, TEXAS 78711-2188 • WWW.TALCB.TEXAS.GOV

Application to Serve on a TALCB Peer Investigative Committee (PIC)/Act as Mentor

Applicants must meet the following minimum requirements:

- Texas-certified as an appraiser
- In good standing in Texas and any other state of licensure/certification
- Certified USPAP instructor
- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

Peter Mark Loftus		1329748-R
Name		Texas Appraiser Certification #
5708 Fairlane Drive	Austin	TX 78757
Street address **or** P.O. Box	City	State Zip Code
512-554-3866	n/a	markloftus@austin.rr.com
Work Phone Number	Fax Number	Email

2. Are you licensed/certified in any other state? If so, list: _____

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
   Yes ❑ No X (If yes, explain) _____

4. What market area(s) do you serve? The Austin Market

5. What property type(s) do you appraise? Residential

6. I wish to be appointed to ❑ serve on the PIC ❑ act as a Mentor X both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

Signature of Applicant — Date Signed: 01/17/13

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

This document is available on the TALCB website at www.talcb.texas.gov

TALCB Form N PPIC-0 (10/5/2012)

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(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.

Agreement to Serve on a Peer Investigative Committee ("Service Agreement")

This Agreement for service on a Peer Investigative Committee ("PIC") is between the Texas Appraiser Licensing and Certification Board ("Board") and Peter Mark Loftus ("PIC Member") for his/her service for a term beginning upon appointment and ending one year later.

Upon appointment, the PIC Member agrees to do the following:

1. Promptly review proposed assignments to identify any conflicts of interest and to determine whether he or she is competent to complete the assignment.

2. Immediately notify the PIC Coordinator in writing (e-mail is acceptable) if the PIC Member cannot accept any assignment for any reason.

3. Provide, within one week of assignment, certification to the Board regarding competence to complete the assignment and the absence of conflicts of interest.

4. Conduct investigative reviews in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP") in effect at the time of the review, utilizing the appropriate version of USPAP in effect at the time of the appraisal(s) that is/are the subject of the complaint. No significant assistance may be provided by any other appraiser or appraiser trainee.

5. Specifically address whether the subject appraisal report(s) comply(ies) with the version of USPAP in effect at the time of the appraisal report or appraisal services rendered.

6. Specifically state any identified non-compliance, the rationale, reasoning and explanation for any conclusion that there was non-compliance with a particular standard or provision, and all supporting data and research for these conclusions.

7. Attach all supporting data (including, but not limited to, MLS data sheet printouts, county appraisal district records, deed records, public records, or other information relied upon) to the report and provide the original version of your report and attached data.

8. Report findings on a typewritten, signed report form (to be provided by Board with each assignment) using the applicable version of USPAP, laws and rules for the date of the subject appraisal.

9. Complete each review within 30 days of assignment, or up to 90 days for more complex reports at the discretion of the Presiding Officer; with the member forwarding the required report to the Board member who serves as the Presiding Officer of the PIC. The Presiding Officer will review the report, and authorize the member to finalize the report and forward it to the Beverly Arnold, the PIC Coordinator.

10. Register and qualify as a vendor with the Board's purchasing department and establish an account to accept electronic funds transfers for payment to the member of earned stipends.

The Board agrees to do the following:

1. Provide instructions and training as needed to PIC Member before assigning the first review.

2. Provide prompt written notice of any proposed assignments and make available sufficient information about the assignment for PIC Member to determine whether he/she is competent to complete the assignment and to identify any immediately apparent conflicts of interest.

3. Provide guidance from the PIC Presiding Officer as needed throughout the review process.

4. Send PIC Member a stipend of $75 upon completion of an assignment and submission of a proper invoice acceptable to the Texas Real Estate Commission's purchasing office (form to be provided).

If these terms are acceptable, please sign and date below and return a signed copy to:
Beverly Arnold, PIC Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you with forms requesting banking data needed to establish an automated payment method via electronic funds transfer for paying your stipend invoices.

Notice of each proposed assignment will be sent to you via e-mail with an acceptance form attached. Once accepted by you, the documentation necessary for you to begin a review assignment will be made available via e-mail or the agency's FTP site. Once the Presiding Officer has notified you that the final review reports have been forwarded to TALCB, your services for that assignment are deemed completed and your stipend invoice(s) should be sent to the PIC Coordinator, who will forward each to the agency's Purchaser for payment.

For any questions, please contact Beverly Arnold, PIC Coordinator at (512) 936-3652, Sandy Jones, Purchaser at (512) 936-3589 or Mark Mrnak, TALCB SES Director at (512) 936-3624.

Thank you for volunteering to be of service in this important process.

Agreed: Peter Mark Loftus; TX-1329748-R Date: 01/17/13
[Print Name here & Sign above]
[Company info]

Confirmation of Appointment (Chair's signature indicates appointment for 1 year from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

January 23, 2013

Texas Appraiser Lic & Cert Board
P.O. Box 12188
Austin, Texas 78711-2188

RE: PIC and Mentor Appointments

To whom it may concern:

In response to your invitation to apply for the above referenced appointments, I have attached the appropriate TALCB applications. I have also attached my current biographical sketch that reflects my experience as an appraiser, educator and contributor to the appraisal profession.

I hereby assert that I am interested in serving in this volunteer effort to help enhance the public trust in our profession. I have long held a deep desire to do what I could to help seasoned appraisers improve and train those that were entering the profession. I have a history of contributing (giving back) to our profession through professional organizations, service on the TALCB, and service in various volunteer roles at The Appraisal Foundation.

If selected for appointment I will look forward to working with the TALCB enforcement team. Thank-you for considering me for a role in this worthwhile effort.

Sincerely,

James Synatzske

James Synatzske, ARA
Appraisal Services

A.R.A.
AMERICAN SOCIETY OF FARM MANAGERS AND RURAL APPRAISERS ®

701 Heritage Way
Stephenville, TX 76401
Phone: 254-965-5914
Cell Ph: 254-485-7222
E-mail: 1jasyn@embarqmail.com

JAMES SYNATZSKE, ARA

Real Estate Appraisals, Reviews, Consulting
701 Heritage Way
Stephenville, TX 76401
PH: 254.965.5914
Cell: 254.485.7222
E-mail 1jasyn@embarqmail.com

James Synatzske has been an appraiser for 35 years, beginning as a staff appraiser for the Texas General Land Office in 1977-later becoming a 'special projects' appraiser and supervisory appraiser for the Land Office. He earned his Accredited Rural Appraiser (ARA) designation in 1984 and operated an independent fee appraisal business from 1985 to 2000. In November 2000 he became the Director of Appraisal for AgTexas Farm Credit Services in Stephenville; and in April 2010 became the Chief Appraisal Officer for Louisiana Land Bank—returning to his private practice in August 2011.

As Director of Appraisal for AgTexas, James was responsible for an appraisal team that handled all in-house appraisals for Farm Credit-related loans in Texas and conducted outside appraisals and appraisal reviews for the public as well. While at Louisiana Land Bank, he coordinated all collateral evaluations and appraisals, and reviewed appraisals for Louisiana Land Bank's Farm Credit related loans-with loan activity in multiple states. He has historically performed appraisals, appraisal reviews and consulting services on highly improved and complex agricultural properties, special-use properties, fractional interest properties, commercial, rural residential and farm/ranch properties. He is a Texas Certified General Real Estate Appraiser, and has work experience throughout Texas, Louisiana and in parts of Arkansas, Kansas, New Mexico, Oklahoma and Georgia.

In 2006 James completed the ***Executive Leadership Coaching Program*** conducted by Mark Wright, and in 2007 completed the ***Journey of Excellence*** leadership program conducted by Alan Dillman.

James is a nationally recognized instructor, lecturer and author on real estate appraisal topics. He has been an approved instructor for the American Society of Farm Mgrs and Rural Appraisers (ASFMRA) since 1983. He developed/authored the 2009 version of ***Appraising Rural Residential Properties*** for the ASFMRA. James also authored the Sales Analysis Chapter of ***The Appraisal of Rural Properties 2nd Edition*** published by The Appraisal Institute, authored ***What is the Market Trying to Tell Me?*** for the Nebraska Appraiser Board's annual Ed Tour, conducted a 4-hour lecture on ***Appraising Rural Residential Properties*** for **Valuation 2000** in Las Vegas, and is an AQB Certified Uniform Standards of Professional Appraisal Practice (USPAP) Instructor**.** In November 2010 James was the recipient of the annual national Excellence in Appraisal Education Award by the American Society of Farm Mgrs. and Rural Appraisers.

In 2008 James ended his service as the Farm Credit System's representative on the Education Council of the Appraisal Foundation Sponsors (ECAFS) in Washington, DC after serving on ECAFS for 6 years—2 years as chair. James was an ex-officio member of the Farm Credit Council's Review, Audit and Appraisal Workgroup Executive Committee from 2004-2008, and in March 2003 completed serving his 6th and final year on the Texas Appraiser Licensing and Certification Board—having served as its Chairman and Vice-Chairman. He is a past President of the Texas Chapter of the ASFMRA, and a past Vice Chair of the ASFMRA National Appraisal Ed Committee. In July 2011 James was elected to a third 3-year term on the Board for Church Extension of the Texas District Lutheran Church of the Missouri Synod. He is a graduate of Texas Tech University with a BS Degree in Agricultural Economics/Finance.

Texas Appraiser Licensing and Certification Board

P.O. Box 12188 Austin, Texas 78711-2188

Certified General Real Estate Appraiser

Number: TX 1320813 G

Issued: 09/12/2012 Expires: 05/31/2013

Appraiser: JAMES MELVIN SYNATZSKE

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Texas Occupations Code, Chapter 1103, is authorized to use this title, Certified General Real Estate Appraiser.

Douglas E. Oldmixon
Commissioner

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

P.O. Box 12188 • Austin, Texas 78711-2188 • www.talcb.texas.gov

Application to Serve on a TALCB Peer Investigative Committee (PIC)/Act as Mentor

Applicants must meet the following minimum requirements:

- Texas-certified as an appraiser
- In good standing in Texas and any other state of licensure/certification
- Certified USPAP instructor
- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

James Melvin Synatzske — TX 1320813 G
Name — Texas Appraiser Certification #

701 Heritage Way — Stephenville — TX — 76401
Street address **or** P.O. Box — City — State — Zip Code

254.965.5914 — N/A — 1jasyn@embarqmail.com
Work Phone Number — Fax Number — Email

2. Are you licensed/certified in any other state? If so, list: No

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
Yes ☐ No ☑ (If yes, explain) _____

4. What market area(s) do you serve? Texas--virtually statewide

5. What property type(s) do you appraise? Complex agricultural/rural RE, small commercial, rural residential

6. I wish to be appointed to ☐ serve on the PIC ☐ act as a Mentor ☑ both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

Signature of Applicant — January 23, 2013
Date Signed

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

This document is available on the TALCB website at www.talcb.texas.gov

TALCB Form N PPIC-0 (10/5/2012)

PRIVACY NOTICE

The following notice about certain information, laws, and practices is given in accordance with Chapter 559, Texas Government Code.

(1) With few exceptions, an individual is entitled on request to be informed about the information that a state governmental body collects about the individual.

(2) Under Sections 552.021 and 552.023 of the Government Code, the individual is entitled to receive and review the information.

(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.

Agreement to Serve on a Peer Investigative Committee ("Service Agreement")

This Agreement for service on a Peer Investigative Committee ("PIC") is between the Texas Appraiser Licensing and Certification Board ("Board") and James Melvin Synatzske ("PIC Member") for his/her service for a term beginning upon appointment and ending one year later.

Upon appointment, the PIC Member agrees to do the following:

1. Promptly review proposed assignments to identify any conflicts of interest and to determine whether he or she is competent to complete the assignment.

2. Immediately notify the PIC Coordinator in writing (e-mail is acceptable) if the PIC Member cannot accept any assignment for any reason.

3. Provide, within one week of assignment, certification to the Board regarding competence to complete the assignment and the absence of conflicts of interest.

4. Conduct investigative reviews in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP") in effect at the time of the review, utilizing the appropriate version of USPAP in effect at the time of the appraisal(s) that is/are the subject of the complaint. No significant assistance may be provided by any other appraiser or appraiser trainee.

5. Specifically address whether the subject appraisal report(s) comply(ies) with the version of USPAP in effect at the time of the appraisal report or appraisal services rendered.

6. Specifically state any identified non-compliance, the rationale, reasoning and explanation for any conclusion that there was non-compliance with a particular standard or provision, and all supporting data and research for these conclusions.

7. Attach all supporting data (including, but not limited to, MLS data sheet printouts, county appraisal district records, deed records, public records, or other information relied upon) to the report and provide the original version of your report and attached data.

8. Report findings on a typewritten, signed report form (to be provided by Board with each assignment) using the applicable version of USPAP, laws and rules for the date of the subject appraisal.

9. Complete each review within 30 days of assignment, or up to 90 days for more complex reports at the discretion of the Presiding Officer; with the member forwarding the required report to the Board member who serves as the Presiding Officer of the PIC. The Presiding Officer will review the report, and authorize the member to finalize the report and forward it to the Beverly Arnold, the PIC Coordinator.

10. Register and qualify as a vendor with the Board's purchasing department and establish an account to accept electronic funds transfers for payment to the member of earned stipends.

The Board agrees to do the following:

1. Provide instructions and training as needed to PIC Member before assigning the first review.

2. Provide prompt written notice of any proposed assignments and make available sufficient information about the assignment for PIC Member to determine whether he/she is competent to complete the assignment and to identify any immediately apparent conflicts of interest.

3. Provide guidance from the PIC Presiding Officer as needed throughout the review process.

4. Send PIC Member a stipend of $75 upon completion of an assignment and submission of a proper invoice acceptable to the Texas Real Estate Commission's purchasing office (form to be provided).

If these terms are acceptable, please sign and date below and return a signed copy to:
Beverly Arnold, PIC Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you with forms requesting banking data needed to establish an automated payment method via electronic funds transfer for paying your stipend invoices.

Notice of each proposed assignment will be sent to you via e-mail with an acceptance form attached. Once accepted by you, the documentation necessary for you to begin a review assignment will be made available via e-mail or the agency's FTP site. Once the Presiding Officer has notified you that the final review reports have been forwarded to TALCB, your services for that assignment are deemed completed and your stipend invoice(s) should be sent to the PIC Coordinator, who will forward each to the agency's Purchaser for payment.

For any questions, please contact Beverly Arnold, PIC Coordinator at (512) 936-3652, Sandy Jones, Purchaser at (512) 936-3589 or Mark Mrnak, TALCB SES Director at (512) 936-3624.

Thank you for volunteering to be of service in this important process.

Agreed: James Melvin Synatzske Date: January 23, 2013
[Print Name here & Sign above]
[Company info]

Confirmation of Appointment (Chair's signature indicates appointment for 1 year from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

Advance Appraisal Group

(Forensic Appraisal Review, Appraisal, Consulting, & Education)

January 31, 2013

Beverly Arnold, PIC Coordinator, and
Mentorship Program Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Re: Letter of Qualification

Dear Ms. Beverly Arnold,

Thank you for the letter dated January 15, 2013 sent to me on behalf of the Board, signed by Chairman Luis F. De La Garza, Jr. I have reviewed the requirements for both, to serve on the PIC and to act as a mentor, as follows:

- *Texas-certified as an appraiser ·In good standing in Texas and any other state of licensure/certification*
- *Certified USPAP instructor*
- *Willing and able to attend a PIC and/or Mentor training session*
- *Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or*
- *Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program*

Based on the above, my qualifications meet or exceed the minimum requirements. As an educator for more than 10 years, I have taught and still teach AQB appraisal pre-licensing and continuing education courses. As an AQB Certified USPAP Instructor for over 6 years, and still actively teaching USPAP, I am able to educate appraisers who have demonstrated deficiencies in areas of appraisal Competency and or Ethics. In addition, I am a practicing appraiser for almost 24 years, and hold an MBA degree. I am prepared to attend the necessary training and complete the tasks as expected.

Therefore, I accept the Board's invitation and wish to be appointed as an **Approved Mentor** and <u>to serve on the PIC</u> for the Board. I understand this is volunteer effort, but I am willing and able to contribute my fair share in our industry to ensure that professional and regulatory standards are being met and maintained. I look forward, if approved, to joining the team and doing my share of service to the appraisal community and the general public. Thank you.

Sincerely.

Robbie Wilson
P O Box 794601
Dallas, TX 75379
rwilson@advanceappraisalgroup.com
469-569-3595

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

P.O. Box 12188 • Austin, Texas 78711-2188 • www.talcb.texas.gov

Application to Serve on a TALCB Peer Investigative Committee (PIC)/Act as Mentor

Applicants must meet the following minimum requirements:

- Texas-certified as an appraiser
- In good standing in Texas and any other state of licensure/certification
- Certified USPAP instructor
- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

Robbie Wilson — TX 1326786-R
Name — Texas Appraiser Certification #

P O Box 794601 — Dallas, TX — 75379
Street address or P.O. Box — City — State — Zip Code

469 569 3595 — N/A — rwilson@advanceappraisalgroup.com
Work Phone Number — Fax Number — Email

2. Are you licensed/certified in any other state? If so, list: No

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
Yes ☐ No ☒ (If yes, explain) _____

4. What market area(s) do you serve? North Texas (Denton, Dallas, Collin, Rockwall & Tarrant)

5. What property type(s) do you appraise? Residential

6. I wish to be appointed to ☐ serve on the PIC ☐ act as a Mentor ☒ both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

Signature of Applicant — Date Signed: 01/31/2013

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

This document is available on the TALCB website at www.talcb.texas.gov

TALCB Form N PPIC-0 (10/5/2012)

PRIVACY NOTICE

The following notice about certain information, laws, and practices is given in accordance with Chapter 559, Texas Government Code.

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(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

DOUGLAS E. OLDMIXON, COMMISSIONER

Agreement to Serve on a Peer Investigative Committee ("Service Agreement")

This Agreement for service on a Peer Investigative Committee ("PIC") is between the Texas Appraiser Licensing and Certification Board ("Board") and Robbie Wilson ("PIC Member") for his/her service for a term beginning upon appointment and ending one year later.

Upon appointment, the PIC Member agrees to do the following:

1. Promptly review proposed assignments to identify any conflicts of interest and to determine whether he or she is competent to complete the assignment.

2. Immediately notify the PIC Coordinator in writing (e-mail is acceptable) if the PIC Member cannot accept any assignment for any reason.

3. Provide, within one week of assignment, certification to the Board regarding competence to complete the assignment and the absence of conflicts of interest.

4. Conduct investigative reviews in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP") in effect at the time of the review, utilizing the appropriate version of USPAP in effect at the time of the appraisal(s) that is/are the subject of the complaint. No significant assistance may be provided by any other appraiser or appraiser trainee.

5. Specifically address whether the subject appraisal report(s) comply(ies) with the version of USPAP in effect at the time of the appraisal report or appraisal services rendered.

6. Specifically state any identified non-compliance, the rationale, reasoning and explanation for any conclusion that there was non-compliance with a particular standard or provision, and all supporting data and research for these conclusions.

7. Attach all supporting data (including, but not limited to, MLS data sheet printouts, county appraisal district records, deed records, public records, or other information relied upon) to the report and provide the original version of your report and attached data.

8. Report findings on a typewritten, signed report form (to be provided by Board with each assignment) using the applicable version of USPAP, laws and rules for the date of the subject appraisal.

9. Complete each review within 30 days of assignment, or up to 90 days for more complex reports at the discretion of the Presiding Officer; with the member forwarding the required report to the Board member who serves as the Presiding Officer of the PIC. The Presiding Officer will review the report, and authorize the member to finalize the report and forward it to the Beverly Arnold, the PIC Coordinator.

10. Register and qualify as a vendor with the Board's purchasing department and establish an account to accept electronic funds transfers for payment to the member of earned stipends.

The Board agrees to do the following:

1. Provide instructions and training as needed to PIC Member before assigning the first review.

2. Provide prompt written notice of any proposed assignments and make available sufficient information about the assignment for PIC Member to determine whether he/she is competent to complete the assignment and to identify any immediately apparent conflicts of interest.

3. Provide guidance from the PIC Presiding Officer as needed throughout the review process.

4. Send PIC Member a stipend of $75 upon completion of an assignment and submission of a proper invoice acceptable to the Texas Real Estate Commission's purchasing office (form to be provided).

If these terms are acceptable, please sign and date below and return a signed copy to:
Beverly Arnold, PIC Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you with forms requesting banking data needed to establish an automated payment method via electronic funds transfer for paying your stipend invoices.

Notice of each proposed assignment will be sent to you via e-mail with an acceptance form attached. Once accepted by you, the documentation necessary for you to begin a review assignment will be made available via e-mail or the agency's FTP site. Once the Presiding Officer has notified you that the final review reports have been forwarded to TALCB, your services for that assignment are deemed completed and your stipend invoice(s) should be sent to the PIC Coordinator, who will forward each to the agency's Purchaser for payment.

For any questions, please contact Beverly Arnold, PIC Coordinator at (512) 936-3652, Sandy Jones, Purchaser at (512) 936-3589 or Mark Mrnak, TALCB SES Director at (512) 936-3624.

Thank you for volunteering to be of service in this important process.

Agreed: Robbie Wilson Date: 01/31/2013
[Print Name here & Sign above]
[Company info] Advance Appraisal Group
Dallas, TX 75379 (469) 569-3595

Confirmation of Appointment (Chair's signature indicates appointment for 1 year from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

AGENDA ITEM 7

Discussion and possible action regarding appointment of Mentors

Mentor Applications 2013
Bobby Crisp
Paul Hornsby*
Diana Jacobs
Deloris Kraft-Longoria
Jim Pearson
Peter Mark Loftus*
Gregory Robert Reynolds*
Dane Sever*
Gregory Stephens*
James Melvin Synatzske*
Ted Whitmer*
Robbie Wilson*

* New applicants as of 2013; all others served as mentors in 2012

SUMMARY

This agenda item allows for the Board, to make appointments to the mentor program.

STAFF RECOMMENDATION

To Be Presented.

RECOMMENDED MOTION

MOVED, that the Board appoint the following individuals as Mentors for the Board's mentorship program: [insert names of individuals selected].

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

DOUGLAS E. OLDMIXON, COMMISSIONER

Mentor Appointment Agreement

This Mentor Appointment Agreement is by and between the Texas Appraiser Licensing and Certification Board ("Board") and Bobby W. Crisp ("Approved Mentor") for his/her appointment for a term beginning upon appointment and ending two years later.

Upon appointment, the Board will add the Approved Mentor to the list given to respondents who are required by the Board to participate in mentorship sessions ("List").

The Approved Mentor understands and agrees as follows:

1. The Board does not recommend any one specific Approved Mentor from the List to a respondent. The respondent is responsible for contacting an Approved Mentor and arranging mentorship sessions.

2. The Board does not regulate what fee the Approved Mentor charges for mentorship sessions. Approved Mentors determine their fee for mentorship sessions.

3. I will attend a mentorship program training session by the Board prior to providing mentorship sessions.

4. During each mentorship session, I will discuss the Uniform Standards of Professional Appraisal Practice, real estate appraisal practices, skills, methods, techniques, processes or other germane material with the respondent in an effort to improve this individual's skills as a real estate appraiser. I will make the mentorship sessions interactive and collaborative with the respondent in our common goal to improve this individual's skills as a real estate appraiser.

5. Within one week of completion of an ordered series of mentorship sessions by a respondent, I will complete, sign and send the Board's Certification of Completion of Mentorship form to the Board.

If these terms are acceptable, please sign and date below and return a signed copy to:
Beverly Arnold, Mentorship Program Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you.

Thank you for volunteering to be of service in this important process.

Agreed: Bobby W. Crisp Date: November 19, 2012
[Print Name here & Sign above]
[Company info] Bobby W. Crisp

Confirmation of Appointment (Chair's signature indicates appointment for 2 years from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

PAUL HORNSBY & COMPANY

APPRAISERS AND CONSULTANTS

AUSTIN • DALLAS/FORT WORTH

Paul Hornsby, MAI, SRA, CRE®
David J. Englund, MAI, SRA
Eli Hanslik, MAI
Lance Lawson, MAI
Chris Hornsby, MAI
Dawn Smith, MAI
Clifford Shaw, State Certified

Catherine A. Thomas, State Certified
Melany Adler, State Certified
Joseph McAweeney, State Certified
Katie Daniewicz, State Certified
Kimberly Garvey, Research Director
Terri Bowden, Business Manager
Kristian Thompson, Administrative Assistant

RECEIVED
TEXAS REAL ESTATE COMMISSION
JAN 24 2013
CASHIER'S SECTION
OPERATOR 13

January 21, 2013

Texas Appraiser Licensing & Certification Board
P.O. Box 12188
Austin, Texas 78711-2188

Re: Mentor for TALCB peer review process

To Whom It May Concern:

In accordance with the attached application, this letter summarizes my experience and qualifications to serve as a Mentor for the TALCB. Those items are more fully described in the attached Qualifications.

I have previously served on the PIC and understand the process. In addition, I regularly teach USPAP for the Appraisal Institute, and have been actively engaged in the appraisal profession for thirty-two (32) years.

I respectfully submit this application and look forward to being of service.

Sincerely,

Paul Hornsby

2100 Kramer Lane • Suite 550 • Austin, Texas 78758 • 512-477-6311 • (Fax) 512-477-1793
777 Main Street • Suite 600 • Fort Worth, Texas 76102 • 817-887-8467

QUALIFICATIONS OF PAUL HORNSBY, MAI, SRA, CRE®

Experience:

Since 1980, Mr. Hornsby has been a practicing real estate appraiser with an office in Austin, Texas, specializing in the valuation of complex commercial properties and in support of litigation proceedings.

Mr. Hornsby often serves in the capacity of expert witness in cases involving eminent domain, bankruptcy, general commercial litigation and ad valorem tax appeal. He is qualified as an appraisal expert in numerous county courts, state district courts, Federal District Court, U.S. Bankruptcy Court, and various commissioners' courts and appraisal district review boards. Mr. Hornsby has given over 300 depositions, testified in over 200 special commissioners hearings and appeared in over 100 jury and bench trials.

In addition to real property appraisal, Mr. Hornsby provides counseling services relating to real estate, tangible personal property, and intangible assets. He is the owner of ph Business Advisors, a business valuation firm specializing in the appraisal of business enterprises, partnership interests, and the allocation of tangible and intangible assets. Land planning services are provided by our sister company, alterra design group (www.alterradesigngroup.com) and brokerage services by Hornsby Realty (www.hornsby-realty.com).

Licenses and Designations:

- MAI Designation - Appraisal Institute, Certificate No. 7305
- SRA Designation - Appraisal Institute
- CRE® Designation - The Counselors of Real Estate®
- State Certified General Real Estate Appraiser #TX-1321761-G
- Texas Broker License #283369-05

Associations and Activities:

- Past Chair, Central & South Texas Chapter, The Counselors of Real Estate®
- Past President, Director and Regional Committee Member-Austin Chapter of the Appraisal Institute
- Member, International Right of Way Association
- Affiliate member, Texas Association of Appraisal Districts
- Instructor, Appraisal Institute – Uniform Standards of Professional Appraisal Practice and Business Practices and Ethics
- Appraisal Qualifications Board (AQB) Certified USPAP Instructor
- REALTOR - National Association of Realtors

Education:

University of Texas at Austin, B.B.A. Degree in Finance, August 1977

Lectures and Publications:

- Transmission Lines: Acquisition, Valuation and condemnation, Austin Chapter of the Appraisal Institute and IRWA Chapter 74, 2012
- Responding to Daubert Challenges, Eminent Domain Conference, CLE® International, 2011
- Equality and Uniformity-Commercial Properties, Appraisal Review Board, Travis Central Appraisal District, May 2009
- Appraisal Values in an Unsettled Economy, Graves Dougherty Hearon & Moody – Banking & Real Estate Clients, October, 2008
- Fee Simple Estate - How Many Sticks in the Bundle?, 22nd Annual Legal Seminar on Ad Valorem Taxation in San Antonio, 2008
- Real Estate Appraisal Issues and Ethics, Eminent Domain for Attorneys in Texas, 2007
- Contemporary Appraisal Issues, Central Texas Commercial Property Exchange, 2007
- Capitalization Theory & Techniques, Chartered Financial Analysts, 2007
- Material and Substantial Impairment of Access, CLE® International, 2003
- Fee Simple Versus Leased Fee Valuation: A Study of Appraisal Models, Downtown Austin Alliance, Institute of Real Estate Management, 2001
- Regulatory Takings, International Right of Way Association, 2000
- The Schmidt Opinion From the Appraiser's Perspective, Office of the Attorney General, State of Texas, 1993
- Asbestos Abatement and Lead Paint: Effects on Real Estate Value, Texas Association of Appraisal Districts, 1992
- The Endangered Species Act and Its Impact on Property Value, Texas Savings and Loan League, 1989
- Valuation Theory, Real Estate Symposium, University of Texas, 1984

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

P.O. Box 12188 • Austin, Texas 78711-2188 • www.talcb.texas.gov

Application to Serve on a TALCB Peer Investigative Committee (PIC)/Act as Mentor

Applicants must meet the following minimum requirements:

- Texas-certified as an appraiser
- In good standing in Texas and any other state of licensure/certification
- Certified USPAP instructor
- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

Paul Hornsby — Name
TX 1321761 G — Texas Appraiser Certification #
2100 Kramer Ln #550 — Street address **or** P.O. Box
Austin — City
TX — State
78758 — Zip Code
512-477-6311 — Work Phone Number
512-477-1793 — Fax Number
phornsby@paulhornsbyandco.com — Email

2. Are you licensed/certified in any other state? If so, list: No

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
Yes ☐ No ☑ (If yes, explain) _____

4. What market area(s) do you serve? Texas

5. What property type(s) do you appraise? Residential, commercial, heavy industrial, equal and uniform valuations

6. I wish to be appointed to ☐ serve on the PIC ☑ act as a Mentor ☐ both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

Signature of Applicant — Date Signed: 1/19/13

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

This document is available on the TALCB website at www.talcb.texas.gov

TALCB Form N PPIC-0 (10/5/2012)

Mentorship Agreement for Paul Hornsby
to be provided.

Confirmation of Appointment (Chair's signature indicates appointment for 2 years from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

Diana T. Jacob

AQB USPAP Instructor #10022

3156 State Hwy 22
Hillsboro, TX 76645

210.363.5950 cell/work
dianatjacob@yahoo.com

November 30, 2012

Beverly Arnold, Mentorship Program Coordinator
TALCB Enforcement Division
PO Box 12188
Austin, Texas 78711-2188

RE: Request to be appointed and continue acting as a Mentor for the TALCB Mentor Program

I am humbly requesting the privilege of being formerly appointed to the Mentor team that I've served on from its implementation. Over the past term of this program I've had the privilege of mentoring eleven Texas Certified Appraisers who were required in their consent order to complete specified hours of mentor time.

The time it takes to prepare for these sessions is approximately 1.5 times the required hours of mentor time. However, the reward of knowing that the appraiser has learned valuable, practical methods and techniques and learned how to apply them in his/her day to day practice goes way beyond the time it takes to prepare and conduct these sessions. I've not had one appraiser who didn't say at the bare minimum, "Don't tell anyone I told you, but I'm so glad I had this opportunity to learn what in all my years past I was never taught." Several have said, "I wish that I could have had this opportunity without the label of a signed agreed order but in the end I'm glad this happened. This was the one good thing that came out of this experience."

I teach USPAP several times a year but I've never had such fulfillment of contribution as I do when I am able to listen to the appraisers' stories about what brought them to this point and how much they love their appraisal practice. I receive far more than I give and I'm in hopes that you will consider my appointment as a continued step in giving back to the appraisers who are charged with completing this program.

I personally would like to see you expand on this program to non-disciplined appraisers by considering statewide round-tables where the mentors and possibly a PIC member (at least two at a time) and an investigator as well as a TALCB member would be available for a day to both bring a short overview of the recent changes in the TX Appraisal Law and be willing to look over volunteered reports for which the appraiser could receive continuing education credit and could, without recrimination, be open to having their work critiqued. I think it would go a long way in establishing a good rapport with the TALCB.

I apologize for the delay in sending this to you; there were time and technical challenges in getting this information put together in the format you requested. Please note I've attached my qualifications in this request for appointment packet as you've required. Should you need any additional information I am available at any time to provide such a request.

Sincerely,

Diana Jacob

Diana T. Jacob

AQB USPAP Certified Instructor #10022

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

P.O. Box 12188 • Austin, Texas 78711-2188 • www.talcb.texas.gov

Application to Serve on a TALCB Peer Investigative Committee (PIC)/Act as Mentor

Applicants must meet the following minimum requirements:

- Texas-certified as an appraiser
- In good standing in Texas and any other state of licensure/certification
- Certified USPAP instructor
- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

Diana T. Jacob		Not Certified in TX-see item 2	
Name		Texas Appraiser Certification #	
3156 State Hwy 22	Hillsboro	TX	76645
Street address **or** P.O. Box	City	State	Zip Code
210.363.5950	none	dianatjacob@yahoo.com	
Work Phone Number	Fax Number	Email	

2. Are you licensed/certified in any other state? If so, list: LA#R0537 (Res), NC#A2994 (Gen), GA207580 (Gen)

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
   Yes ❑ No X (If yes, explain) _____

4. What market area(s) do you serve? See expanded answer on following page for the response to this question.

5. What property type(s) do you appraise? Residential, Vacant Land, Light Commercial, Farms, Golf Courses, etc.

6. I wish to be appointed to ❑ serve on the PIC X act as a Mentor ❑ both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

Signature of Applicant — Date Signed: 11/30/2012

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

This document is available on the TALCB website at www.talcb.texas.gov

TALCB Form N PPIC-0 (10/5/2012)

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

DOUGLAS E. OLDMIXON, COMMISSIONER

Mentor Appointment Agreement

This Mentor Appointment Agreement is by and between the Texas Appraiser Licensing and Certification Board ("Board") and Diana T. Jacob ("Approved Mentor") for his/her appointment for a term beginning upon appointment and ending two years later.

Upon appointment, the Board will add the Approved Mentor to the list given to respondents who are required by the Board to participate in mentorship sessions ("List").

The Approved Mentor understands and agrees as follows:

1. The Board does not recommend any one specific Approved Mentor from the List to a respondent. The respondent is responsible for contacting an Approved Mentor and arranging mentorship sessions.

2. The Board does not regulate what fee the Approved Mentor charges for mentorship sessions. Approved Mentors determine their fee for mentorship sessions.

3. I will attend a mentorship program training session by the Board prior to providing mentorship sessions.

4. During each mentorship session, I will discuss the Uniform Standards of Professional Appraisal Practice, real estate appraisal practices, skills, methods, techniques, processes or other germane material with the respondent in an effort to improve this individual's skills as a real estate appraiser. I will make the mentorship sessions interactive and collaborative with the respondent in our common goal to improve this individual's skills as a real estate appraiser.

5. Within one week of completion of an ordered series of mentorship sessions by a respondent, I will complete, sign and send the Board's Certification of Completion of Mentorship form to the Board.

If these terms are acceptable, please sign and date below and return a signed copy to:
Beverly Arnold, Mentorship Program Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you.

Thank you for volunteering to be of service in this important process.

Agreed: Diana Jacob Date: 11/30/2012

Diana T. Jacob

Confirmation of Appointment (Chair's signature indicates appointment for 2 years from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

DOUGLAS E. OLDMIXON, COMMISSIONER

Mentor Appointment Agreement

This Mentor Appointment Agreement is by and between the Texas Appraiser Licensing and Certification Board ("Board") and Deloris L. Kraft-Longoria ("Approved Mentor") for his/her appointment for a term beginning upon appointment and ending two years later.

Upon appointment, the Board will add the Approved Mentor to the list given to respondents who are required by the Board to participate in mentorship sessions ("List").

The Approved Mentor understands and agrees as follows:

1. The Board does not recommend any one specific Approved Mentor from the List to a respondent. The respondent is responsible for contacting an Approved Mentor and arranging mentorship sessions.

2. The Board does not regulate what fee the Approved Mentor charges for mentorship sessions. Approved Mentors determine their fee for mentorship sessions.

3. I will attend a mentorship program training session by the Board prior to providing mentorship sessions.

4. During each mentorship session, I will discuss the Uniform Standards of Professional Appraisal Practice, real estate appraisal practices, skills, methods, techniques, processes or other germane material with the respondent in an effort to improve this individual's skills as a real estate appraiser. I will make the mentorship sessions interactive and collaborative with the respondent in our common goal to improve this individual's skills as a real estate appraiser.

5. Within one week of completion of an ordered series of mentorship sessions by a respondent, I will complete, sign and send the Board's Certification of Completion of Mentorship form to the Board.

If these terms are acceptable, please sign and date below and return a signed copy to:
Beverly Arnold, Mentorship Program Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you.

Thank you for volunteering to be of service in this important process.

Agreed: Deloris L. Kraft-Longoria Date: December 3, 2012
[Print Name here & Sign above] DELORIS L. KRAFT-LONGORIA
[Company info] LONE STAR VALUATION, INC.

Confirmation of Appointment (Chair's signature indicates appointment for 2 years from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

Mentor Appointment Agreement

This Mentor Appointment Agreement is by and between the Texas Appraiser Licensing and Certification Board ("Board") and Jim D. Pearson ("Approved Mentor") for his/her appointment for a term beginning upon appointment and ending two years later.

Upon appointment, the Board will add the Approved Mentor to the list given to respondents who are required by the Board to participate in mentorship sessions ("List").

The Approved Mentor understands and agrees as follows:

1. The Board does not recommend any one specific Approved Mentor from the List to a respondent. The respondent is responsible for contacting an Approved Mentor and arranging mentorship sessions.

2. The Board does not regulate what fee the Approved Mentor charges for mentorship sessions. Approved Mentors determine their fee for mentorship sessions.

3. I will attend a mentorship program training session by the Board prior to providing mentorship sessions.

4. During each mentorship session, I will discuss the Uniform Standards of Professional Appraisal Practice, real estate appraisal practices, skills, methods, techniques, processes or other germane material with the respondent in an effort to improve this individual's skills as a real estate appraiser. I will make the mentorship sessions interactive and collaborative with the respondent in our common goal to improve this individual's skills as a real estate appraiser.

5. Within one week of completion of an ordered series of mentorship sessions by a respondent, I will complete, sign and send the Board's Certification of Completion of Mentorship form to the Board.

If these terms are acceptable, please sign and date below and return a signed copy to:
Beverly Arnold, Mentorship Program Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you.

Thank you for volunteering to be of service in this important process.

Jim D. Pearson

Agreed: Jim D. Pearson Date: November 18, 2012
[Print Name here & Sign above]
[Company info]

Confirmation of Appointment (Chair's signature indicates appointment for 2 years from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

DOUGLAS E. OLDMIXON, COMMISSIONER

Mentor Appointment Agreement

This Mentor Appointment Agreement is by and between the Texas Appraiser Licensing and Certification Board ("Board") and Peter Mark Loftus ("Approved Mentor") for his/her appointment for a term beginning upon appointment and ending two years later.

Upon appointment, the Board will add the Approved Mentor to the list given to respondents who are required by the Board to participate in mentorship sessions ("List").

The Approved Mentor understands and agrees as follows:

1. The Board does not recommend any one specific Approved Mentor from the List to a respondent. The respondent is responsible for contacting an Approved Mentor and arranging mentorship sessions.

2. The Board does not regulate what fee the Approved Mentor charges for mentorship sessions. Approved Mentors determine their fee for mentorship sessions.

3. I will attend a mentorship program training session by the Board prior to providing mentorship sessions.

4. During each mentorship session, I will discuss the Uniform Standards of Professional Appraisal Practice, real estate appraisal practices, skills, methods, techniques, processes or other germane material with the respondent in an effort to improve this individual's skills as a real estate appraiser. I will make the mentorship sessions interactive and collaborative with the respondent in our common goal to improve this individual's skills as a real estate appraiser.

5. Within one week of completion of an ordered series of mentorship sessions by a respondent, I will complete, sign and send the Board's Certification of Completion of Mentorship form to the Board.

If these terms are acceptable, please sign and date below and return a signed copy to:
Mentorship Program Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you.

Thank you for volunteering to be of service in this important process.

Agreed: Peter Mark Loftus; TX-1329748-R Date: 01/21/13
[Print Name here & Sign above]
[Company info]

Confirmation of Appointment (Chair's signature indicates appointment for 2 years from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

DOUGLAS E. OLDMIXON, COMMISSIONER

Mentor Appointment Agreement

This Mentor Appointment Agreement is by and between the Texas Appraiser Licensing and Certification Board ("Board") and Gregory R. Reynolds ("Approved Mentor") for his/her appointment for a term beginning upon appointment and ending two years later.

Upon appointment, the Board will add the Approved Mentor to the list given to respondents who are required by the Board to participate in mentorship sessions ("List").

The Approved Mentor understands and agrees as follows:

1. The Board does not recommend any one specific Approved Mentor from the List to a respondent. The respondent is responsible for contacting an Approved Mentor and arranging mentorship sessions.

2. The Board does not regulate what fee the Approved Mentor charges for mentorship sessions. Approved Mentors determine their fee for mentorship sessions.

3. I will attend a mentorship program training session by the Board prior to providing mentorship sessions.

4. During each mentorship session, I will discuss the Uniform Standards of Professional Appraisal Practice, real estate appraisal practices, skills, methods, techniques, processes or other germane material with the respondent in an effort to improve this individual's skills as a real estate appraiser. I will make the mentorship sessions interactive and collaborative with the respondent in our common goal to improve this individual's skills as a real estate appraiser.

5. Within one week of completion of an ordered series of mentorship sessions by a respondent, I will complete, sign and send the Board's Certification of Completion of Mentorship form to the Board.

If these terms are acceptable, please sign and date below and return a signed copy to:
Mentorship Program Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you.

Thank you for volunteering to be of service in this important process.

Agreed: Greg Reynolds Date: 1/21/13
[Print Name here & Sign above]
[Company info]

Confirmation of Appointment (Chair's signature indicates appointment for 2 years from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

DOUGLAS E. OLDMIXON, COMMISSIONER

Mentor Appointment Agreement

This Mentor Appointment Agreement is by and between the Texas Appraiser Licensing and Certification Board ("Board") and Dave Sever ("Approved Mentor") for his/her appointment for a term beginning upon appointment and ending two years later.

Upon appointment, the Board will add the Approved Mentor to the list given to respondents who are required by the Board to participate in mentorship sessions ("List").

The Approved Mentor understands and agrees as follows:

1. The Board does not recommend any one specific Approved Mentor from the List to a respondent. The respondent is responsible for contacting an Approved Mentor and arranging mentorship sessions.

2. The Board does not regulate what fee the Approved Mentor charges for mentorship sessions. Approved Mentors determine their fee for mentorship sessions.

3. I will attend a mentorship program training session by the Board prior to providing mentorship sessions.

4. During each mentorship session, I will discuss the Uniform Standards of Professional Appraisal Practice, real estate appraisal practices, skills, methods, techniques, processes or other germane material with the respondent in an effort to improve this individual's skills as a real estate appraiser. I will make the mentorship sessions interactive and collaborative with the respondent in our common goal to improve this individual's skills as a real estate appraiser.

5. Within one week of completion of an ordered series of mentorship sessions by a respondent, I will complete, sign and send the Board's Certification of Completion of Mentorship form to the Board.

If these terms are acceptable, please sign and date below and return a signed copy to:
Mentorship Program Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you.

Thank you for volunteering to be of service in this important process.

Agreed: _____ Date: 1/29/13
[Print Name here & Sign above] Dave Sever
[Company info]

Confirmation of Appointment (Chair's signature indicates appointment for 2 years from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

Mentor Appointment Agreement

This Mentor Appointment Agreement is by and between the Texas Appraiser Licensing and Certification Board ("Board") and Gregory Stephens ("Approved Mentor") for his/her appointment for a term beginning upon appointment and ending two years later.

Upon appointment, the Board will add the Approved Mentor to the list given to respondents who are required by the Board to participate in mentorship sessions ("List").

The Approved Mentor understands and agrees as follows:

1. The Board does not recommend any one specific Approved Mentor from the List to a respondent. The respondent is responsible for contacting an Approved Mentor and arranging mentorship sessions.

2. The Board does not regulate what fee the Approved Mentor charges for mentorship sessions. Approved Mentors determine their fee for mentorship sessions.

3. I will attend a mentorship program training session by the Board prior to providing mentorship sessions.

4. During each mentorship session, I will discuss the Uniform Standards of Professional Appraisal Practice, real estate appraisal practices, skills, methods, techniques, processes or other germane material with the respondent in an effort to improve this individual's skills as a real estate appraiser. I will make the mentorship sessions interactive and collaborative with the respondent in our common goal to improve this individual's skills as a real estate appraiser.

5. Within one week of completion of an ordered series of mentorship sessions by a respondent, I will complete, sign and send the Board's Certification of Completion of Mentorship form to the Board.

If these terms are acceptable, please sign and date below and return a signed copy to:
Mentorship Program Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you.

Thank you for volunteering to be of service in this important process.

Agreed: Gregory Stephens Date: 1/29/2013
[Print Name here & Sign above] Greg Stephens
[Company info]

Confirmation of Appointment (Chair's signature indicates appointment for 2 years from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

DOUGLAS E. OLDMIXON, COMMISSIONER

Mentor Appointment Agreement

This Mentor Appointment Agreement is by and between the Texas Appraiser Licensing and Certification Board ("Board") and James Melvin Synatzske ("Approved Mentor") for his/her appointment for a term beginning upon appointment and ending two years later.

Upon appointment, the Board will add the Approved Mentor to the list given to respondents who are required by the Board to participate in mentorship sessions ("List").

The Approved Mentor understands and agrees as follows:

1. The Board does not recommend any one specific Approved Mentor from the List to a respondent. The respondent is responsible for contacting an Approved Mentor and arranging mentorship sessions.

2. The Board does not regulate what fee the Approved Mentor charges for mentorship sessions. Approved Mentors determine their fee for mentorship sessions.

3. I will attend a mentorship program training session by the Board prior to providing mentorship sessions.

4. During each mentorship session, I will discuss the Uniform Standards of Professional Appraisal Practice, real estate appraisal practices, skills, methods, techniques, processes or other germane material with the respondent in an effort to improve this individual's skills as a real estate appraiser. I will make the mentorship sessions interactive and collaborative with the respondent in our common goal to improve this individual's skills as a real estate appraiser.

5. Within one week of completion of an ordered series of mentorship sessions by a respondent, I will complete, sign and send the Board's Certification of Completion of Mentorship form to the Board.

If these terms are acceptable, please sign and date below and return a signed copy to:
Mentorship Program Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you.

Thank you for volunteering to be of service in this important process.

Agreed: James Synatzske Date: January 23, 2013
[Print Name here & Sign above]
[Company info]

Confirmation of Appointment (Chair's signature indicates appointment for 2 years from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

P.O. Box 12188 • Austin, Texas 78711-2188 • www.talcb.texas.gov

Application to Serve on a TALCB Peer Investigative Committee (PIC)/Act as Mentor

RECEIVED
TEXAS REAL ESTATE COMMISSION
JAN 22 2013
CASHIER'S SECTION
OPERATOR 15

Applicants must meet the following minimum requirements:

- Texas-certified as an appraiser
- In good standing in Texas and any other state of licensure/certification
- Certified USPAP instructor
- Willing and able to attend a PIC and/or Mentor training session
- Willing and able to complete four investigative reviews in a year (roughly one per quarter), each within 30 days of assignment and/or
- Willing and able to perform a minimum of 32 hours in a year of in person mentorship meetings with appraisers who are required by TALCB to complete a mentorship program

1. Personal Information and Certification #:

Ted Whitmer — Name
TX 1321994-G — Texas Appraiser Certification #
2508 Merrimac Ct. — Street address or P.O. Box
College Station — City
TX — State
77845 — Zip Code
979-1090-9465 — Work Phone Number
979-987-2530 — Fax Number
ted@tedwhitmer.com — Email

2. Are you licensed/certified in any other state? If so, list: No, not currently (please see attached letter)

3. Are there any lawsuits, regulatory complaints, or criminal action pending against you in Texas or elsewhere?
Yes ☐ No ☒ (If yes, explain) _____

4. What market area(s) do you serve? Houston, College Station, Dallas, Austin

5. What property type(s) do you appraise? ALL

6. I wish to be appointed to ☐ serve on the PIC ☒ act as a Mentor ☐ both

7. Please attach a letter on your professional letterhead stating your qualifications and experience as an appraiser and USPAP Certified Instructor, and your rationale for requesting appointment to the PIC or to act as a Mentor.

By my signature below, I certify that the information I have provided is true and correct. If I am appointed to serve on a peer investigative committee, I agree to perform each investigative review assigned to me within 30 days of assignment. I will decline any assignment I am not competent to complete or that presents a conflict of interest or even the appearance of a conflict of interest. If I am appointed to act as a Mentor, I will discuss the Uniform Standards of Professional Appraisal Practice; real estate appraisal practices, skills, and methods with the appraiser in an effort to improve the individual's skills as a real estate appraiser.

Signature of Applicant — Date Signed: 1/17/13

Please return a signed application, letter of qualifications, and PIC Service Agreement and/or Mentor Appointment Agreement to TALCB at the address provided above. TALCB will make a determination, in its sole discretion, based on the application and any other information it deems relevant to the appointment.

This document is available on the TALCB website at www.talcb.texas.gov

TALCB Form N PPIC-0 (10/5/2012)

PRIVACY NOTICE

The following notice about certain information, laws, and practices is given in accordance with Chapter 559, Texas Government Code.

(1) With few exceptions, an individual is entitled on request to be informed about the information that a state governmental body collects about the individual.

(2) Under Sections 552.021 and 552.023 of the Government Code, the individual is entitled to receive and review the information.

(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.

Ted Whitmer, CRE CCIM MAI Attorney
Lisa Smith, Paralegal & Legal Administrator
Carly Whitmer, Education Director

2508 Merrimac Ct.• College Station, TX 77845• Phone: 979.690.9465 • Fax: 979.987.2530
E-Mail: ted@tedwhitmer.com Web: www.tedwhitmer.com & www.appraiserdefense.com

To Whom This May Concern,

I was licensed in several states, most recently in Oklahoma. I turned in my license back to them last year and became inactive. For some reason, it is still showing on the ASC website that I am active, but I recently called and confirmed with them that I am no longer active. Please let me know if you have any questions.

Sincerely,

Ted Whitmer, Attorney, CRE CCIM MAI
General Certified Appraiser, Certified USPAP Instructor
2508 Merrimac Court
College Station, Texas 77845
979.690.9465
979.987.2530 (F)
979.492.4124 (C)
ted@tedwhitmer.com

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

DOUGLAS E. OLDMIXON, COMMISSIONER

Mentor Appointment Agreement

This Mentor Appointment Agreement is by and between the Texas Appraiser Licensing and Certification Board ("Board") and Ted R. Whitmer ("Approved Mentor") for his/her appointment for a term beginning upon appointment and ending two years later.

Upon appointment, the Board will add the Approved Mentor to the list given to respondents who are required by the Board to participate in mentorship sessions ("List").

The Approved Mentor understands and agrees as follows:

1. The Board does not recommend any one specific Approved Mentor from the List to a respondent. The respondent is responsible for contacting an Approved Mentor and arranging mentorship sessions.

2. The Board does not regulate what fee the Approved Mentor charges for mentorship sessions. Approved Mentors determine their fee for mentorship sessions.

3. I will attend a mentorship program training session by the Board prior to providing mentorship sessions.

4. During each mentorship session, I will discuss the Uniform Standards of Professional Appraisal Practice, real estate appraisal practices, skills, methods, techniques, processes or other germane material with the respondent in an effort to improve this individual's skills as a real estate appraiser. I will make the mentorship sessions interactive and collaborative with the respondent in our common goal to improve this individual's skills as a real estate appraiser.

5. Within one week of completion of an ordered series of mentorship sessions by a respondent, I will complete, sign and send the Board's Certification of Completion of Mentorship form to the Board.

If these terms are acceptable, please sign and date below and return a signed copy to:
Mentorship Program Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you.

Thank you for volunteering to be of service in this important process.

Agreed: _____ Date: 1/17/13
[Print Name here & Sign above]
[Company info]

Confirmation of Appointment (Chair's signature indicates appointment for 2 years from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

DOUGLAS E. OLDMIXON, COMMISSIONER

Mentor Appointment Agreement

This Mentor Appointment Agreement is by and between the Texas Appraiser Licensing and Certification Board ("Board") and Robbie Wilson ("Approved Mentor") for his/her appointment for a term beginning upon appointment and ending two years later.

Upon appointment, the Board will add the Approved Mentor to the list given to respondents who are required by the Board to participate in mentorship sessions ("List").

The Approved Mentor understands and agrees as follows:

1. The Board does not recommend any one specific Approved Mentor from the List to a respondent. The respondent is responsible for contacting an Approved Mentor and arranging mentorship sessions.

2. The Board does not regulate what fee the Approved Mentor charges for mentorship sessions. Approved Mentors determine their fee for mentorship sessions.

3. I will attend a mentorship program training session by the Board prior to providing mentorship sessions.

4. During each mentorship session, I will discuss the Uniform Standards of Professional Appraisal Practice, real estate appraisal practices, skills, methods, techniques, processes or other germane material with the respondent in an effort to improve this individual's skills as a real estate appraiser. I will make the mentorship sessions interactive and collaborative with the respondent in our common goal to improve this individual's skills as a real estate appraiser.

5. Within one week of completion of an ordered series of mentorship sessions by a respondent, I will complete, sign and send the Board's Certification of Completion of Mentorship form to the Board.

If these terms are acceptable, please sign and date below and return a signed copy to:
Mentorship Program Coordinator
TALCB Standards and Enforcement Services
P.O. Box 12188, Austin, Texas 78711-2188

Once your application for appointment has been reviewed and approved by the TALCB, an executed copy of this agreement will be returned to you.

Thank you for volunteering to be of service in this important process.

Agreed: Robbie Wilson Date: 01/31/2013
[Print Name here & Sign above]
[Company info] Advance Appraisal Group
Dallas, TX 75379 (469) 569 3595

Confirmation of Appointment (Chair's signature indicates appointment for 2 years from date)

Agreed: _____ Date: _____
Chair of the Texas Appraiser Licensing & Certification Board

AGENDA ITEM 8

Discussion and possible action to set responsibilities for TALCB's liaison to the Texas Real Estate Commission

AGENDA ITEM 9

Approval of minutes of the August 17, 2012 Board meeting

STAFF RECOMMENDATION

Approve minutes as presented for the for August 17, 2012 Board meeting.

MINUTES OF THE
TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD
Board Room 170
1700 N. Congress, Suite 400
Austin, TX 78701

August 17, 2012

On Friday, August 17, 2012, at 10:00 a.m., there was a duly posted regular meeting of the Texas Appraiser Licensing and Certification Board (the "Board"). Chair Luis De La Garza presided, the meeting was web-streamed live and video-taped and Beverly Arnold recorded the minutes.

The following members of the Board, constituting a quorum, were present at the beginning of the meeting:

Walker R. Beard	Shannon K. McClendon
Laurie C. Fontana	Sheryl R. Swift
Luis F. De La Garza, Jr.	Donna L. Walz
Mark A. McAnally	Jamie S. Wickliffe

The following staff members were present: Karen Alexander, Christine Anderson, Beverly Arnold, Troy Beaulieu, Marjorie Caldwell, Loretta DeHay, Donna Englert, General Counsel Kerri Galvin, Commissioner Douglas Oldmixon, Anthony Slagle, Jeff Strawmyer, Kendall Tobert, Tom Watson, David Wilson, and Kyle Wolfe. Co-General Counsel Ellen Sameth of the Office of the Attorney General was also present.

Chair De La Garza called the meeting to order at 10:02 a.m. and welcomed the attendees. Ms. Walz led the attendees in the Pledge of Allegiance to the United States and Mr. McAnally led the attendees in the Pledge of Allegiance to the Texas flag.

Chair De La Garza moved to agenda item 2, discussion and possible action to excuse Board member absences, if any. Chairman De La Garza stated that Mr. Malachi Boyuls had resigned from the Board and thanked him for all his hard work.

Chair De La Garza moved to agenda item 3, minutes of the May 18, 2012, Board meeting. Upon motion of Ms. McClendon, duly seconded by Ms. Walz, the Board unanimously approved the minutes as corrected.

Chair De La Garza moved to agenda item 4, Staff Reports. Commissioner Oldmixon addressed the Board, welcomed the members and informed the Board that the meeting was streamed live across the internet. The Commissioner reported that Mr. Mark Mrnak, Director of TALCB Standards and Enforcement, was called to military duty until December 31, 2012, and Mr. Troy Beaulieu would be acting Director during Mr. Mrnak's absence. Commissioner Oldmixon explained that a hold was placed on the investigator appraiser position in TALCB. Commissioner Oldmixon reported updated AMC registration numbers, stating that as of the morning of the meeting, the agency had received 174 AMC applications, with 166 registered and operating in Texas, and over 14,200 registered panelists.

Commissioner Oldmixon reported that in July the agency filed the Strategic Plan approved by the Board at the last meeting, and also filed the required Customer Service Supplemental Report and progress reports on legislative implementation with the House Licensing and Administrative Procedures Committee and the Senate Business and Commerce Committee. The Commissioner also announced that the survey required by HB1146 to be conducted by the Texas A & M Real Estate Center (now joined by the Hobby Center for Public Policy) has been sent to all the Appraisal Management Companies registered in Texas. He reported that it will also be sent to all the appraisers in Texas so that appraisers will have a chance to voice their opinions about current trends in the industry. The survey results are due to the Texas Legislative Leadership by November 1st, and the Board will be provided a copy of the results. Chair De La Garza stressed that is important for all appraisers to answer the questions to the best of their abilities and return the survey as soon as possible.

The Commissioner reported that staff has met with groups of license holders in various cities and that two editions of the agency e-newsletters have been published since the last Board meeting. He also reported that the Board's Enforcement Committee has met twice since the last Board meeting and has done significant work on proposals for improving the complaint process, several of which have become a part of the rule proposals in this meeting. He added that the Uniform and Equal Studies Working Group also met and recommendations from the Working Group will be addressed as a separate agenda item. He commented on the work that went into preparing the FY2013 budget which will be up for the Board's approval at this meeting. He reported that the agency has been recognized with a Certificate of Appreciation by Goodwill Industries in conjunction with the Austin Travis County Department of Health and Human Resources for its utilization of alternative work programs.

Commissioner Oldmixon shared with the Board that Ms. Michelle Bowens retired after 33 plus years with the agency and Ms. Karen Alexander, Director of Staff Services, will be retiring at the end of August, 2012. The Commissioner stated that the agency celebrated one year in the Stephen F. Austin building with a picnic. He mentioned that Ms. Lorie DeAnda and Mr. Tom Watson met with DIR to learn about some telephonic and network systems improvements and reported that agency received an excellent audit from the Department of Public Safety (DPS) on the handling of criminal history data. He informed the Board that he and Chair De La Garza will be attending the Association of Appraiser Regulatory Officials conference in Washington, DC in October, 2012. Finally, the Commissioner informed the Board of the passing of Ms. Dona Scurry, an ex-Board member of TALCB for six years.

In absence of Ms. Lorie DeAnda, Director of Reception and Communication Services (RCS), Ms. Donna Englert presented the division report. Ms. Englert stated that in the month of June, 2012, the department handled 21,795 calls, which brings the total number of calls as of the date of the meeting to just under 200,000. She reported that in May, RCS hired a full time staff person, and once she was trained and began answering phone calls and emails, the hold time for calls went from 15 minutes to 10 minutes, and email response time was cut in half (from a 2 day response time to 24 hours). She suggested that the best time for licensees to contact the agency by phone was during the 2nd and third week of the month because the end of the month was the agency's busiest time of the month. There were discussions regarding TREC and TALCB phone lines.

Ms. Gwen Jackson, Director of Education and Licensing Services (ELS), addressed the Board and introduced Ms. Denise Sample as the new manager of Licensing and Education. Ms. Jackson then reported on active certifications and licenses and stated that over the past five years the number of licenses and certifications has dropped by about 1,000. Ms. Jackson stated that this drop could be caused by the current economic trends. She explained, however, that there has been no significant change in the total number of active certifications and licenses since the beginning of this calendar year and that so far this year, the totals are remaining steady. Ms. Jackson gave an overview on the year-to-date examination activity reports. Mr. Beard asked who creates the examination and Ms. Jackson explained that the test is created by a federal agency. It is a national exam utilized across the nation for appraisers.

Mr. Tom Watson, Director of Information Technology Services, (ITS), presented the Electronic Information Statistics report and stated that online transactions continued to be strong. Mr. Watson also reported on the activity and utilization of the website, addressed some ongoing issues with online transactions and spoke to various resolutions enacted to correct these issues. Finally, he gave an overview of the results of a security test conducted by the Department of Information Resources Services that is designed to identify possible website security issues and explained that the agency passed the test.

Ms. Karen Alexander, Director of Staff and Support Services (SSS), addressed the Board and introduced Ms. Michelle Fiorentini as the new Human Resources Specialist. Ms. Alexander presented the Budget Status Report and indicated that revenue from AMC registrations has resulted in expenditures being about 8% below revenue. Ms. Alexander stated that the agency is over budget for Other Personnel Costs, an expenditure that is out of the agency's control due to the nature of the items that fall under the umbrella of this item, such as: employee longevity, compensatory per diem, unemployment compensation, and lump sum payments for unused vacation time accrued by departing employees. Ms. Alexander explained that the agency has been able to operate under budget for Other Operating Expenses, due to the utilization of alternative labor programs available through the Texas Workforce Commission. The agency also received a sizable credit from VERSA that was negotiated by Commissioner Oldmixon due to the problems that occurred with the licensing database program. Finally, Ms. Alexander provided a summary of the license fees for TALCB.

Ms. Wickliffe congratulated Ms. Alexander on her retirement and stated that she and her team did a great job with the budget. Ms. McClendon also made the same comments and asked about receiving a per diem that she was not aware of. Commissioner Oldmixon stated that the Board members do receive a per diem and travel for the regular meetings and just travel for committee meetings. Ms. Alexander stated that the per diem is $75.00 per day for regular quarterly meetings.

In absence of Mr. Mark Mrnak, Director of TALCB Standards and Enforcement Services (SES), Mr. Troy Beaulieu, Acting Director, addressed the Board and gave an overview of the reports which indicate that SES has closed more cases than were opened for the fiscal year. He also reported that SES has made strides on the cases that are at least one year old. Mr. Beaulieu reported that SES is currently down two positions with Mr. Mrnak on military duty and an open

Appraiser/Investigator position; Mr. Beaulieu also presented graphs regarding case resolutions and disciplinary actions.

Ms. Wickliffe made positive comments to Mr. Beaulieu and staff on their hard work, and to the Board that they may want to keep these reports close by to help correct any complaints or concerns that TALCB is heavy handed with disciplining licensees.

Ms. McClendon thanked Mr. Beaulieu and mentioned his presentation at a recent conference where the Commissioner also spoke and gave a motivating speech to the appraisers. She stated that Mr. Beaulieu's presentation addressed many of the attendees' ongoing concerns about the TALCB enforcement process. Ms. McClendon stated that the statistics show that TALCB staff is resolving complaints as quickly as they can, and the complaint/enforcement numbers are not nearly as frequent as what was thought they were relative to the number of appraisers.

Ms. Fontana also thanked Mr. Beaulieu and staff for the presentation to the Association of Texas Appraisers conference.

Chair De La Garza moved agenda item 5 to be presented in conjunction with agenda item 14, and agenda item 6 to be considered in conjunction with agenda item 18, and agenda item 7 to be considered in conjunction with agenda item 21.

Chair De La Garza moved to agenda item 8, comments from members of the public regarding non-agenda items. Mr. Mike Roth, past president of the Association of Texas Appraisers (ATA), thanked Mr. Oldmixon and Board members who came to a recent ATA meeting and informed the Board that the new president of ATA is Rick Nabors and complimented the Board on the AMT registration online process. He also notified the Board that ATA had been accepted as a member of The Appraisal Foundation Advisory Council. Mr. Bobby Crisp, a certified appraiser and AQB instructor, commented that it should not be an appraiser's responsibility to monitor or police non-registered AMC.

Chair De La Garza moved to agenda item 9, discussion and possible action to adopt on an emergency basis, amendments to 22 TAC §153.17 concerning Renewal or Extension of Certification and License or Renewal of Trainee Approval. Ms. Galvin presented the agenda item and gave an overview of the rule. Upon motion of Ms. Wickliffe, duly seconded by Ms. Walz, the Board unanimously adopted the amendments, as presented.

The Board took a break at 11:25 a.m., and returned at 11:39 a.m.

Chair De La Garza moved to agenda item 10, discussion and possible action to adopt amendments to 22 TAC §153.9 concerning Applications. Ms. Galvin presented the agenda item. Upon motion of Mr. Beard, duly seconded by Mr. McAnally, the Board unanimously adopted the amendments as presented.

Chair De La Garza moved to agenda item 11, discussion and possible action to adopt amendments to 22 TAC §159.156 concerning Business Records. Ms. Galvin presented the item and gave an overview of the rule, stated that one comment was received and suggested a non-substantive revision to the rule based on that comment. After discussion and upon motion and

comments of Ms. McClendon, duly seconded by Ms. Swift, the Board unanimously voted to adopt the amendments as presented.

Chair De La Garza moved to agenda item 12, discussion and possible action to propose amendments to 22 TAC §153.17 concerning Renewal or Extension of Certification and License or Renewal of Trainee Approval. Ms. Galvin presented the item and stated this is the same as the emergency rule that was just adopted. Following motion of Mr. Beard, duly seconded by Ms. Walz, the Chair asked for clarification on the proposed rule and its impact on trainees. Ms. Galvin stated that the change from one year to six months is dictated by statute for late renewals and affects trainees, certifications, licenses and approvals. The Board unanimously proposed the amendments as presented.

Chair De La Garza moved to agenda item 13, discussion and possible action to propose amendments to 22 TAC §153.23 concerning Inactive Status. Ms. Galvin presented the item and stated that this is a cleanup item, there is an error in the current rule, then gave an overview of the rule. Ms. Fontana moved to propose the rule, and that motion was duly seconded by Ms. Walz. Mr. McAnally asked for clarification regarding additional requirements an inactive licensee may have to meet when they return their license to active status. Ms. Galvin stated that if the licensee elects to go inactive, and returns to active status more than six months after their license has expired, they would have to meet the same requirements anyone would have to meet that returns after six months. After discussion, Ms. Wickliffe commented that staff needs to advertise this, because this is a significant change. She stated that there are licensees who have been licensed for a long time who believe that they have twelve months, instead of six, and they need to know that if they go beyond six months, they would be essentially starting over. The Board unanimously proposed the amendments as presented.

The Chair moved to agenda item 5, report by the Enforcement Committee. Ms. Wickliffe addressed the Board and thanked Ms. McClendon and Ms. Fontana for their service. She reported that the Commissioner, Ms. Galvin, Mr. Beaulieu and TALCB staff has done a very good job and diligently accomplished the goals of the committee. She stated that staff has created detailed exhibits, some of which will be shown today in a presentation by Mr. Beaulieu. Ms. Wickliffe then read the Enforcement Committee Report. Ms. Wickliffe stated that there may be one more meeting to accomplish the goals that were put before the committee by the working session. Ms. Wickliffe then asked Mr. Beaulieu to make a presentation on the complaint process.

Before Mr. Beaulieu's presentation, the Chair asked to receive comments from the public regarding the report. Mr. Jim Jacobs, a licensed appraiser representing FACT, addressed the Board, and thanked the Board staff for working with FACT to refine the enforcement process. Mr. Jacobs stated that he has worked with appraisers from different states and must compliment the Board, Commissioner and staff on the quality of TALCB enforcement process in Texas. Mr. Jacobs stated that some participants abuse the process by filing frivolous complaints as well as threating to file a complaint and that this has a number of repercussions for appraisers. Mr. Jacobs encouraged the Board to keep refining the complaint to figure out a way to deal with frivolous complaints before they become official complaints.

Ms. Wickliffe commented that the subcommittee has been looking into whether the Board could further refine the definition of complaint to address some the issues relating to E & O insurance. Ms. McClendon also commented that it would be helpful to know the sources of some of these complaints so that they can be fleshed out.

Mr. Joe Woller, representing FACT, addressed the Board to thank them for putting into effect the contingency dismissal category, the live web-streaming of these meetings, and reviewing the complaint process for possible changes to address the issues surrounding frivolous complaints. Chair De La Garza stated that organizations like FACT can help get the word out that people and organizations can now watch the Board meetings live.

Chair asked Mr. Beaulieu to begin his presentation. After the presentation, Mr. McAnally made comments and asked who attends the informal conferences. Mr. Beaulieu stated that the letters sent from TALCB informs the respondents who from the Board staff will be appearing at the informal conference and invites respondents to have their attorney present if they wish. There were more discussions regarding the complaint process.

The Board took a break at 12:02 p.m., and reconvened at 12:12 p.m.

The Chair moved to agenda item 14, discussion and possible action to propose amendments to 22 TAC §153.20 concerning Guidelines for Revocation, Suspension, Denial of Licensure or Certification; Probationary Licensure. Ms. Galvin presented the item and gave an overview of the rule. After discussion and upon motion of Ms. McClendon, duly seconded by Ms. Walz, the Board unanimously proposed the amendments as presented.

The Chair moved to agenda item 17A, discussion and possible action to propose amendments to add 22 TAC §157.81 concerning Temporary Suspension. Ms. Galvin presented the item and gave an overview of the rule. Upon motion of Ms. McClendon, duly seconded by Ms. Swift, the Board unanimously voted to propose the amendments as presented.

Chair De La Garza moved to agenda item 17b, discussion and possible action to propose amendments to 22 TAC §157.8 concerning Adverse Action against a Licensee. Ms. Galvin presented the item and gave an overview of the rule. Upon motion of Ms. McClendon, duly seconded by Ms. Fontana, the Board unanimously proposed the amendments as presented.

Chair De La Garza moved to agenda item 17c, discussion and possible action to propose amendments to 22 TAC §157.12, concerning Failure to Attend Hearing, Default Judgment. Ms. Galvin presented the item and gave an overview of the rule. After discussion and upon motion of Ms. Fontana, duly seconded by Ms. Swift, the Board unanimously proposed the amendments as presented.

Chair De La Garza moved to agenda item 17d, discussion and possible action to propose amendments to 22 TAC §157.17 concerning Final Decision and Orders. Ms. Galvin presented the item and gave an overview of the rule. After discussion and upon motion of Ms. McClendon, duly seconded by Ms. Walz, the Board unanimously proposed the amendments as presented. Ms. McClendon commended staff for their hard work.

Chair De La Garza moved to agenda item 17e, discussion and possible action to propose amendments to 22 TAC §157.18 concerning Motions for Rehearing; Finality of Decisions. Ms. Galvin presented the item and gave an overview of the rule. After discussion and upon motion of Ms. Swift, duly seconded by Mr. Beard, the Board unanimously proposed the amendments as presented.

Chair De La Garza moved to agenda item 20, discussion and possible action on a recommendation from the Enforcement Committee that the Board delegate authority to the Commissioner to sign Final Default Order on behalf of the Board. Ms. Galvin presented the item. After discussion and upon motion of Mr. Beard, duly seconded by Ms. Swift, the Board unanimously approved the recommendation as presented.

At 12:35 p.m., the Board and the Commissioner went into executive session on agenda item numbers 24-34 to receive advice of counsel concerning pending or contemplated litigation, settlement offers and enforcement actions before the Board as authorized by the Texas Government Code §551.071, returning to open session at 2:07 p.m.

Chair De La Garza moved to agenda item 7, the report by U & E Working Group and asked for comments from the public prior to presentation of the report. Mr. Glenn Garoon, addressed the Board and stated that while he has the utmost respect for the Commissioner, he believes that the way the Working Group performed its duties was shameful. Ms. Walz interjected and asked if Mr. Garoon was the chair of the Working Group. He explained that he was a member and asked Ms. Swift, the Chair of the Working Group, to list its members. Ms. Swift then explained the committee dynamics. Mr. Garoon continued with his comments expressing dissatisfaction at the brevity of the work Group's meeting and frustration at not feeling that the enforcement issues were given any serious discussion, and further suggested that one or more appraiser members of the Board be placed on the Working Group, hopefully someone who understands the tax process. Mr. Garoon then expressed his thanks and resigned from the Working Group.

Deloris Kraft-Longoria, a member of the Working Group, addressed the Board and stated she was severely offended by how the last meeting went. Ms. Kraft-Longoria stated that she was disappointed by the fact that the Working Group was given an agenda with four items to consider, but also felt there was insufficient opportunity given to discuss the three enforcement policy issues addressing the three items pertaining to U&E related complaints currently filed with TALCB. She explained that she shared her disappointment with the Chair and sent an email to the committee. She addressed her concerns to the Board regarding the U&E Working group recommendations, specifically with regard to handling dismissal of complaints currently on file at the Board. Finally, she recommended that the Board reject the report and recommendations as currently drafted and send any U&E complaints back to the TALCB enforcement division to process. Ms. McClendon asked Ms. Kraft-Longoria if she was willing to continue to serve on the U & E Working Group. Ms. Kraft-Longoria stated she would continue to serve.

Mr. Ted Whitmer addressed the Board and said there has been confusion in the marketplace about whether or not U&E studies are appraisals. He mentioned speaking to licensees at conferences who thought they were operating under a jurisdictional exception provided by the tax code. He also explained that all of the members were given the agenda and a draft copy of the

U&E recommendations as a draft for discussion before the meeting and felt that he had plenty of opportunity to make comments if he needed to on all four items. He stated that he believes the report is a very rational and reasonable representation of what was proposed and discussed in the Working Group meeting.

When asked by Ms. McClendon to respond to Ms. Kraft Longoria assertion that four items were on the agenda, but only the first item was addressed, Mr. Whitmer responded while there was not a lot of discussion offered on about the last three items, but the Working Group was provided the agenda and when given the opportunity to add any additional comments, and nothing was said at the meeting. Mr. McAnally asked Mr. Whitmer if he agrees with the report, and Mr. Whitmer answered yes and he believed that the majority of the committee had agreed also.

Mr. Jamie Ratliff, a former Board member, addressed the Board and stated that he was the original board member that chaired the committee. Referring to Mr. Whitmer's inclusion in the Working Group, he asserted the possibility of a conflict of interest for certain members of the Working Group who might represent an appraiser who was the respondent in a complaint regarding U&E work. He also stated that all Working Group members agreed that the Board would have full jurisdiction after September 1, 2012, but also asserted his personal belief that the Board did in fact have jurisdiction over U&E studies performed by appraisers prior to May 27, 2011 under section 41.43 of the Tax Code. Mr. Ratliff stated that he does not support two of the recommendations in the final report.

The Chair asked the Commissioner to address Mr. Ratliff's issues. Commissioner Oldmixon, in response stated that no one in the Group, or on the staff disputes that an appraisal done under Section 41.43 of the Tax Code is an appraisal done by an appraiser under the jurisdiction of this Board. He explained that this is not what is at issue, but rather because the tax code provides for a self-contained evaluation methodology, does U&E work constitute a jurisdictional exception, as Mr. Whitmer suggested. The question is whether a U&E study, done by an appraiser under the exception provided for under the Tax Code has to be USPAP compliant. Commissioner Oldmixon explained that the answer is "yes" if it is done by an appraiser who has signed the report as an appraiser and represents the report as an appraisal.

Ms. McClendon asked the Chair to clarify the process and raised a point of order, stating that she thought the Chair had asked Ms. Swift as Chair of the U & E Working Group to give her report and questioned why the Commissioner was interjecting when other commenters had been given limited time to address the Board. The Chair agreed and asked Ms. Swift to proceed.

Ms. Sheryl Swift addressed the Board and thanked everyone on the Working Group and staff that was present at the group's meeting noting that people are passionate about this subject and not everyone is going to agree. Ms. Swift gave the report as contained in the meeting materials.

Ms. Walz then asked Ms. Swift, how many people are on the committee. Ms. Swift answered there were seven total. Ms. Walz asked if votes were taken on each agenda item. Ms. Swift responded that a vote was only taken on the first item. Ms. Walz asked who wrote the report and whether the majority approved it. Ms. Swift stated that staff was asked to prepare a report based on the recommendations on the meeting agenda to be brought forward to the Board for

consideration. She also asserted that she was not opposed to referring it back to the Working Group for further discussion should that be the wish of the Board.

Ms. McClendon asked Ms. Swift questions regarding clarifying the membership of the Working Group and the recommendations contained in the report. Ms. Swift detailed the members and noted that all four recommendations were on the agenda for the working group's meeting and that there was not going to be agreement on all of the agenda items. After further discussion by the Board members, Mr. Garoon then made additional comments about U&E work he did for an appraisal district and as a consultant. He also complained that the notice creates a competitive disadvantage for appraisers who are also property tax consultants.

There were extensive discussions by the Board regarding whether, in light of the strong comments offered at this meeting, the recommendations were ready for Board consideration and the potential and process for remanding the report back to the U & E Working Group.

Ms. Galvin clarified that the first reported agenda item, the disclaimer, is actually proposed as a rule on the Board's agenda as a separate item for publication and for public comment. The other items are enforcement policy proposals.

The Chair stated that there is no action to be taken on item 7, report by U & E. Working Group.

Ms. Wickliffe made a motion on agenda item 15, that the Chair considered reopening the Working Group for further work on the U & E issue and provide any additional direction that might be necessary to move forward. Ms. Walz stated, that there is no need to vote "No action" at this time. Ms. Wickliffe withdrew her motion. Ms. McClendon seconded to allow the discussion to continue. After discussion, motion and second were withdrawn. The Chair stated that agenda item 15 will die for a lack of action. Chair De La Garza stated the U & E Working Group needs to reconvene and that he will ask the same participants, minus the one member who resigned, to reconvene to work on U&E issues. The Chairman also asked for volunteers to join the Working Group. After a brief discussion Chair De La Garza appointed Mr. Walker Beard to join the U & E Working Group and thanked the U&E Working Group members and Chair for all of their work and stated that the open and spirited debate of these issues by the Board was very appropriate for such an important issue.
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The Chair moved to agenda item 16, discussion and possible action to propose amendments to 22 TAC §159.155 concerning Periodic Review of Appraisals. Ms. Galvin presented the agenda item and gave an overview of the rule.

Ms. Diane Jacob addressed the Board and asked for clarifications about the proposal. After discussion and upon motion of Ms. McClendon to publish the amendments for public comment, duly seconded by Mr. McAnally, the Board unanimously proposed the amendments.

Mr. Mark Loftus, certified appraiser and AQB Instructor, made comments regarding the types of field reviews in connection with the proposal and noted his support for a detailed scope of work.

Chair De La Garza moved to agenda item 6, report by Finance/Budget Committee, in connection with agenda item 18, discussion and possible action to adopt FY2013 budget. Mr. McAnally

presented the item and thanked staff for all their hard work. Mr. McAnally along with Ms. Walz commented that they were very pleased with the process that staff went through and that the projections were on target, or within 90% of the projected target. Mr. McAnally also pointed out that the Board is trying to build a cash reserve, and most SDSI agencies have cash reserve targets of about 25 – 30 percent of the budget. He reported that based on revenue collected in FY2012, by FY2013 the Board should meet its reserve goal. Mr. McAnally made a motion that the Board accept the FY2013 budget as proposed, duly seconded by Mr. Beard. There was some discussion about filling an FTE position that had been placed on hold due to some initial budgetary concerns. As a result, Mr. McAnally amended his motion to hire an FTE six months ahead of the time set out in the budget. Ms. Walz, duly seconded the motion. The Board unanimously approved the budget with additional funds to cover the FTE being hired now.

The Chair moved to agenda item 19, discussion and possible action on amendments to Appraisal Management Company Owner/Primary Contact Background History form. Ms. Galvin presented the item and gave an overview of the amendments to the form. Upon motion of Ms. McClendon, duly seconded by Ms. Wickliffe, the Board unanimously approved the amendments as presented.

The Chair stated that agenda item 21, discussion and possible action on recommendations from the U & E Working Group, died for lack of action.

The Chair moved to agenda item 22, discussion and possible action to appoint the Manager of Licensing, the Manager of Education, and Deputy Commissioner as custodians of records for TALCB. Ms. Galvin presented the item. Upon motion of Ms. McClendon, duly seconded by Ms. Wickliffe, the Board unanimously approved the motion.

Ms. Walz was excused to leave at 3:30 p.m.

The Chair moved to agenda item 23, discussion and possible action to appoint a liaison to the Texas Real Estate Commission. Commissioner Oldmixon presented the item and stated that while the Commission Chair acknowledged that anyone from the Board is welcome to speak to the Commission or its Chair at any time; she did not see the need to formalize this relationship. She believes that chair to chair communication, along with a joint Administrator/Commissioner provides adequate liaison.

Ms. McClendon stated that, with the permission of the Chair and the other Board members, she is willing to put the Board's request to the Commission in writing for consideration at the next Board meeting explaining why the Board believes a more formalized communication with the Commission via a liaison is to the benefit of both the Board and Commission.

The Chair expressed no objections to Ms. McClendon recommendation and Ms. McClendon requested that it be put on the agenda for discussion at the next meeting.

The Chair moved to agenda item 24 of the enforcement items. Mr. Beaulieu requested that the Board take action on agreed orders, agenda items 24 through 29. Chair De La Garza noted that he has questions on 27 through 29. Upon motion of Ms. McClendon, duly seconded by Ms.

Swift, the Board unanimously approved the agreed orders for agenda items 24, 25, and 26 as follows:

> Agenda item 24, discussion and possible action to approve an agreed final order regarding complaint file number 12-162 (April Lynne Acker, TX-1334010-L)
>
> Agenda item 25, discussion and possible action to approve an agreed final order regarding complaint file number 11-163 (James Robert Koonce, TX-1321565-R)
>
> Agenda item 26, discussion and possible action to approve agreed an agreed final order regarding complaint file number 12-027 (Brian Todd Young, TX-1330163-R)

Chair De La Garza moved to agenda item 27, discussion and possible action to approve agreed final order regarding complaint file number 11-345 (Elbert Eugene Dagley, TX-1328317-R). Mr. Beaulieu gave an overview of the agreed final order. Mr. Ted Whitmer, counsel for the respondent, supported the agreed final order but requested that the way TALCB put the disciplinary actions for agreed final orders on the website be changed to include language that respondent neither admits or denies allegations. Ms. McClendon noted that this was not pertinent to action on the enforcement order before the Board. Upon motion of Mr. Beard, duly seconded by Mr. McAnally the Board unanimously approved the agreed order as presented.

Upon motion of Ms. McClendon, duly seconded by Ms. Swift, the Board unanimously approved agenda items 28 and 29 as follows:

> Agenda item 28, discussion and possible action to approve agreed an agreed final order regarding complaint file number 11-200 (Eric Elder, TX-1336851-R)
>
> Agenda item 29, discussion and possible action to approve agreed an agreed final order regarding complaint file numbers 10-297 & 11-167 (Scott Sherrill, TX-1320957-R)

Chair De La Garza moved to agenda item 30, discussion and possible action to modify a final order regarding complaint file number 10-268 (Kathy Ann Dalton, TX-1323550-R). Mr. Beaulieu presented the item and gave an overview of the case. Mr. Ted Whitmer, representing Ms. Dalton, stated that while Ms. Dalton was taken off the FHA list, she lost income due to the clerical error. Mr. Whitmer recommended that Ms. Dalton no longer be required to provide a log to the TALCB staff and asked that TALCB show that she is in good standing with the Board. There were discussions regarding whether a disciplinary listing on the Appraisal Sub Committee's website results in automatic notice being sent to AMCs. Mr. Bobby Crisp commented that as a prior owner of an AMC, he registered with ASC and got notices about any action taken against appraisers on the ASC website on a daily basis. After extensive discussion and upon motion of Ms. McClendon, duly seconded by Mr. McAnally, the Board unanimously approved to modify the agreed order to provide that Ms. Dalton is no longer required to provide a log to the TALCB staff. The Board stressed that this modification applies only under these specific circumstances for this specific case.

Chair De La Garza moved to agenda item 31, discussion and possible action to modify a final order regarding complaint file number 10-145 (Wiley Payne Rudasill, TX-1331780-R). Mr. Beaulieu presented the item and staff recommended denial of the modification. After discussion and upon motion of Ms. McClendon, duly seconded by Mr. Beard, the Board unanimously approved the modification of the agreed order that Mr. Rudasill has is no longer required to provide a log to TALCB staff and has completed the terms of the agreed order.

Chair De La Garza moved to agenda item 32, discussion and possible action on proposal for decision from the State Office of Administrative Hearings regarding complaint file number 10-358 (Douglas Scott Roby, TX-1323344-R). Mr. Beaulieu presented the item and gave an overview of staff's recommendations. Mr. Roby addressed the Board. After discussion and upon motion of Mr. Beard, duly seconded by Ms. McClendon, the Board unanimously voted that the default judgment and PFD be set aside, the case be remanded to SOAH for further proceedings, and that Mr. Roby be ordered to reply to Board staff's original complaint in accordance with rule §153.24(6) within 20 days of the date of the Final Order.

Chair De La Garza moved to agenda item 33, discussion and possible action on proposal for decision from the State Office of Administrative Hearings regarding complaint file number 11-286 (Tanisha Carter, TX-1333998-L). Mr. Beaulieu presented the item. Upon motion of Mr. Beard, duly seconded by Ms. McClendon, the Board unanimously accepted the proposal for decision as presented.

Chair De La Garza moved to agenda item 34, discussion and possible action regarding litigation filed by David Garza. Upon motion of Ms. Fontana, duly seconded by Ms. Swift, the Board unanimously voted that the Chair is authorized on behalf of the Board to consult with legal counsel and make any decisions related to the litigation filed by David Garza including any strategies, settlement or any appeal. Laura Diamond, legal counsel for Mr. Garza, made comments regarding the desire to address the Board regarding the ongoing litigation. Ms. Galvin responded that the Board had taken their desired action on this agenda item and that Ms. Diamond could address her issues directly to Ms. Sameth, OAG counsel for the Board, outside of the meeting.

Chair De La Garza moved to agenda item 35, request for new business agenda items. Ms. McClendon asked whether staff could provide a report at the next meeting regarding the hold time appraiser are experiencing when they contact the agency so that the Board could discuss if there is a need for a revision of the current agency policy. The Chair agreed to discuss this at the next board meeting.

Chair De La Garza moved to agenda item 36, discussion and possible action to schedule future meetings. After discussion, the Board confirmed the next meeting is on Friday, November 16, 2012. Commissioner Oldmixon stated that the Board meetings for the next year will be tentatively the 3rd Friday of the middle month of each calendar quarter. Ms. McClendon asked to add an item on the next agenda to discuss having the Board meeting on a day other than Friday. Ms. Galvin interjected that the current agenda item (item 36) was the appropriate place to discuss this issue because it concerned possible action to schedule future meeting dates and locations, Ms. McClendon had no issue with the next meeting to be held on a Friday, but asked that the

Board consider the pros and cons of a possible change to another day of the week. Chairman De La Garza suggested polling the members to ascertain meeting day consensus.

The Chairman then thanked the Board, staff and committee members for all their hard work and travel time, and adjourned the meeting at 4:49 p.m.

_____
Beverly Arnold
Secretary for the Meeting

APPROVED the 15th day of February, 2013.

_____
Luis F. De La Garza
Chairman of the Board

ATTEST:

_____
Sheryl R. Swift
Secretary of the Board

AGENDA ITEM 10

Approval of minutes of the November 9, 2012, Board meeting

STAFF RECOMMENDATION

Approve minutes as presented for the November 9, 2012 Board meeting.

MINUTES OF THE
TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD
Board Room 170
1700 N. Congress, Suite 400
Austin, TX 78701

November 9, 2012

On Friday, November 9, 2012, at 10:00 a.m., there was a duly posted regular meeting of the Texas Appraiser Licensing and Certification Board (the "Board"). Chair Luis De La Garza presided, the meeting was web-streamed live and video-taped and Beverly Arnold recorded the minutes.

Chair De La Garza called the meeting to order at 10:02 a.m. and welcomed the attendees. Ms. Fontana led the attendees in the Pledge of Allegiance to the United States and Mr. McAnally led the attendees in the pledge to the Texas flag.

Chair De La Garza asked for roll call by the recording secretary, the following members of the Board, constituting a quorum, answered present when roll call was announced:

Walker R. Beard
Laurie C. Fontana
Luis F. De La Garza, Jr.
Mark A. McAnally
Donna L. Walz
Jamie S. Wickliffe

Shannon McClendon arrived at the meeting after Agenda Item 6.
Sheryl Swift, had an appointment and was excused by the Chair
Keith Kidd, he was newly appointed and unable to attend and was excused by the Chair.

The following staff members were present: Christine Anderson, Beverly Arnold, Troy Beaulieu, Marjorie Caldwell, Loretta DeHay, General Counsel Kerri Galvin, Commissioner Douglas Oldmixon, Anthony Slagle, Jeff Strawmyer, Kendall Tobert, Tom Watson, David Wilson, and Kyle Wolfe. Co-General Counsel Ellen Sameth of the Office of the Attorney General was also present.

Chair De La Garza moved to Agenda Item 3, Approval of Minutes and postponed action on this item until Ms. McClendon's arrival because she had indicated that she had concerns regarding the minutes.

Chair De La Garza, moved to Agenda Item 4, Comments from Members of the Public Regarding Non-Agenda Items. Mr. Arturo Palacios addressed the Board and distributed a T-shirt and a copy of his report regarding the ethnic make-up of TALCB licensees and the possible decline of minority appraisers in the near future. Mr. Palacios stated that he obtained the information by reviewing public data and the TALCB strategic plan. Mr. Palacios stated that he hoped the Board would do their part to move things in a different direction. Mr. Palacios finished his comments by submitting a letter requesting a copy of the TALCB standard operating procedures

manual for enforcement and investigations and recommended that the Board consider conducting outreach to educate the minority population about the possibilities of becoming appraisers.

Bobby Crisp, an AQB instructor, a member of the Association of Texas Appraisers, and Board appointed PIC member and a mentor for the Board's Mentorship Program, expressed concern regarding inconsistencies reported to him in both the investigation process and the mentorship program, specifically the inconsistent application in the amount of mentorship hours assigned to appraisers as part of disciplinary action. Mr. Crisp also explained that at times he felt that the disciplinary action did not fit the case at hand. He expressed his concern regarding the Enforcement Division of the Board making the decisions during the entire process and would like to see a more uniform oversight process to agreed orders, with a better explanation as to why each appraiser received the hours that they receive for disciplinary action in the membership program.

Chair De La Garza moved to Agenda Item 5, Enforcement Matters, and the Chair asked General Counsel Galvin if they needed to go into executive session to receive advice of counsel pursuant to Texas Government Code §551.071 regarding these matters. Ms. Galvin explained that executive session was only necessary if any of the members had any questions on these items and needed legal advice and also told the Board that Agenda Item 8 would not be heard at this meeting because the final ruling from the judge had not been received. No members had any questions for counsel.

Chair De La Garza moved to Agenda Items 6 (a-k). Troy Beaulieu, Acting Director of TALCB Standards and Enforcement, presented these items and explained that Items 6a through k are all agreed resolutions needing the Board's approval, and that all of them are agreed orders, except for (k), which is an agreed surrender. Upon motion of Ms. Donna Walz, duly seconded by Mr. Mark McAnally, the Board unanimously voted to approve items as presented.

> Agenda item 6a, discussion and possible action to approve an agreed final order regarding complaint file number 10-247 (Charlotte Ann Broesche, TX-1322275-R)
>
> Agenda item 6b, discussion and possible action to approve an agreed final order regarding complaint file numbers 05-069 & 07-170 (Andrea Masters Fahrenthold, TX-13220492-G)
>
> Agenda item 6c, discussion and possible action to approve an agreed final order regarding complaint file number 12-244 (Jay Patrick Novero, TX-1350035-L)
>
> Agenda item 6d, discussion and possible action to approve agreed final order regarding complaint file number 12-232 (Frank Joseph Santos, TX-1333440-R)
>
> Agenda item 6e, discussion and possible action to approve an agreed final order regarding complaint file number 10-358 (Douglas Scott Roby, TX-1323344-R)
>
> Agenda item 6f, discussion and possible action to approve an agreed final order regarding complaint file number 12-150 (Mary Catherine Giesberg, TX-1324048-R)

Agenda item 6g, discussion and possible action to approve an agreed final order regarding complaint number 12-206 (Fernando Marquez, TX-1332798-L) (expired)

Agenda item 6h, discussion and possible action to approve an agreed final order regarding complaint number 12-110 (April Lynne Acker, TX-1334010-L) (application denial)

Agenda item 6i, discussion and possible action to approve an agreed final order regarding complaint number 10-195 (Colleen Frances Litfin, TX-1336169-R)

Agenda item 6j, discussion and possible action to approve an agreed final order regarding complaint numbers 10-256 & 11-173 (Heath Dean Hanson, TX-1335186-R)

Agenda item 6k, discussion and possible action to accept a Surrender of Certification from John Thomas DeCecco, TX-1324930-R, with respect to complaint file numbers 08-159, 09-014, 10-221, 11-031 and 11-120

Chair De La Garza moved to Agenda Item 7, Discussion and possible action to approve request for modification of agreed order in the matter of Complaint #11-164 (John Hiram Goddard, TX-1338543-L). Mr. Beaulieu presented the item. Ms. Wickliffe made a motion that in light of the extreme circumstances of the physical limitations of a mentor in proximity of this particular appraiser that the Board allows the request for modification. It was duly seconded by Ms. Walz and the Board unanimously approved the modification.

Chair De La Garza stated Agenda Item 8 has been withdrawn.

Chair De La Garza returned to Agenda Item 3, Minutes. Ms. McClendon thanked the Chair for allowing her extra time to review the minutes prior to proposing approval. Ms. McClendon stated that she had gone through the minutes and found both substantive and non-substantive issues. Ms. McClendon was concerned that while there was an extensive discussion at the August meeting regarding the report presented by the U & E Working Group, she didn't feel that the controversies addressed at that meeting were reflected accurately in the minutes. She pointed out that Ms. Walz had asked who wrote the report and whether the majority of the Working Group approved it prior to it being presented to the Board. Ms. McClendon expressed her concern that the minutes did not reflect the lack of response addressing Ms. Walz. Ms. McClendon felt that this was a critical part of the conversation and that it should have been noted in the minutes. Ms. McClendon stated that whether deliberately or unintentionally, the withholding of these items in the minutes needed to be addressed. Ms. McClendon added that discussion, both negative and positive, is informative and while she appreciates the positive points being stressed, all points of the meeting needed to be included in the minutes.

Ms. McClendon expressed her discomfort about discussing all of the meeting minutes' discrepancies in an open forum and that it was not necessary to have all of her issues placed on record. She indicated that for benefit of the Board, she would prefer to discuss her concerns outside of the meeting with staff, preferably Commissioner Oldmixon, from this point forward.

Chairman De La Garza asked for further clarification on the procedure in preparing the minutes. General Counsel Kerri Galvin responded that generally the minutes are prepared by staff as a summary of discussions and are not a word for word transcription of the meeting. Ms. Galvin stated that minutes are prepared and forwarded to Board members for review and comment several weeks prior to Board meetings to allow corrections to be made prior to approval at Board meetings. Ms. Galvin stated that if the Board felt that the current minutes were not at a point to be approved, the Board could postpone approval until the February meeting. Chairman De La Garza asked Ms. McClendon if she would like additional time to review the minutes and provide comments. If so, they could be tabled for approval at the next Board meeting. Ms. McClendon stated that she would be happy to work with staff during a meeting break and during lunch and that she is willing to discuss additional ways to help improve the minutes' preparation process. Ms. McClendon stated that she has comments at every Board meeting she has stressed the importance of ensuring that minutes are accurate and not just repetition of the meeting agenda. She did not feel that the Board's concerns have not been reflected in the meeting minutes, but should be reflected in the minutes going forward. She explained that the minutes are 90% better than what the Board received a year ago, but they are still lacking on critical issues and pointed out a few more specific concerns with the minutes surrounding the U&E report discussion and noted that statements made by public members should be more fully stated in the minutes.

Chair De La Garza stated that Ms. McClendon had valid points and that approval of the minutes for the August Board meeting can be postponed until the next Board meeting to give her the opportunity review them further. He also asked staff to work with Ms. McClendon during one of the breaks to address her concerns. Ms. McClendon thanked the Chair and asked if there was any input from other Board members. Ms. McClendon then stated that there are several things missing from the minutes and started to present them and the Chair asked that her corrections be submitted in writing. Ms. McClendon stated that she does not intend to submit all of her issues in writing because she is not going to take the administrative time to do so. She explained that she discussed the typographical errors, but she does not intend on taking the administrative time to type them out. Ms. Walz addressed the Chair and stated that she too found several errors and agrees that there are certain things that are important to mention specifically. Ms. Walz asked if the minutes are based on what staff thinks is important or are they just ignoring things that the Board thinks are important if staff doesn't agree. Ms. Walz stated that the minutes needed to be a little more specific because she was confused at the last meeting, specifically when she asked who created the reports and who voted on the reports? Ms. Walz also had trouble finding out how many members were on that U & E committee. She explained that the Board needs its discussions more fully documented. Ms. Walz recommended that when the Board takes a break, Ms. McClendon should take time with staff and hopefully the Board can get the minutes approved at this meeting. Chair De La Garza stated that he concurs with her and recalls that three years ago he addressed the minutes early on, and asked staff to send the minutes to the Board members as soon as they were ready within a two or three week period after the meeting to allow the Board members to review them with the meeting being fresh in their minds. He explained that this gave the Board members time to make corrections or comments before the actual time for approval at the meeting. The Chair encouraged the Board to go over the minutes when they are submitted by the recording secretary so that that the members can make sure that information that the Board believes is vital is included in the minutes initially. The Chair stated that we will try to get it done today but if additional time is needed, the Board will bring it back

to the next Board meeting. The Chair stated the Board wanted the minutes to be as accurate as possible and to be correct.

Ms. Wickliffe, stated that she echoed the comments the Chair just made and said that it is important for the Board to let new members coming on understand that it is acceptable for them to review the minutes once they are received and submit changes so that the alterations can be presented to everyone. Ms. Wickliffe also stated that she would like to see the corrections before actually taking a vote to adopt them. Ms. Wickliffe stated that criticisms need to be noted, that's how the Board learns, when a public member or appraiser member makes a criticisms of the Board and its actions, it needs to be clear in the minutes so that the Board can address the criticisms and move forward.

Chair De La Garza then stated that because of the additional information the Board may be adding to the minutes, he would like to postpone approval and bring it back to the next Board meeting. He reiterated that written comments in addition to what was discussed would be helpful. He stated that he doesn't want staff to be second guessing what the members are thinking. Ms. McClendon stated that it makes more sense when staff sends the minutes out, that the track changes feature is activated that will automatically track any changes made by the Board members. Ms. McClendon also explained that it is not her responsibility to take notes on what she said at this meeting and that she doesn't intend on taking the time to go back through and review the things she said. Chair De La Garza stated that he concurs his point was to ensure that the members' concerns are reflected in the minutes and the Board needs to make some kind of effort to make sure staff understands the concerns the members want reflected in the minutes. He asked that the members please work with staff at this time and he will delay approval until additional work is done. The Chair asked staff to revise and send the minutes from the August meeting out again so that the Board can read them and at that point if there are additional modifications the Board can send comments prior to approval at the next meeting. He asked Ms. McClendon if that was okay with her. Ms. McClendon answered yes, and reiterated that if the correction can be made today, they could be approved today. She stressed that she wanted the discussion that was just had the over the last 10 minutes to be recorded in the minutes. The Chair agreed and asked staff to note that. Ms. Walz commented that she just wanted to be clear that staff should be highlighting key points and not writing a book, or asking for complete verbatim. Commissioner Oldmixon asked if the Board would be so kind as to point out those specific areas that the Board member feels that there has been an omission so that staff does not expand on things that were not a concern or fails to expand on something that was a specific concern. Ms. McClendon then stated that the Chair has already addressed that. Ms. Wickliffe summarized stating that it appears that when criticism is lodged at the Board, staff seems to put less information than the Board wants in the minutes.

Chair De La Garza moved to Agenda Item 9, report by Enforcement Committee. Ms. Wickliffe, Chair of the committee, began her report by noting the Board members on the committee are Ms. Fontana, Ms. McClendon, and herself. She added that the committee has been assisted by staff and the meetings have been attended by public members as well. The primary focus of the committee remains to review the compliance process, complaint process, to enhance the process by approving the materials and creating consistency and communication, to increase the efficiency of the complaint process, and to have the organization structure in place to ensure that staff meets the ASC audit guidelines and deadlines. She noted that the committee is making

progress, and that it was worth noting that that there are 10 items on the agenda that are the result of the work being done by the committee but that there are four or five critical items that need a resolution that the committee will continue to work on, one of them being the penalty matrix which will address some of the concerns made by Mr. Crisp earlier. She explained that the committee is also working on a complaint flow chart to help people understand the process, expansion of the mentorship program, and review of the jurisdictional exception as it relates to individuals that are currently on staff or serving on the PIC. Ms. Wickliffe stated that she would encourage and appreciate anyone to attend the committee meetings and make comments and that she is pleased that staff has been receptive to all the extra work burdens given them. She also acknowledged her fellow committee members. Ms. Wickliffe stated that she believes the Board will be pleased at the end of their service, and thinks that the committee will have served the public and appraisers well with the work. She stated that the committee expects to reconvene after the holidays and before the next meeting to try and resolve some of the outstanding issues. Chair De La Garza thanked Ms. Wickliffe for the Enforcement Report.

Ms. Walz, asked Ms. Wickliffe, if her report contained recommendations from the enforcement committee, that need action today by the Board or if the committee is going wait until it has completed the other things mentioned. Ms. Wickliffe replied that the 10 items on the agenda today are ready for action. Ms. Walz then asked about the makeup of the committee and that it should be noted on the report. Ms. Wickliffe answered that she will do her best to remember next time to include committee members at the very beginning of the report. Ms. McClendon stated that she agrees with Ms. Walz and would also like to see a list of attendees at committee meetings, both staff and public members. Ms. McClendon also stated that she would like to recognize the Board's General Counsel as a great mediator and commended her on being able to keep the Committee moving along. Chair De La Garza stated that staff should include the membership of each committee on the reports, and that it is important to recognize the public participants present and contributing. He also thanked the committee for all the hard work because significant progress has been made in this area that is so controversial. Ms. Walz made a motion, however withdrew it after being reminded that it was a report and not an action item.

Chair De La Garza moved to Agenda Item 10, Report of the U & E Working Group. Mr. Beard presented the committee report. Ms. Wickliffe questioned that, in light of the issues raised by committee members at the last Board meeting, why the report itself did not reflect the volume of disagreement among the subcommittee, noting that the report does not indicate if there was dissention or if it was unanimous. Mr. Beard explained that the votes were not unanimous. Ms. Walz then asked how many were present. Mr. Beard answered 6 of the 7 members were present. He explained that the meeting was held via teleconference and that the Chair was present as an ex-officio member. He further explained that there were 4 Yes and 2 No votes on a couple of different issues and that the report did not reflect how everyone voted. Ms. Wickliffe stated that she wasn't necessary looking for that level of detail, but she did think that it's important to note when a committee vote is not unanimous. A discussion followed regarding recalling what the actual votes were on each item. Ms. Galvin stated that she thought the first item on the report, the disclaimer, was unanimous and the rest were all 5 Yes and 2 No (including the vote of the Chair of the Board as ex-officio member), with different members voting No on several of the items. NOTE – this was subsequently corrected to reflect that the unanimous vote took place on the second item and the first item, the disclaimer, was approved by a 5-2 vote. The Chair thanked Mr. Beard for the report in Ms. Swift's absence.

Chair De La Garza moved to the Agenda Item 11, Staff reports. Commissioner Oldmixon addressed the Board, welcomed the members and informed them that the meeting was streamed live across the internet. The Commissioner then introduced Ms. Melissa Huerta, Director of Staff & Support Services. The Commissioner reported that since the last meeting, the new Relationship Management Tool has been launched and the tool is helping the staff with production. He explained that a future iteration of this tool will be used to accommodate appraisers and their trainee sponsorship relationships. Commissioner Oldmixon stated that the agency provided progress reports regarding the implementations of key legislation to the Senate Business and Commerce Committee in October. He also reported on the SECC campaign. The Commissioner stated that he and the Chair attended the AARO convention in Washington, DC, where he was elected to the Board of Directors of that association. He reported that staff spoke to groups of license holders in various cities, published two new editions of the agency newsletter, three news releases, and staff attended the TAR convention in San Antonio at which staff was able to demonstrate the agency's on-line services. He also reported that he had the privilege of presenting the story of Texas' legislative road to its Appraisal Management Company Registration law and rules for a national webinar with an audience of appraisal management companies, appraisers, and regulators and that the webinar host reported positive feedback from the three hour session. The Commissioner reported that on October 22, 2012, TALCB received the final report from the Appraisal Sub Committee audit that was conducted last May, and a copy was mailed to each member. All areas were in compliance except for meeting the one year goal for complaint resolutions. He explained that since TALCB has shown sufficient positive progress the Appraisal Sub Committee has decided that there will be no mid-term visit. The Commissioner thanked the Enforcement Committee, the U & E Working Group Committee, and staff for all their hard work. Commissioner Oldmixon stated that on November 1, 2012, the Real Estate Center at Texas A & M University filed their survey study report on appraiser fees in Texas. TALCB expects this study to inform appraisers about the fee trends across Texas. Commissioner Oldmixon stated that the Governor's Office has appointed attorney Keith Kidd, from Paris, Texas as the new public member replacing Mr. Boyuls.

Ms. McClendon asked Commissioner Oldmixon, if meetings are stored for the Board to review later. Commissioner Oldmixon answered that they are. Ms. McClendon asked where people can find them. The Commissioner said that they can be found on the Board's website. A discussion followed regarding the timing of putting the video on the website for the public to view. Commissioner Oldmixon asked Mr. Watson if the meetings can be posted by the next business day, and Mr. Watson stated that the next business day should be okay.

Mr. Walker asked the Commissioner about what he anticipates for the legislative session? The Commissioner stated that he is not aware of any particular bills that are planned to be filed to address matters that fall under the Board's jurisdiction. The Commissioner noted that Monday, November 12, 2012 is when early filing begins and that staff will be monitoring any bills as they come up.

Chair De La Garza stated that he had asked the Commissioner about a year ago about the possibility of some type of training for Board members. He asked if there is any kind of a training/video for new Board members coming aboard. The Commissioner answered that there is an orientation/presentation that staff will continue to try and improve, and he gave an overview

of the presentation. Ms. Wickliffe said that there are limits to what staff can do trying to help the new Board members and maybe the Board members themselves can come up with a policy for new members.

Commissioner Oldmixon reported that the agency is in the process of updating the agency's website and is currently in the beginning stages of designing it. He mentioned this because staff is proposing the adoption of a Social Media Policy under another agenda item, which includes integrating new technology tools. As the development of the website occurs, he wanted the Board to know that staff welcomes their input during the process.

Chair De La Garza asked what were the most common violations committed by appraisers in the State of Texas. Ms. Wickliffe stated that enforcement committee has been talking about how to bridge what the agency sees as repetitive complaints with education. She stated that the appraiser members of the committee believe there must be a failure somewhere at the education level if 90% of the complaints received by the Board concern the same issues.

Chair De La Garza then inquired about the policy and procedures of the budget. Commissioner Oldmixon stated the previous suggestions came to the Board from the finance committee and that Mr. Boyuls' outline was the working product of budget and finance committee. It was expressed that they were not thorough with the details, but did provide good general guidance, and there was a suggestion that there may be some additional details that were needed. He explained that staff will work with the Board to add that detail as it is identified. Ms. Wickliffe responded that a great job has been done in creating procedures, but that she continued to want to see a written policy. Commission Oldmixon stated that he would bring a draft to the Board, unless the Board wanted it worked out through the Finance/Budget Committee, where it was previously addressed, followed by a recommendation to the full Board. After discussion, the Chairman asked the Commissioner to have a draft of the budget policy at the next meeting.

Ms. Lorie DeAnda, Director of Reception and Communications, addressed the Board and gave an overview on how the telephone system operates. Ms. DeAnda stated that the C1 report reflects that staff received 16,473 calls, and assisted 558 walk-ins and responded to 5,508 emails (within 2 business days) from fiscal year to date. Ms. DeAnda then gave an overview of the pie charts and reports in the materials. Ms. McClendon asked Ms. DeAnda if staff can tell whether the call has come in on the TREC line or theTALCB line. Ms. DeAnda responded No and explained that the phone calls are directed to one place, and gave an overview of the call center process and noted that once staff answers the call then that is when they manually track TALCB calls. There were more discussions regarding the phone system.

The Board took a break for lunch at 11:54 a.m., and reconvened at 1:00 p.m.

The Chair moved to make a clarification on the U & E Report. Commissioner Oldmixon stated that the very first item, including the disclaimer was said to be a unanimous vote, but the vote on that item was 5 to 2.

Ms. Gwen Jackson, Director of Education and Licensing Services, addressed the Board and directed them to the Active Certifications and Licenses report (L1), and reported that at the end of September, 2012, TALCB has 5,825 active appraisers. Ms. Jackson presented a report on

Appraisal Management Companies registrations for registrations received and processed between March, 2012 and the beginning of November, 2012. She noted that TALCB processed 181 AMC Applications and 178 AMC Registrations. Ms. Jackson then reported on the Fiscal Year to Date (L-1) Report, and the Appraiser Exam Comparisons Fiscal Year Ending August 2012, Report and stated that the pass rates for the Certified General Appraiser has increased by over 1%, the Certified Residential Appraiser increased by 11 ½ percent, and the State Licensed Appraiser increased by 24 ½ percent, overall pass rate improved by 12 ½ percent. Ms. Jackson reported that eight appraisers took the examination and seven passed.

Ms. Fontana shared with the Board and audience that she renewed her license, and asked about the procedure for finding out what classes she had taken in the last three years. Ms. Fontana stated that this is a function that TREC has for their agents. Ms. Jackson responded that TALCB is not currently set up for appraisers to be able to see their education, but it is a priority of the agency to give appraiser that ability in the near future. .

Tom Watson, Director of Information and Technology Services, addressed the Board and reported on the Electronic Information Outlet Statistics Report (I1), Mr. Watson reported that this is the first report that displays online activity for AMC and panelists utilization rates. He explained that, going forward, the IT department will be tracking this information. Mr. Watson then gave an overview of the I1 report, and also stated that in addition to the AMC activity the ITS did have some security testing completed by the Department of Information Resources(DIR) which spiked the numbers up a bit because they did look at the website. Those two activities represent the large increase in this year's online web activity versus last year's activity.

Mr. Beard asked if the increased activity meant that somebody had logged on to the site. Mr. Watson responded that as visitors to the site go through the pages and, possibly do some online transactions, downloading some files or forms, etc., every page or download is recorded. Chair De La Garza asked Mr. Watson, if he had plans to hire additional staff. Mr. Watson responded that he will have a new person starting December 1, 2012, and that his focus will be the development of the website.

Commissioner Oldmixon asked the Board to turn to the Agency Budget Status Report, and explained that he will be reporting on it since it was Ms. Huerta 7th day on the job. Ms. McClendon asked the Commissioner about the maintenance and repairs line item. The Commissioner responded that line item includes the Board's software maintenance and explained that there is a state requirement that it be located on that line item. Ms. Huerta concurred. Mr. McAnally commented that as part of the Finance/Budget Committee, he did a calculation and went all the way through the total expenditures stating that if you normalize that six months' rent and add it back, there was an even flow and the Board would have a balance of 92.4% of remaining budget, so it appears that everything is tracking very well.

Troy Beaulieu, Acting Director of TALCB Standards and Enforcement Services, gave an overview on the case status report and cases at least one year old. Mr. Beaulieu reported that TALCB is experiencing staffing shortages and is down one attorney (the Director is on military duty), one investigator and one legal assistant, both positions being open for hire. Mr. Beaulieu reported that the litigation appears to be more intensive and lengthy than it was a year ago but TALCB is able to dismiss cases as staff works through the backlog.

Ms. Fontana asked Mr. Beaulieu if he could provide a copy of the current penalty matrix in the future, so when the Board is reviewing the materials, they have that information available. Ms. Fontana also asked Mr. Beaulieu if the Board could get a report illustrating the percentage of the duplicate violations. Mr. Beaulieu responded by clarifying the question, and asked if she wanted staff to build a report that would track the common violations in the disciplinary actions on a percentage basis. Ms. Fontana responded yes, and stated that the report should also show the duplication of standards. Mr. Beaulieu responded that he will check into it and find what information is out there. Commissioner Oldmixon also commented that this is on the agency's "to do" list for automation.

Chair De La Garza moved to Agenda Item 12, Discussion and possible action to adopt amendments to 22 TAC §153.17, concerning Renewal or Extension of Certification and License or Renewal of Trainee Approval. Ms. Kerri Galvin, General Counsel presented the item and stated no comments were received. Upon motion of Ms. McClendon, duly seconded by Ms. Walz, the Board unanimously approved the adoption as presented.

The Chair moved to Agenda Item 13, Discussion and possible action to adopt amendments to 22 TAC §153.23 concerning Inactive Status. General Counsel presented the item and gave an overview of the rule and stated no comments were received. Upon motion of Ms. McClendon, duly seconded by Mr. Beard, the Board unanimously adopted the amendments as presented.

The Chair moved to Agenda Item 14, Discussion and possible action to adopt amendments to 22 TAC §153.20 concerning Guidelines for Revocation, Suspension, Denial of Licensure or Certification, Probationary Licensure. General Counsel presented the item and gave an overview of the rule. Ms. Galvin received one comment and stated that staff respectfully disagrees with the comment. Ms. McClendon inquired as to whether this rule was previously addressed by the Enforcement Committee. Ms. Galvin responded that the rule was, but not the comment, which was received after the committee meeting. There was discussion concerning what burden the rule would place on an appraiser. Ms. Wickliffe commented that as the rule is written, there will be an expectation that written verification be placed in the appraisers work file to prove the appraiser did his or her due diligence. She stated that this expectation needs to be accomplished through education and that the agency needs to get the word out to residential appraisers. Ms. Galvin then stated that it would not be a requirement that an appraiser report to the Board an AMC that is not licensed, but should be encouraged as a business practice.

Chair De La Garza explained that he interprets registration requirements that any AMCs that have less than 15 appraisers on their panel do not have to register with the state and that it is ok for any AMCs doing legitimate business to send a memo to a panelist stating that they are not registered due to the exemption. Ms. McClendon asked if the AMCs that are not required to register and are not on a list are going to be required to send a letter out to the panelists, and if so, is the Board putting a burden not only on the appraiser, but on the AMC and TALCB as well. Ms. Galvin responded and said that the exempt AMC's could send an email for that matter, as long as their exemption is disclosed. Ms. Wickliffe asked if the Board could assemble a list online that shows any AMCs that are not required to register. A discussion took place regarding shifting the burden to provide documentation of an exemption to AMCs that are exempt from

registration or the feasibility of the Board providing a list of exempt AMCs. The Chair asked for public comment on this item.

Diana Jacob addressed the Board and stated that she is not certified in Texas, but is one of TALCB's mentors. She stated that she has concerns that the title of the rule is heavy handed and the requirement of written verification in the work file too onerous on appraisers. She asked Commissioner Oldmixon for clarification regarding the AMCs and appraisers obligations. Commissioner Oldmixon responded that the rule does not preclude any method of making the case that what the appraiser did to verify the AMC's status was reasonable. He reiterated that the rule does not prescribing any one way of documenting an appraiser's reasonable due diligence. Ms. Jacob then asked how it can be enforced. Commissioner Oldmixon responded that there is a high burden on the Board to prove that an appraiser, after conducting some reasonable due diligence, knowingly worked for an AMC that is not registered in Texas. He explained that it is pretty easy to see if an AMC is registered on our website, and it is not difficult to ask an AMC to send something in writing if it is exempt from registration. Ms. Wickliffe then asked for purposes of clarification, if the obligation of the appraiser to determine if an AMC is licensed would change even if the Board did nothing and took no action on this rule.

Frank Baker, ATA Board Member, addressed the Board regarding the proposed rule. He stated that his issues with the rule revolved around what Appraisal Management Company was because he does a lot of work for small banks, small mortgage companies and some small mortgage companies which are not so small. He wanted to know if he needs to ask every lender if they were an AMC. Commissioner Oldmixon explained that an AMC is defined as someone other than the client, and if the client is the one ordering it, then by definition they are not an AMC. Ms. Galvin then addressed the question that Ms. Wickliffe asked, and gave an overview of the existing rule and how enforcement could be taken for this same issue as currently written and that the purpose of the Enforcement Committee with this amendment was to make it clear to all that this action would be considered a violation.

Then Mr. McAnally made comments, and asked a question regarding FACT. Mr. Joe Woller of FACT addressed the Board and stated that he thought the process had been pretty well laid out. An appraiser can click on-line to see the AMC's license status, and if appraisers regularly do business for someone, then they know if they are on that AMC's panel. He explained that the AMC would not get a letter if they are not required to be registered, and verification on the appraiser's part is a simple question and then the appraiser could just note the response. He explained that he is exclusively commercial appraiser and would want to ensure that the entity he is working for is properly registered, if for no other reason, it increases the chances of getting paid. If an AMC that is not licensed to work in Texas hires someone for 10 or so quick jobs, the appraiser may be working for free on those jobs, so verification on the appraiser's part covers the appraiser on the other end too. Upon motion of Ms. McClendon, duly seconded by Ms. Walz, the Board unanimously adopted the amendments as modified by staff and presented to the Board.

Ms. Walz asked to be excused at 2:15 p.m.; Chair De La Garza excused her.

Chair De La Garza moved to Agenda Item 15, Discussion and possible action to adopt amendments to 22 TAC §159.155 concerning Periodic Review of Appraisals. Ms. Galvin presented the item and gave an overview of the rule, and comments. Upon motion of Ms.

McClendon, duly seconded by Mr. Beard, the Board unanimously adopted the amendments as presented.

The Chair moved to Agenda Item 16, Discussion and possible action to adopt amendments to 22 TAC Chapter 157 as follows:

16a. Add a new §157.25 concerning Temporary Suspension. Ms. Galvin presented the rule with suggested non-substantive changes, and after discussion and upon motion of Ms. McClendon duly seconded by Ms. Fontana, the Board unanimously adopted the amendments as presented.

16b. Add amendments to §157.8 concerning Adverse Action Against A Licensee. Ms. Galvin presented the rule, noting no comments were received. Upon motion of Ms. Fontana, duly seconded by Ms. McClendon, the Board unanimously adopted the amendments as presented.

16c. Add amendments to 157.12 concerning Failure to Attend Hearing, Default Judgment. Ms. Galvin presented the rule, noting no comments were received. Upon motion of Ms. McClendon, duly seconded by Ms. Fontana, the Board unanimously adopted the amendments as presented.

16d. Add amendments to §157.17 concerning Final Decisions and Orders. Ms. Galvin presented the rule, noting no comments were received. After discussion and upon motion of Mr. Beard, duly seconded by Ms. McClendon, the Board unanimously adopted the amendments as presented.

16e. Add amendments to §157.18 concerning Motions for Rehearing; Finality of Decisions. Ms. Galvin presented the rule, noting no comments were received. Upon motion of Mr. Beard, duly seconded by Mr. McAnally, the Board unanimously adopted the amendments as presented.

Chair De La Garza moved to Agenda Item 17, Discussion and possible action to propose new rule §155.2 concerning Work Relating to Property Tax Protests. Ms. Galvin presented the rule and gave an overview of the rule. Upon motion of Ms. Wickliffe, duly seconded by Mr. Beard, the Board unanimously proposed the amendment as presented.

Chair De La Garza moved to Agenda Item 18, Discussion and possible action to propose amendments to 22 TAC §153.24 concerning Complaint Processing. Ms. Galvin presented the rule and gave an overview of the rule. Mr. Phillip Hartledge, a Texas Certified Residential Appraiser, addressed the Board regarding some frivolous complaints filed against him in the past two years that were causing him a lot of problems. He stated that all three complaints were dismissed with no disciplinary actions but as a result of the complaints being filed, his E & O provider would not renew his insurance. Mr. Hartledge explained that he tried four additional E & O providers and they refused, but the 6th Provider said they would write a policy for him, but would not give him prior acts coverage because he had a complaint filed. Even though he provided them with copies of the dismissals, he explained that the insurance company said it did not matter. Mr. Hartledge stated that as a result of these three complaints, he is out of approximately $3500 per complaint, loss time, and now paying double for E & O coverage. Ms. McClendon responded that the Board understood the gist of these concerns.

The Chair commented that the Board is being challenged with exactly what Mr. Hartledge was addressing and this is the item that the Board will be discussing right now. Ms. Galvin responded to the comments made by Mr. Hartledge and stated that the intent of the rule is to allow a more preliminary review and make it clear to some of the E & O providers and AMCs that just because a complaint is filed with the Board does not mean that the Board has decided to take formal complaint action. Ms. Galvin further stated that the agency has an obligation to log and investigate any complaint that is filed. She explained that the committee is attempting to stay within the statutory requirements for the agency while recognizing that there are frivolous complaints that should not be held against the appraiser. Upon motion of Ms. McClendon, duly seconded by Ms. Fontana, and more discussions, the Board unanimous proposed the amendments as presented.

Chair De La Garza moved to Agenda Item 19, Discussion and possible action to propose amendments to 22 TAC §157.10 concerning Right to Counsel, Right to Participate. Ms. Galvin presented the agenda item and gave an overview of the rule. Upon motion of Mr. Beard, duly seconded by Mr. McAnally, the Board unanimously proposed the amendments as presented.

Chair De La Garza moved to Agenda Item 20, Discussion and possible action on recommendations from the Enforcement Committee:
20a. Revised Complaint Intake Form: Ms. Gavin presented the revised complaint intake form. Upon motion of Ms. McClendon, duly seconded by Ms. Fontana, the Board unanimously approved to adopt the Complaint Intake Form as presented.

20b. Approval of Mentorship appointment process, Mentor Application form and Mentor Appointment Agreement; and appointment of existing Mentors. Ms. Galvin presented the item and gave an overview of the process. Upon motion of Ms. McClendon, duly seconded by Ms. Fontana, the Board unanimously approved the Mentorship appointment process, Mentor Application form and Mentor Appointment Agreement. Ms. Galvin then requested that the current existing Mentors be appointed without submission of an application if they confirm their agreement to act as Mentors by executing a Mentor Appointment Agreement. Upon motion of Ms. Wickliffe, duly seconded by Mr. Beard, the Board unanimously appointed the existing Mentors from this date to February, 2014.

20c. Agreed Order policy guidelines. Ms. Galvin presented the item and gave an overview of the policy guidelines. After discussion and upon motion of Ms. McClendon, duly seconded by Mr. Beard, the Board unanimously approved the policy guidelines as presented.

The Board took a break at 3:07 p.m., and reconvened at 3:16 p.m.

General Counsel Kerri Galvin clarified for the Board members that neither the OAG Attorney General's Counsel nor Ms. Galvin has a problem with the Board members keeping the T-shirts that were handed to them by Mr. Arturo Palacios during his public testimony. It is well below the gift limit, and it was not handed out during discussion of an item that needed a vote by the Board.

Chair De La Garza moved to Agenda Item 21, Discussion and possible action on recommendations from the U & E Working Group. Ms. Galvin presented the agenda item. Ms.

Galvin gave an overview of the recommendations. After discussion and upon motion of Mr. McAnally, duly seconded by Mr. Beard, the Board unanimously approved the recommendations from the U & E. Committee.

Chair De La Garza moved to Agenda Item 22, Discussion and possible action to appoint a liaison to the Texas Real Estate Commission (TREC). Ms. McClendon presented this agenda item and explained that at the May meeting, the Board voted to appoint a liaison to TREC. However, the Board did not appoint one. Instead, the Commissioner presented the recommendation to the Chair of TREC who thought that an official liaison was not necessary since the two chairs could communicate about joint concerns at any time. Ms. McClendon circulated a letter she drafted to the Chair of TREC explaining the Board's reasoning for the liaison. Ms. McClendon explained that the thought behind the liaison is to have a working relationship with the Commission so that the Board can share ideas, thoughts, and run more efficiently as an agency. She felt that because Commissioner Oldmixon is the joint Commissioner and Administrator, there is a perceived conflict, and after discussion with the Board gave as an example the performance review that the Board is given by TREC for the Commissioner and how that is weighed. After further discussion it was decided that the letter draft would not be sent. Upon motion of Ms. McClendon, duly seconded by Ms. Fontana, the Board unanimously approved to appoint the Chair of the Board as a formal liaison with TREC. Mr. Beard requested that the Board develop a "roles and goals" policy for this liaison position in the future.

Chair De La Garza moved to Agenda Item 23, Discussion and possible action regarding appointments to Peer Investigative Committees. Ms. Galvin presented the agenda item, and after discussion, the Presiding Officer of the Board, with the consent of the executive committee, appointed Jim Jacobs as a peer investigative committee member.

Chair De La Garza moved to Agenda Item 24, Discussion and possible action to adopt a Social Media Policy. Ms. Christine Anderson, Public Affairs Specialist for the Real Estate Commission and Appraiser Board, presented the agenda item. Ms. Anderson stated that the Texas Department of Information Resources (DIR) recently created a Social Media Policy and explained that what is being presented to the Board for adoption is a modified version of the DIR policy that staff developed to guide the agency's use of available social media options. She went on to explain that while there are five items listed under Terms of Service, staff does not recommend using Get Satisfaction in the initial implementation. The agency is only asking to use Twitter, Facebook, Flickr, and You Tube. After discussion and upon motion of Ms. McClendon, duly seconded by Mr. McAnally, the Board unanimously approved the Social Media Policy as presented.

Chair De La Garza moved to Agenda Item 25, Discussion and possible action to submit comments to the Appraisal Sub Committee (ASC) on the proposed ASC Policy Statements. Ms. Galvin presented the agenda item and an overview of the agency's comments, noting they are due November 29, 2012. After discussion, and upon motion of Mr. Beard, duly seconded by Ms. Fontana, the Board unanimously approved the comments as presented.

Chair De La Garza moved to Agenda Item 26, Discussion and possible action regarding hold times for people calling TALCB. No action was taken on this agenda item.

Chair De La Garza moved to Agenda Item 27, request for new business agenda items. Ms. McClendon asked the Chair if she can call him to discuss various items she would like to put on the agenda. The Chair responded yes.

Chair De La Garza moved to Agenda Item 28, Discussion and possible action to schedule future meetings. Commissioner Oldmixon explained that he sent an email to the Board members on October 5, 2012 regarding meeting days of the week and received 5 responses via email and one telephone response confirming that the majority wanted to leave it the way it currently is. He asked for confirmation of the February 15, 2013 meeting date. The Chair asked the Board if there were any conflicts with that date. Ms. McClendon responded that she had a conflict and she asked the Commissioner to send a copy of the survey sent regarding meeting days. Due to Ms. McClendon's conflict, the Chair and members checked their calendars and the Chair announced the February meeting could be moved to February 8, 2013, and the Chair also announced that the May Board meeting would be held on May 17, 2013.

Ms. McClendon asked if the Board would consider in the future the possibility of an extra meeting during the year, because as she has stated at every meeting, she has problems with Fridays. Ms. McClendon also suggested that we might put something on the agenda to have a tracking system for items requested of staff to ensure that they are addressed in a timely manner, stating that it is unacceptable when someone brings to the attention of the Board (using an incorrect fax number on a form as an example) that it takes not only three weeks to get fixed, but three meetings.

Chair De La Garza announced that Mr. Shoemaker from the Governor's Office has been attending the meeting all day. Chairman De La Garza thanked Mr. Shoemaker, the Board, staff and committee members for all their hard work, and adjourned the meeting at 4:19 p.m.

_____
Beverly Arnold
Secretary for the Meeting

APPROVED the 15th day of February, 2013.

_____
Luis F. De La Garza
Chairman of the Board

ATTEST:

_____
Sheryl R. Swift
Secretary of the Board

AGENDA ITEM 11

Comments from members of the public regarding non-agenda items

AGENDA ITEM 12

Executive session to receive advice of counsel pursuant to Texas Government Code §551.071

AGENDA ITEM 13(a)

Discussion and possible action to approve agreed final order regarding complaint file number 12-243 (Bart Landon Gardner, TX-1333054-R)

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	
	§	
vs.	§	DOCKETED COMPLAINT NO. 12-243
	§	
BART LANDON GARDNER TX-1333054-R	§	

AGREED FINAL ORDER

On the _____ day of _____, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Bart Landon Gardner (the "Respondent").

In order to conclude this matter, Bart Landon Gardner neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order. The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent Bart Landon Gardner is a Texas state certified residential real estate appraiser who holds certification number TX-1333054-R, and was certified by the Board during all times material to the above-noted complaint.

2. Respondent appraised real property located at: 4724 Carolina Trace, Arlington, Texas 76244 ("the Carolina property") on or about August 24, 2010 and 3310 Edgewater Court, Arlington, Texas 76016 ("the Edgewater property") on or about November 4, 2010.

3. Thereafter a complaint was filed with the Board. The complaint alleged that the Respondent produced appraisal reports for the property that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").

4. Thereafter the Board, in accordance with the mandate of the Administrative Procedure Act (the "APA"), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103 (the "Act"), notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board.

5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the Carolina Trace property:

a) USPAP Ethics Rule (Conduct) – Respondent communicated an appraisal report that was knowingly misleading by failing to disclose his trainee's participation in the appraisal report;

b) USPAP Ethics Rule (Record Keeping) – Respondent failed to comply with the USPAP ethics rule because he failed to maintain a work file containing all data, information, and documentation necessary to support the appraiser's opinions and conclusions;

c) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed to report the correct zoning classification; and,

d) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) – Respondent failed to use an appropriate method or technique to develop an opinion of the site value;

6. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the Edgewater property:

a) USPAP Ethics Rule (Conduct) -- Respondent communicated an appraisal report that was knowingly misleading by failing to disclose his trainee's participation in the appraisal report;

b) USPAP Ethics Rule (Record Keeping) – Respondent failed to comply with the USPAP ethics rule because he failed to maintain a work file containing all data, information, and documentation necessary to support the appraiser's opinions and conclusions;

c) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed to report the correct zoning classification;

d) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) – Respondent failed to use an appropriate method or technique to develop an opinion of the site value; and,

e) USPAP Standards 1-4(a) & 2-2(b)(viii) – Respondent failed to provide support for his adjustments in the sales comparison approach;

7. As part of an experience audit submitted to the Board in connection with his employee's application to the Board, Respondent added his employee's name to the appraisal reports for appraisals in which he participated; so that it appeared that his name was included when the report was prepared, when it actually was not so included. Even though the appraiser signing the reports should have included his employee's name at the time the reports were prepared, the Board considers Respondent's addition of his employee's name when he submitted the reports to the Board to be misleading.

8. The parties enter into the following consent order in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.

2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).

3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(2) by specifically violating 22 TEX. ADMIN. CODE §153.9(e) by submitting false information in an application to the Board.

4. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by omitting material facts.

5. The parties are authorized to resolve their dispute by means of a consent order in accordance with Tex. Occ. Code §1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that Respondent's Texas appraiser certification be suspended for a period of twenty four (24) months, effective 5:00 p.m., February, 15th, 2013.

IT IS FURTHER ORDERED that beginning at 5:00 p.m., February 15th, 2013 the suspension is to be fully probated for twenty four (24) months ending February 15th, 2015, subject to the following terms and conditions:

1. **EDUCATION.** On or before February 15th, 2014. Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance and have an exam. Respondent must receive a passing grad on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for licensure. **Respondent is solely responsible for locating and scheduling classes to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.**

   a. A minimum fifteen (15) classroom-hour course in USPAP, on or before February 15th, 2014.

2. **MENTORSHIP.** On or before February 15th, 2014. Respondent shall complete four (4) hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board in accordance with the schedule and topics set out below. Respondent shall submit a certification of

completion signed by the approved certified USPAP instructor on or before the due date listed for each mentorship requirement. Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.

a. Four (4) hours of mentorship concerning the USPAP Ethics Rule, USPAP Recordkeeping Rule, USPAP Competency Rule, and USPAP Scope of Work Rule, on or before February 15th, 2014.

3. **EXPERIENCE LOG.** On or before February 15th, 2015. Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board for the period of twelve (12) months starting after completion of education and mentorship (from February 15th, 2014 to February 15th, 2015). The log shall detail *all* real estate appraisal activities Respondent has conducted during that twelve (12) month period. This log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete and accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments Respondent performs during the course of this period of probation within twenty days of receiving any such request.

4. **TRAINEES.** Respondent shall not sponsor any trainees during the first year of his twenty-four (24) month probation period.

5. **ADMINISTRATIVE PENALTY.** Pay to the Board an administrative penalty of five thousand dollars ($5,000.00), by certified funds, within twenty (20) days of the effective date of this order (i.e. on or before March 7th, 2013).

6. Fully and timely comply with all of the provisions of this Agreed Final Order; and,

7. Comply with all future provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

Payment of the $5,000 **ADMINISTRATIVE PENALTY** must be by certified funds, and must be tendered within **TWENTY (20) DAYS** of the date of this Agreed Final Order (i.e. on or before March 7th, 2013).

Failure to comply with any of the terms of this Agreed Final Order within the time allotted shall result in **IMMEDIATE SUSPENSION** of the Respondent's certification pursuant to notice to the Respondent from Board staff indicating that the Respondent has not fulfilled the requirements of this Agreed Final Order.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH

HEARING OR DUE PROCESS. If Respondent's certification is suspended on such a basis, the suspension shall remain in effect until such time as Respondent is in full compliance with the terms of this Order and has provided adequate documentation of that compliance to the Board.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING, AND HEREBY WAIVE A HEARING AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCULDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 11 day of JANUARY, 2013.

BART LANDON GARDNER

TED WHITMER, ATTORNEY FOR
BART LANDON GARDNER

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 11th day of January, 2013, by BART LANDON GARDNER, to certify which, witness my hand and official seal.

Notary Public Signature

SANG GEON LEE
MY COMMISSION EXPIRES
September 16, 2013

Sang G. Lee
Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this _____ day of _____, 2013.

Kyle Wolfe, TALCB Staff Attorney

Signed by the Commissioner this _____ day of _____, 2013.

Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this ____ day of _____, 2013.

Luis De La Garza, Chairperson
Texas Appraiser Licensing and Certification Board

AGENDA ITEM 13(b)

Discussion and possible action to approve agreed final order regarding complaint file number 11-212 (Israel R. Galindo, TX-1337554-R)

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	
	§	
vs.	§	DOCKETED COMPLAINT NO.
	§	11-212
	§	
ISRAEL R. GALINDO	§	
TX-1337554-R	§	
	§	

AGREED FINAL ORDER

On the _____ day of _____, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Israel R. Galindo (the "Respondent").

In order to conclude this matter, Israel R. Galindo neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order. The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent Israel R. Galindo was a Texas state certified residential real estate appraiser who holds and held certification number TX-1337664-R issued by the Board during all times material to the above-noted complaint.

2. Respondent appraised real property located at: 1227 Dogwood Street, Tyler, Texas 75701 ("the property').

3. Thereafter a complaint was filed with the Board. The complaint alleged that the Respondent produced an appraisal report for the property that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").

4. Thereafter the Board, in accordance with the mandate of the Administrative Procedure Act (the "APA"), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103 (the "Act"), notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board, which was received.

5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:

a) USPAP Ethics Rule (Conduct) – Respondent failed to comply with the USPAP ethics rule because he communicated a misleading report and/or knowingly permitted another person to communicate a misleading report;

b) USPAP Ethics Rule (record keeping) -- Respondent violated the Ethics Rule because he failed to maintain a work file containing all data, information and documentation necessary to support his opinions, analyses and conclusions as required by the record keeping provisions;

c) USPAP Scope of Work Rule; 1-2(h) & 2-2(b)(vii) — Respondent failed to satisfy the Scope of Work Rule and related USPAP provisions by failing to recognize and address incurable functional obsolescence for the property, which compounded with deficiencies in the sales comparison approach (discussed below) led to a scope of work which did not produce credible assignment results;

d) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) -- Respondent failed to identify and report the improvements description by misrepresenting the garage for the property was attached, misrepresenting the property's gross living area through the improper inclusion of the room above the garage in the total gross living area of the improvements and by omitting significant and material information concerning repairs, renovations and additions made to the property and the analysis of this additional information and its impact, if any, on the property's market value. Respondent also failed to identify and report the site description and misrepresented the property's shape, legal description and omitted any reference to the property's dimensions. Respondent also did not provide supporting documentation in his work file for the opinions and conclusions he reached;

e) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) -- Respondent misrepresented the property's zoning as "A-1 Residential" and he did not provide supporting documentation in his work file for the opinions and conclusions he reached;

f) USPAP Standards 1-3(a) & 2-2(b)(viii) - Respondent misrepresented factors affecting marketability (such as economic supply and demand and market area trends), including the neighborhood's one-unit housing price range and did not summarize his rationale for the determinations he made in his report. He also did not provide supporting documentation in his work file for the opinions and conclusions he reached;

g) USPAP Standards 1-3(b) & 2-2(b)(ix) — Respondent failed to provide an analysis and summarize the rationale underlying his determination of the property's highest and best use, and he did not provide supporting documentation in his work file for the opinions and conclusions he reached;

h) USPAP Standards 1-4(b)(i) & 2-2(b)(viii); 1-1(a) & 1-4(b) — Respondent failed to use an appropriate method or technique to determine the property's site value. Respondent did not provide supporting documentation or data for this

determination in his work file and did not provide his supporting rationale for his site value determinations contained in the report;

i) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii); 1-1 (a) & 1-4(b) — Respondent failed to provide support for his determination of the cost new of improvements in his work file and did not summarize his supporting rationale for his determinations. Respondent also did not properly collect, verify, analyze and reconcile this data, which revealed a different price per square foot than Respondent used in his report;

j) USPAP Standards 1-4(b)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(b) -- Respondent failed to collect, verify, analyze and reconcile accrued depreciations (including the incurable functional obsolescence associated with the additional gross living area) and did not provide documentation in his work file to support his analyses, opinions and conclusion, nor did he provide a summary of his supporting rationale, which explained the reasoning behind those opinions and conclusions;

k) USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1 (a) & 1-4(a); 1-6(a) & (b) & 2-2(b)(viii) -- Respondent misrepresented that the sales she selected were comparable to the property. He has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach. Generally, Respondent used inappropriate properties as comparable sales even though appropriate, more similar sales (in terms of salient market characteristics) were readily available in the immediate area and should have been used. Respondent misrepresented the properties he selected as comparables were similar in location, gross living area, age, condition, amenities and quality of construction. Respondent also failed to make appropriate adjustments or made inappropriate adjustments to the sales he did use, and did not discuss his analysis and reasoning behind the adjustments he made or elected not to make. In general, objective market data was not analyzed by Respondent, which needed to be and would have significantly impacted his assignment results;

l) USPAP Standards 1-5(a) & 2-2(b)(vii) & 1-1(b); 1-6(a) & (b) & 2-2(b)(viii) — Respondent failed to disclose, analyze and reconcile significant information concerning a prior listing of the property;

m) USPAP Standards 1-5(b) & 2-2(b)(vii) & 1-1(b); 1-6(a) & (b) & 2-2(b)(viii) — Respondent failed to disclose, analyze and reconcile significant and material information concerning a prior sale of the property; and,

n) USPAP Standards 1-1(a), 1-1(b), 1-1(c) and 2-1(a) — For the reasons detailed above, Respondent produced a misleading appraisal report for the property that contained misrepresentations and several substantial errors of omission or commission by not employing correct methods and techniques. This resulted in a

misleading appraisal report that was not credible or reliable and negatively impacted his value conclusion.

6. Respondent made material misrepresentations and omissions of material fact with respect to his appraisal of the property as detailed above.

7. The parties enter into the following consent order in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.

2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).

3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by misrepresenting and omitting material facts.

4. The parties are authorized to resolve their dispute by means of a consent order in accordance with TEX. OCC. CODE §1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that Respondent's certification TX-1337664-R be suspended for twenty-four (24) months effective 5:00 p.m. on February 15th, 2013.

IT IS FURTHER ORDERED that beginning at 5:00 p.m., February 15th, 2013, the suspension is fully probated for twenty-four (24) months ending February 15th, 2015, subject to the following terms and conditions:

1. **NO TRAINEES.** Respondent shall not sponsor or supervise any appraiser trainees for the duration of the above-referenced period;

2. **LOGS.**

3. **MENTORSHIP.** On or before March 4th, 2013, Respondent shall complete 20 hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board. Respondent shall submit a Board approved certification form signed by the approved certified USPAP instructor on or before the due date listed for the mentorship requirement, in accordance with the schedule of topics set out below. Respondent is solely responsible for locating and scheduling an approved mentor to

timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion;

i. On or before March 4th, 2013, complete twenty (20) hours of mentorship with a focus on the sales comparison approach, prior sales and listing history analysis, and cost approach, including lot value and cost of improvements analysis and determination.

4. **EDUCATION.** On or before March 4th, 2013, Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Order must be approved by the Board. Unless otherwise noted below, all classes must require in-class attendance. Respondent must receive a passing grade on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for certification. Respondent is solely responsible for locating and scheduling any classes to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion:

   i. Attend and complete a minimum 15 hour classroom course in USPAP;

   ii. Attend and complete a minimum 15 hour classroom course in the Sales Comparison Approach;

   iii. Attend and complete a minimum 7 hour classroom course in the Cost Approach;

      a. No examination shall be required for this course;

5. **LOGS.** On or before each of the dates listed below, Respondent shall submit a signed and notarized experience log and affidavit listing all real estate appraisal activities completed during the the previous six-months.

   i. August 15th, 2013;
   ii. February 15th, 2014;
   iii. August 15th, 2014;
   iv. February 15th, 2015;

6. Fully and timely comply with all of the provisions of this Agreed Final Order; and,

7. Comply with all future provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

Failure to comply with any of the terms of this Agreed Final Order within the time allotted shall result in **IMMEDIATE SUSPENSION** of the Respondent's certification pursuant to notice to the Respondent from the Board indicating that the Respondent has not fulfilled the requirements of this Agreed Final Order. If Respondent's certification is suspended on such a basis, the suspension shall remain in effect until such time as Respondent is in full compliance with the terms of this Order and has provided adequate documentation of that compliance to the Board.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS. Respondent shall be notified of any such suspension by first class mail or e-mail to the last known address as provided to the Board.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING AND TO BE REPRESENTED BY AN ATTORNEY OF MY OWN CHOOSING, AND HEREBY WAIVE BOTH AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCULDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The

Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this ____ day of _____, 2013.

_____
ISRAEL R. GALINDO

_____
TED WHITMER, ATTORNEY FOR
ISRAEL R. GALINDO

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the _____ day of _____, 2013, by , to certify which, witness my hand and official seal.

_____
Notary Public Signature

_____
Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this _____ day of _____, 2013.

_____
Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this _____ day of _____, 2013.

_____
Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this ____ day of _____, 2013.

_____
Luis De La Garza, Chairperson
Texas Appraiser Licensing and Certification Board

AGENDA ITEM 13(c)

Discussion and possible action to approve agreed final order regarding complaint file number 10-379 (Ruth Launa Stodghill, TX-1322509-G)

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	
	§	
	§	
vs.	§	DOCKETED COMPLAINT NO. 10-379
	§	
	§	
RUTH LAUNA STODGHILL TX-1322509-G	§	
	§	

AGREED FINAL ORDER

On the _____ day of _____, 2012, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of DOUGLAS SCOTT ROBY (the "Respondent").

In order to conclude this matter, RUTH LAUNA STODGHILL admits to the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order.

FINDINGS OF FACT

1. Respondent is a Texas state certified general real estate appraiser who holds certification number TX-1322509-G, and was certified by the Board during all times material to the above-noted complaint.

2. Respondent appraised real property located at: 1320 Wood Park Street, Beaumont, Texas 77706 (the "property") on or about July 29th, 2010.

3. Thereafter a complaint was filed with the Board. The complaint alleged that the Respondent produced appraisal report for the property that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").

4. Thereafter the Board notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board, which was received.

5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:

a) USPAP Ethics Rule (Record Keeping) – Respondent failed to comply with the USPAP ethics rule because she failed to maintain a work file containing all data, information, and documentation necessary to support the appraiser's opinions and conclusions;

b) USPAP Ethics (conduct) – Respondent misrepresented that she had inspected the property.

c) USPAP Scope of Work Rule – Respondent failed to support her work with the relevant evidence and logic required by this rule to obtain credible assignment results and did not have a sufficient scope of work to obtain credible assignment results. She also misrepresented her scope of work by misrepresenting that she had conducted the inspection of the property;

d) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the improvement(s) and site description adequately;

e) USPAP Standards 1-3(a) & 2-2(b)(viii) and 1-3(b) & 2-2(b)(ix) – Respondent failed to provide support for her opinions and conclusions in the neighborhood section of the report and failed to provide her supporting rationale for her determination of the property's highest and best use;

f) USPAP Standards 1-4(b)(i), (b)(ii) and (b)(iii) & 2-2(b)(viii) and 1-1(a) & 1-4(b) – Respondent failed to provide support for her determination of the property's lot value and did not use an appropriate method or technique to develop the lot value, she failed to collect, verify, analyze and reconcile the cost new of improvements and accrued depreciation and did not employ recognized methods and techniques correctly.

g) USPAP Standards 1-4(a) & 2-2(b)(viii) and 1-1(a) & 1-4(a) – Respondent failed to collect, verify, analyze and reconcile the comparable sales data; and generally failed to employ recognized methods and techniques in the Sales Comparison Approach;

h) USPAP Standards 1-5(b) & 2-2(b)(viii); 1-5(a) & 2-2(b)(viii) – Respondent failed to analyze all sales of the subject within three (3) years prior to the effective date of the appraisal and did not analyze the listing history of the property;

i) USPAP Standards 1-1(a), 1-1(b), 1-1(c); 2-1(a); and 2-1(b) – Respondent produced a misleading appraisal report for the property that contained several substantial errors of omission or commission by not employing correct methods and techniques and not analyzing and reconciling significant and material information she had a duty to analyze and reconcile. This resulted in an appraisal report that was not credible or reliable.

6. Respondent omitted material facts and made material misrepresentations as described in more detail above.

7. The parties enter into this consent order ("Order") in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.

2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).

3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by making material misrepresentations omitting material facts.

4. The parties are authorized to resolve their dispute by means of a consent order in accordance with Tex. Occ. Code §1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that Respondent's Texas appraiser certification be suspended for a period of12 months, effective 5:00 p.m., February 15th, 2013.

IT IS FURTHER ORDERED that beginning at 5:00 p.m., February 15th, 2013, the suspension is to be fully probated for 12 months ending February 15th, 2014, subject to the following terms and conditions:

1. **EDUCATION.** On or before August 15th, 2013. Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance. Respondent must receive a passing grad on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for licensure. **Respondent is solely responsible for locating and scheduling classes to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.**

   A. On or before August 15th, 2013, complete a minimum fifteen (7) classroom-hour course in Valuation by Comparison;

   B. In lieu of completing the education noted above, Respondent may elect to complete an *additional* 5 hours of mentorship on market data analysis and the sales comparison approach in the manner described below under the "mentorship" heading.

2. **MENTORSHIP.** On or before May 15th, 2013. Respondent shall complete seven (7) hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board Staff in accordance with the schedule and topics set out below.

Respondent shall submit a notarized Board affidavit form signed by the approved certified USPAP instructor on or before the due date listed for each mentorship requirement. Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.

A. On or before May 15th, 2013, complete seven (7) hours of mentorship with a focus on the sales comparison approach, prior sales history and listing history analysis, and cost approach, including lot value and cost of improvements analysis and determination.

3. **LOGS.** On or before December 15th, 2013, Respondent shall submit to the Board an appraisal experience log on a form prescribed by the Board for the period of August 15th, 2013 to November 15th, 2013. The log shall detail ***all*** real estate appraisal activities Respondent has conducted during that three month period. This log shall be signed by Respondent and contain a notarized affidavit attesting the log is true, complete and accurate. Upon request from the Board, Respondent shall provide copies of her appraisal reports and work files for any appraisal assignments Respondent performs during the course of this period of probation within twenty days of receiving any such request;

4. Fully and timely comply with all of the provisions of this Agreed Final Order; and,

5. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

Failure to comply with any of the terms of this Agreed Final Order within the time allotted shall result in **IMMEDIATE SUSPENSION** of the Respondent's certification pursuant to notice to the Respondent from Board staff indicating that the Respondent has not fulfilled the requirements of this Agreed Final Order.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS. A violation of these terms will automatically revoke probation and impose the aforementioned suspension for the entire term of 12 month suspension, commencing on the effective date of the revocation of probation.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING AND TO BE REPRESENTED BY AN ATTORNEY OF MY OWN CHOOSING, AND HEREBY WAIVE BOTH AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCLUDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 15 day of January, 2013

Ruth Launa Stodghill

RUTH LAUNA STODGHILL

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 15th day of January, 2013, by RUTH LAUNA STODGHILL, to certify which, witness my hand and official seal.

Notary Public Signature

LARISA MANKARSINGH

Notary Public's Printed Name

Dallas Hutton

DALLAS HUTTON, ATTORNEY FOR RUTH LAUNA STODGHILL

Signed by the Standards and Enforcement Services Division this _____ day of _____, 2013.

_____
Troy Beaulieu, TALCB Staff Attorney

Signed by the Commissioner this _____ day of _____, 2013.

_____
Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this ____ day of _____, 2013.

_____
Luis De La Garza, Chairperson
Texas Appraiser Licensing and Certification Board

AGENDA ITEM 13(d)

Discussion and possible action to approve agreed final order regarding complaint file number 11-408 (Ronald John Guerrera, TX-1332869-R)

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	
	§	
vs.	§	DOCKETED COMPLAINT NO. 11-408
	§	
RONALD JOHN GUERRERA TX-1332869-R	§	

AGREED FINAL ORDER

On the _____ day of _____, 2013, the Texas Appraiser Licensing and Certification Board (the "Board") considered the matter of the certification of Ronald John Guerrera (the "Respondent").

In order to conclude this matter, Ronald John Guerrera neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order.

FINDINGS OF FACT

1. Respondent is a Texas state certified residential real estate appraiser who holds certification number TX-1332869-R, and was certified by the Board during all times material to the above-noted complaint.

2. Respondent appraised real property located at: 115 Guerra Garza Road, Rio Grande City, TX 78582 (the "property") on or about July 6, 2010.

3. Thereafter a complaint was filed with the Board. The complaint alleged that the Respondent produced appraisal report for the property that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").

4. Thereafter the Board notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board.

5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:

a) USPAP Ethics Rule (Conduct) – Respondent communicated assignment results in a misleading manner through the omission and commission of errors that significantly affected the results and conclusions in the report;

b) USPAP Ethics Rule (Record Keeping) – Respondent failed to comply with the USPAP ethics rule because he failed to maintain a work file containing all data,

information, and documentation necessary to support the appraiser's opinions and conclusions;

c) USPAP Scope of Work Rule – Respondent failed to support his work with the relevant evidence and logic required by this rule to obtain credible assignment results;

d) USPAP Standards 1-2(b) & 2-2(b)(ii) – Respondent failed to properly identify the intended use of the appraisers opinions and conclusions;

e) USPAP Standards 1-2(e)(i) & 2-2(iii) – Respondent failed to adequately identify and report the site description;

f) USPAP Standards 1-2(e)(i) & 2-2(iii) – Respondent failed to adequately identify and report the description of improvements;

g) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed to report the correct zoning classification;

h) USPAP Standards 1-3(a) & 2-2(b)(viii) – Respondent failed to provide support for her opinions and conclusions in the Neighborhood section of the report;

i) USPAP Standards 1-3(b) & 2-2(b)(ix) – Respondent failed to provide her supporting rationale for her determination of the property's highest and best use;

j) USPAP Standards 1-4(b)(i) & 2-2(b)(viii); 1-4(b)(ii) & 2-2 (b)(viii); and, 1-1(a) & 1-4(b) – Respondent failed to use an appropriate method or technique to develop an opinion of the site value; failed to collect, verify, analyze and reconcile the cost new of improvements; and generally failed to use recognized methods and techniques;

k) USPAP Standards 1-4(a) & 2-2(b)(viii) and 1-1(a) & 1-4(a) – Respondent failed to collect, verify, analyze and reconcile the comparable sales data; and generally failed to employ recognized methods and techniques in the Sales Comparison Approach;

l) USPAP Standard 2-2(b)(viii) – Respondent failed to explain and support the exclusion of the income approach; and,

m) USPAP Standards 1-1(a), 1-1(b), 1-1(c); 2-1(a); and 2-1(b) – Respondent produced a misleading appraisal report for the property that contained several substantial errors of omission or commission by not employing correct methods and techniques and not analyzing and reconciling significant and material information she had a duty to analyze and reconcile. This resulted in an appraisal report that was not credible or reliable.

6. Respondent omitted material facts and made material misrepresentations as described in more detail above.

7. The parties enter into this consent order ("Order") in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.

2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).

3. Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by omitting material facts.

4. The parties are authorized to resolve their dispute by means of a consent order in accordance with Tex. Occ. Code §1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that the Respondent shall:

1 **MENTORSHIP.** On or before September 4, 2013. Respondent shall complete five (5) hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board in accordance with the schedule and topics set out below. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor on or before the due date listed for each mentorship requirement. Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.

a. On or before September 4, 2013, five (5) hours of mentorship in sales comparison approach and market analysis.

2. Fully and timely comply with all of the provisions of this Agreed Final Order; and,

3. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

Failure to comply with any of the terms of this Agreed Final Order within the time allotted shall result in **IMMEDIATE SUSPENSION** of the Respondent's certification pursuant to notice to the Respondent from Board staff indicating that the Respondent has not fulfilled the requirements of this Agreed Final Order.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH

HEARING OR DUE PROCESS. If Respondent's certification is suspended on such a basis, the suspension shall remain in effect until such time as Respondent is in full compliance with the terms of this Order and has provided adequate documentation of that compliance to the Board.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING AND TO BE REPRESENTED BY AN ATTORNEY OF MY OWN CHOOSING, AND HEREBY WAIVE BOTH AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCULDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 2 day of January, 2013.

RONALD JOHN GUERRERA

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 2 day of January, 2013, by RONALD JOHN GUERRERA, to certify which, witness my hand and official seal.

Alma E Huerta

Notary Public Signature

Alma E. Huerta

Notary Public's Printed Name

ALMA E HUERTA
My Commission Expires
March 15, 2015

Signed by the Standards and Enforcement Services Division this 2nd day of January, 2013.

Kyle Wolfe, TALCB Staff Attorney

Signed by the Commissioner this 2nd day of January, 2013.

Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this day of _____, 2013.

Luis De La Garza, Chairperson
Texas Appraiser Licensing and Certification Board

AGENDA ITEM 13(e)

Discussion and possible action to approve agreed final order regarding complaint file number 12-296 (James Elmer Partin, III (Unlicensed)

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	
	§	
	§	
vs.	§	DOCKETED COMPLAINT NO. 12-296
	§	
	§	
JAMES ELMER PARTIN III (UNLICENSED)	§	
	§	

AGREED FINAL ORDER

On the _____ day of _____, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of unlicensed activity of James Elmer Partin III (the "Respondent").

In order to conclude this matter, neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order.

FINDINGS OF FACT

1. Respondent was not licensed or certified by the Board during all times material to the above-noted complaint.

2. Respondent appraised real property located at: 15.19 acres located east of Maple Street on South 27th Street, Abilene, Texas (the "property"), on or about June 19, 2012.

3. Thereafter a complaint was filed with the Board. The complaint alleged that the Respondent produced appraisal report for the property that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").

4. Thereafter the Board notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board.

5. Respondent acted as a certified real estate appraiser by appraising the property when he was not so certified under the Act.

6. The parties enter into this consent order ("Order") in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.

2. Respondent violated 22 TEX. ADMIN. CODE § 153.20(a)(7) by acting as a certified real estate appraiser under the Act when he was not so certified.

3. The parties are authorized to resolve their dispute by means of a consent order in accordance with Tex. Occ. Code §1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS**:

1. **CEASE AND DESIST.** Respondent shall cease and desist from all unlicensed appraisal activities.

2. **ADMINISTRATIVE PENALTY.** Respondent shall pay to the Board an administrative penalty of one thousand five hundred dollars ($1,500.00), by certified funds, within twenty (20) days of the effective date of this order (i.e. on or before March 7, 2013)

3. Fully and timely comply with all of the provisions of this Agreed Final Order; and,

4. Comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

Payment of the $1,500 **ADMINISTRATIVE PENALTY** must be by certified funds, and must be tendered within **TWENTY (20) DAYS** of the date of this Agreed Final Order (i.e. on or before March 7, 2013).

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING AND TO BE REPRESENTED BY AN ATTORNEY OF MY OWN CHOOSING, AND HEREBY WAIVE

BOTH AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCULDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 15 day of Jan, 2013.

James Elmer Partin III

JAMES ELMER PARTIN III

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 15 day of January, 2013, by, to certify which JAMES ELMER PARTIN III, witness my hand and official seal.

Juanita Sachsenmeyer

Notary Public Signature

Juanita Sachsenmeyer

Notary Public's Printed Name

NOTARY PUBLIC STATE OF TEXAS
Juanita Sachsenmeyer
My Commission Expires
11/30/2014

Signed by the Standards and Enforcement Services Division this _____ day of _____, 2013.

_____

Kyle Wolfe, TALCB Staff Attorney

Signed by the Commissioner this _____ day of _____, 2013.

_____

Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this ____ day of _____, 2013.

AGENDA ITEM 13(f)

Discussion and possible action to accept Surrender of Licensure from complaint file number 12-245 (Felicia A. Hall, TX-1328738-L)

SURRENDER OF LICENSE

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	
	§	
	§	
vs.	§	DOCKETED COMPLAINT NO. 12-245
	§	
	§	
FELICIA A. HALL TX-1328738-L	§	
	§	

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared FELICIA A. HALL DAY, who being by me duly sworn, deposes as follows:

My name is FELICIA A. HALL. I am over 18 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am a STATE LICENSED REAL ESTATE APPRAISER in the State of Texas and I am voluntarily and permanently surrendering my LICENSE to the Texas Appraiser Licensing and Certification Board because I no longer desire to be LICENSED.

I understand that through this action the Texas Appraiser Licensing and Certification Board will permanently revoke my LICENSE without formal charges, notice, or a hearing.

I hereby waive my right to appeal or complain of any final order entered by the Texas Appraiser Licensing and Certification Board accepting the voluntary surrender of my LICENSE.

NOTARY PUBLIC STATE OF TEXAS
JOEL WOLF
My Commission Expires
August 5, 2014

FELICIA A. HALL

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this the 17 day of January, 2013.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

Notary Public's Signature

Joel Wolf
Notary Public's Printed Name

SURRENDER OF LICENSE

TEXAS APPRAISER LICENSING	§	
AND CERTIFICATION BOARD	§	
	§	
vs.	§	DOCKETED COMPLAINT NO.
	§	12-245
	§	
FELICIA A. HALL	§	
TX-1328738-L	§	

ORDER OF THE BOARD

WHEREAS, FELLICIA A. HALL has submitted to the Board her affidavit that she no longer desires to be approved as a state licensed real estate appraiser, and that she has voluntarily surrendered her license, the Board takes the following action:

NOW, THEREFORE, IT IS ORDERED that license number TX-1328738-L hereto issued to FELICIA A. HALL, to practice real property appraisal in the State of Texas, be permanently revoked without formal charges, notice of hearing, or a formal hearing.

Approved by the Board and Signed this ____ day of _____, 2013.

_____

Luis De La Garza, Chairperson
Texas Appraiser Licensing and Certification Board

AGENDA ITEM 13(g)

Discussion and possible action to accept Surrender of Certification from complaint file number 12-213 (Eric Elder, TX-1336851-R)

SURRENDER OF CERTIFICATION

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	
	§	
	§	
vs.	§	DOCKETED COMPLAINT NO.
	§	_____
ERIC ELDER	§	
	§	
TX- 1336851-R	§	

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared ERIC ELDER, who being by me duly sworn, deposes as follows:

My name is ERIC ELDER I am over 18 years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am a STATE CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER in the State of Texas and I am voluntarily and permanently surrendering my CERTIFICATION to the Texas Appraiser Licensing and Certification Board because I no longer desire to be CERTIFIED.

I understand that through this action the Texas Appraiser Licensing and Certification Board will permanently revoke my CERTIFICATION without formal charges, notice, or a hearing.

I hereby waive my right to appeal or complain of any final order entered by the Texas Appraiser Licensing and Certification Board accepting the voluntary surrender of my CERTIFICATION.

ERIC ELDER
NAME (PRINT)

SIGNATURE

SWORN TO AND SUBSCRIBED before me, the undersigned authority, on this the 8 day of October, 2012.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

Theresa Driska
Notary Public's Signature

Theresa Driska
Notary Public's Printed Name

THERESA DRISKA
Notary Public, State of Texas
My Commission Expires
June 22, 2016

SURRENDER OF CERTIFICATION

TEXAS APPRAISER LICENSING	§	
AND CERTIFICATION BOARD	§	
	§	
vs.	§	DOCKETED COMPLAINT NO.
	§	12-313
ERIC ELDER	§	
TX-1336851-R	§	

ORDER OF THE BOARD

WHEREAS, ERIC ELDER has submitted to the Board his affidavit that he no longer desires to be approved as a state certified residential real estate appraiser, and that he has voluntarily surrendered his certification, the Board takes the following action:

NOW, THEREFORE, IT IS ORDERED that certification number TX-1336851-R hereto issued to ERIC ELDER, to practice real property appraisal in the State of Texas, be permanently revoked without formal charges, notice of hearing, or a formal hearing.

Approved by the Board and Signed this ____ day of _____, 2013.

_____

Luis De La Garza, Chairperson
Texas Appraiser Licensing and Certification Board

AGENDA ITEM 13(h)

Discussion and possible action to approve agreed final order regarding complaint file number 09-110 (Wm Douglas Askew, TX-1325858-G)

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	
vs.	§	DOCKETED COMPLAINT NO. 09-110
WM DOUGLAS ASKEW TX-1325858-G	§	

AGREED FINAL ORDER

On the _____ day of _____, 2013, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of WM Douglas Askew (the "Respondent").

In order to conclude this matter, WM Douglas Askew neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order. The Board makes the following findings of fact and conclusions of law and enters this Order in accordance with TEX. OCC. CODE § 1103.458:

FINDINGS OF FACT

1. Respondent WM Douglas Askew is a Texas state certified general real estate appraiser who holds certification number TX-1325858-G, and was certified by the Board during all times material to the above-noted complaint.

2. Respondent appraised real property located at: 1840 Harvard Street, Houston, Texas 77008 ("the property") on or about May 8th, 2007.

3. Thereafter a complaint was filed with the Board. The complaint alleged that the Respondent produced appraisal reports for the property that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").

4. Thereafter the Board, in accordance with the mandate of the Administrative Procedure Act (the "APA"), TEX. GOV'T CODE ANN. CHPT. 2001, and TEX. OCC. CODE CHPT. 1103 (the "Act"), notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaint. Respondent was also requested to provide certain documentation to the Board.

5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the property:

a) USPAP Ethics Rule (Conduct) – Respondent failed to comply with the USPAP ethics rule because he communicated a misleading report and/or knowingly permitted another person to communicate a misleading report.

6. The parties enter into the following consent order in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.

2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3).

3. The parties are authorized to resolve their dispute by means of a consent order in accordance with TEX. OCC. CODE §1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS**:

1. **ADMINISTRATIVE PENALTY.** Pay to the Board an administrative penalty of one thousand dollars ($1,000.00), by certified funds, within twenty (20) days of the effective date of this order (i.e. on or before March 7th, 2013).

2. Fully and timely comply with all of the provisions of this Agreed Final Order; and,

3. Comply with all future provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

Payment of the $1,000 **ADMINISTRATIVE PENALTY** must be by certified funds, and must be tendered within **TWENTY (20) DAYS** of the date of this Agreed Final Order (i.e. on or before March 7th, 2013).

Failure to comply with any of the terms of this Agreed Final Order within the time allotted shall result in **IMMEDIATE SUSPENSION** of the Respondent's certification pursuant to notice to the Respondent from Board staff indicating that the Respondent has not fulfilled the requirements of this Agreed Final Order.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS. If Respondent's certification is suspended on such a basis, the suspension shall remain in effect until such time as Respondent is in full

compliance with the terms of this Order and has provided adequate documentation of that compliance to the Board.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING, AND HEREBY WAIVE A HEARING AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCULDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this ____ day of _____, 2013.

_____
WM DOUGLAS ASKEW

_____
LESLIE P. LEGRAND, ATTORNEY FOR
WM DOUGLAS ASKEW

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 31st day of January, 2013, by WM DOUGLAS ASKEW, to certify which, witness my hand and official seal.

Notary Public Signature

Leslie LeGrand Jr

Notary Public's Printed Name

LESLIE LEGRAND, JR.
MY COMMISSION EXPIRES
March 25, 2013

Signed by the Standards and Enforcement Services Division this _____ day of _____, 2013.

_____
Kyle Wolfe, TALCB Staff Attorney

Signed by the Commissioner this _____ day of _____, 2013.

_____
Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this ____ day of _____, 2013.

_____
Luis De La Garza, Chairperson
Texas Appraiser Licensing and Certification Board

AGENDA ITEM 13(i)

Discussion and possible action to approve agreed final order regarding complaint file numbers 10-251 & 12-250 (Richard M. Fetsch, TX-1323512-R)

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	
	§	
	§	
vs.	§	DOCKETED COMPLAINT NO. 10-251 & 12-250
	§	
	§	
RICHARD M. FETSCH TX-1323523-R	§	
	§	

AGREED FINAL ORDER

On the _____ day of _____, 2012, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the license of Richard M. Fetsch (the "Respondent").

In order to conclude this matter, neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order.

FINDINGS OF FACT

1. Respondent is a Texas state certified residential real estate appraiser who holds certification number, TX-1323523-R, and was certified by the Board during all times material to the above-noted complaint.

2. Respondent appraised real properties located at: 6902 Tallahassee Drive, San Antonio, Texas (the "Tallahassee property") (on or about March 15, 2006); 5051 Sierra Madre Drive, San Antonio, Texas (the "Sierra Madre property") (on or about November 1, 2006); 7107 Spring Point, San Antonio, Texas (the "Spring Point property") (on or about June 9, 2007); and 7915 Santa Catalina, San Antonio, Texas (the "Catalina property") (on or about August 4, 2006).

3. Thereafter complaints were filed with the Board. The complaints alleged that the Respondent produced appraisal reports for the properties that did not conform to the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").

4. Thereafter the Board notified Respondent of the nature of the accusations involved and Respondent was afforded an opportunity to respond to the accusations in the complaints. Respondent was also requested to provide certain documentation to the Board.

5. The parties enter into this consent order ("Order") in accordance with TEX. OCC. CODE § 1103.458.

6. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a) by the following acts or omissions which did not conform to

USPAP in effect at the time of the appraisal reports for the properties:

a) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) – Respondent failed to identify and report the site and improvement(s) description adequately;

b) USPAP Standards 1-2(e)(iv) & 2-2(b)(viii) – Respondent failed consider and report easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances or other items of a similar nature;

c) USPAP Standards 1-3(a) & 2-2(b)(viii) – Respondent failed to identify and analyze the effect on use and value of existing land use regulations, economic supply & demand, physical adaptability of the real estate market and market area trends;

d) USPAP Standards 1-3(b) & 2-2(b)(ix) – Respondent failed to provide support and a brief summary of his rationale for the highest and best use;

e) USPAP Standards 1-4(b)(i) & 2-2(b)(viii) – Respondent failed to use an appropriate method or technique to develop an opinion of site value;

f) USPAP Standards 1-4(b)(ii) & 2-2(b)(viii) and 1-1(a) & 1-4(b) – Respondent failed to collect, verify, analyze and reconcile the cost new of improvements and did not employ recognized methods and techniques in his cost approach;

g) USPAP Standards 1-4(a) & 2-2(b)(viii) and 1-1(a) & 1-4(a) – Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately and did not employ recognized methods and techniques in his sales comparison approach;

h) USPAP Standards 2-2(b)(viii) – Respondent failed to provide an explanation for the exclusion of the income approach;

i) USPAP Standards 1-5(a) & 2-2(b)(viii) and 1-5(b) & 2-2(b)(viii) – Respondent failed to analyze all agreements of sale, options or listings of the subject property current as of the effective date of the appraisal and did not analyze all sales of the subject within three years of the effective date of the appraisal;

j) USPAP Standards 1-6(a) & (b) and 2-2(b)(viii) – Respondent failed to reconcile the quality and quantity of the data within the approaches used, and the applicability or suitability of the approaches;

Respondent's reports for the properties contain substantial errors of commission or omission as detailed above which resulted in misleading appraisal reports for the properties.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103 et. seq.

2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(6).

4. The parties are authorized to resolve their dispute by means of a consent order in accordance with Tex. Occ. Code §1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board **ORDERS** that Respondent's Texas appraiser TX-1323523-R be revoked for a period of 12 months, effective 5:00 p.m., February 15th, 2013.

IT IS FURTHER ORDERED that beginning at 5:00 p.m., February 15th, 2013, the revocation is to be fully probated for 12 months ending February 15th, 2014, subject to the following terms and conditions:

1. **NO TRAINEES.** Respondent shall not sponsor or supervise any appraiser trainees for the duration of the above-referenced period;

2. **MENTORSHIP.** On or before May 15th, 2013, Respondent shall complete ten (10) hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board staff in accordance with the schedule and topics set out below. Respondent shall submit a certification form signed by the approved certified USPAP instructor on or before the due date listed for each mentorship requirement. Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion;

    A. On or before May 15th, 2013, complete ten (10) hours of mentorship with a focus on the sales comparison approach, prior sales history and listing history analysis, and cost approach, including lot value and cost of improvements analysis and determination.

3. **EDUCATION.** On or before August 15th, 2013. Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance. Respondent must receive a passing grade on the exam given in each class. None of the required classes will count toward Respondent's continuing education requirements for licensure. **Respondent is solely responsible for locating and scheduling classes to timely**

satisfy this Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.

A. On or before August 15th, 2013, complete a minimum fifteen (7) classroom-hour course in Valuation by Comparison. No examination shall be required for this course;

B. In lieu of completing the education noted above, Respondent may elect to complete an *additional* 7 hours of mentorship on market data analysis and the sales comparison approach in the manner described below under the "mentorship" heading.

4. **ADMINISTRATIVE PENALTY.** On or before March 7th, 2013, Respondent shall pay an administrative penalty in the amount of $500. Payment of the administrative penalty must be by certified funds.

5. Fully and timely comply with all of the provisions of this Agreed Final Order; and,

6. Comply with all future provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

Failure to comply with any of the terms of this Agreed Final Order within the time allotted shall result in **PERMANENT and IMMEDIATE REVOCATION** of the Respondent's certification pursuant to notice to the Respondent from the Board indicating that the Respondent has not fulfilled the requirements of this Agreed Final Order.

ANY SUCH REVOCATION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT OR THE ADMINISTRATIVE PROCEDURE ACT, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS. A violation of these terms will automatically revoke probation and impose the aforementioned revocation of Respondent's certification, commencing on the effective date of the revocation of probation.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's web site.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF

LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE. I AM AWARE OF MY RIGHT TO A HEARING AND TO BE REPRESENTED BY AN ATTORNEY OF MY OWN CHOOSING, AND HEREBY WAIVE BOTH AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCULDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER, SUCH AS PAYMENT OF A FEE, COMPLETION OF COURSEWORK OR FAILURE TO PROVIDE LOGS.

This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 4 day of February, 2012.

RICHARD M. FETSCH

TED WHITMER, ATTORNEY FOR
RICHARD M. FETSCH

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this the 4th day of Feb, 2012, by, to certify which, witness my hand and official seal.

Notary Public Signature

Petrina Telles

Notary Public's Printed Name

NOTARY PUBLIC STATE OF TEXAS
Petrina Telles
My Commission Expires
04/20/2015

Signed by the Standards and Enforcement Services Division this _____ day of _____, 2013.

TALCB Staff Attorney

Signed by the Commissioner this _____ day of _____, 2013.

_____
Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this _____ day of _____, 2013.

_____
Chairperson
Texas Appraiser Licensing and Certification Board

AGENDA ITEM 13(j)

Discussion and possible action to approve agreed final order regarding complaint file numbers 12-024 & 12-174 (Ted Norman Lear, TX-1321121-G)

AGENDA ITEM 13(k)

Discussion and possible action to approve agreed final order regarding complaint file numbers 10-173 & 12-038 (Robert W. Hawkins, TX-1335830-R)

AGENDA ITEM 13(l)

Discussion and possible action to approve agreed final order regarding complaint file number #12-209 (John Arenas, Jr., TX-1323843-R)

AGENDA ITEM 13(m)

Discussion and possible action to approve agreed final order regarding complaint file number 13-073 (David Louis Smedley, TX-1338373-G)

AGENDA ITEM 14(a)

Discussion and possible action on proposal for decision from the State Office of Administrative Hearings regarding complaint file number 08-065 (Ronald Craig Lewis, TX-1329836-G).

State Office of Administrative Hearings

RECEIVED
SEP 24 2012
Texas Real Estate Commission

Cathleen Parsley
Chief Administrative Law Judge

September 21, 2012

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

INTER-AGENCY

RE: Docket No. 329-11-9425.ALC; Texas Appraiser Licensing and Certification Board v. Ronald Craig Lewis

Dear Mr. Oldmixon:

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

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Sarah G. Ramos

SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SRG/lh
Enclosure
xc: Kyle Wolfe, Attorney, TALCB, 1700 N. Congress Ave., Suite 400, Austin, TX – **VIA INTER-AGENCY**
Sadiyah A Evangelista, Attorney, P.O. Box 1092, Houston, TX 77251 - **VIA REGULAR MAIL**
Troy Beaulieu, TALCB, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 – (with 1 hearing CD) - **VIA-INTER-AGENCY**

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

SOAH DOCKET NO. 329-11-9425.ALC

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD, PETITIONER	§	**BEFORE THE STATE OFFICE**
V.	§	**OF**
RONALD CRAIG LEWIS, RESPONDENT	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

The Staff of the Texas Appraiser Licensing and Certification Board (TALCB or Board) brought this action to revoke the real property appraiser certification held by Ronald Craig Lewis (Respondent). In the alternative, Staff seeks imposition of an administrative penalty, a requirement for remedial education, and/or suspension or probation of Respondent certificate. Staff alleged that Respondent violated the Texas Appraiser Licensing and Certification Act and the Board's rules by producing appraisal reports that failed to conform to the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP). Respondent demonstrated that he wrote an erroneous appraisal during a time of undue stress and performed another appraisal that, while inadequate, was not intended to be a true summary appraisal. The Administrative Law Judge (ALJ) recommends that Respondent be required to pay a $3,000 monetary penalty and, for one year, be limited to providing appraisals only for his employer.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

The hearing was held on May 14, May 15, and July 12, 2012, by Administrative Law Judge (ALJ) Sarah G. Ramos at the William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Staff attorneys Troy Beaulieu and Kyle Wolfe represented Staff. Attorney Sadiyah Evangelista represented Respondent. The parties made oral closing arguments on July 24, 2012, on which date the record closed. There were no contested issues of notice or jurisdiction, and those issues are discussed only in the Findings of Fact and Conclusions of Law.

II. APPLICABLE LAW

Texas Occupations Code (Code) § 1103.405 requires a licensed appraiser to comply with the most current edition of USPAP and any other standards established by Board rule that are at least as stringent as those standards. For a violation of the Code, a rule, or a Board order, Code § 1103.552 authorizes the Board to impose an administrative penalty of up to $1,500 for each violation or $5,000 for multiple violations in a single case. The person on whom the penalty is imposed must pay the penalty not later than the 20th day after the date the order imposing the penalty becomes final.

This is the second disciplinary action against Respondent. The Board's penalty matrix at 22 Texas Administrative Code §153.24(9) lists a range of recommended sanctions. For second violations that do not reflect a serious inability or unwillingness to comply, the suggested penalty is $500 to $1,500 per violation with a requirement to take remedial course work or to adopt preventive policies and procedures, or both.

III. BACKGROUND

A. Respondent's History

Respondent began working as a real estate agent in 1992 and was licensed as an appraiser on December 18, 2000. He is a general certificate real estate appraiser and thus allowed to appraise both commercial and residential properties. Respondent has completed more than 1,000 appraisals since being licensed. He testified that he has not done any other type of work except real estate and appraising. Respondent received a bachelor's degree in leadership ministries in 2005, and in January 2009, began pursuing a real estate degree.

Respondent currently resides in Little Rock, Arkansas. Since August 2011, Respondent has worked as a review appraiser for the Department of Housing and Urban Development (HUD).[1] Prior to his employment with HUD, Respondent had own his appraisal company.

[1] Respondent testified that he has an outstanding recommendation from HUD, and his employers are aware of his disciplinary history with the Board.

B. Agreed Final Order

On May 11, 2007, the Board issued an Agreed Final Order which found that Respondent failed to comply with USPAP in appraisals he prepared for four properties.[2] The errors included, among other things, failing to adequately identify and report the site description and improvements; using an inappropriate method to develop an opinion of the value; failing to properly account for depreciation; and failing to adequately collect, verify, analyze and reconcile comparable sales data.

As a result, the Board revoked Respondent's certification but probated the revocation for two years and six months (*i.e.*, until November 11, 2009). In addition, the Board set conditions with which Respondent was required to comply during the period of probation. The conditions included, among other things, that Respondent submit a quarterly log of his appraisals and, at the Board's request, provide his work files. Further, Respondent was suspended from making any appraisals for thirty days, prohibited from sponsoring any appraiser trainees during the probation period, required to pay a $2,000 administrative penalty, and required to attend 105 hours of continuing education courses.

While Respondent was on probation, Staff reviewed the appraisal logs that Respondent submitted quarterly, and Staff requested work files for various properties. In those work files, Staff found errors for two of the properties that Respondent appraised during the term of his probation. One property is at 9430 West Bellfort in Houston, Texas, and is referred to as the "Bellfort property." The other is at 14502 Renee Lane in Crosby, Texas, and is referred to as "Renee property."

[2] The "Truxillo" property in 2001, the "Russett" property in 2002, and the "Philbrook" and "Kirby" properties in 2006. (Staff Ex. 8).

IV. BELLFORT PROPERTY

A. Respondent's Report

The Bellfort property is a 0.6731 acre tract with a metal warehouse building that was used as a church. It has 6,350 square feet of net rentable area, but a second level has been added, making the total heated and cooled area 12,700 square feet.

According to the appraisal log that Respondent submitted to the Board, he prepared a restricted use report (RUR) for the church on October 24, 2007, and issued his report on November 2, 2007. Respondent testified that representatives of the church contacted him by email in October 2007 and asked him to verbally give them a market value for the property so that they could make an internal decision about whether to sell the property or keep it. They also told Respondent they did not plan to compensate him for his work.

In response, Respondent offered to prepare a "letter of value" for them so that they would have a written figure to discuss. Respondent testified that he inadvertently referred to the letter as an RUR on his appraisal log since he did not intend for it to be either an appraisal summary or an RUR. Further, Respondent understood that no one other than the church would have access to the letter of value. After Respondent submitted the letter, he had no more discussions with the church, and no one from the church ever told him there were any issues with his letter.

The Bellfort report is labeled as a "Summary Report" on the first page,[3] but Respondent testified that the label was an error. In the report, Respondent further states, "Pursuant to your request a letter of value . . . has been done for the purpose of estimating "Market Value/Value in Use" in fee simple interest."[4] He describes the property's location and general features and then states:

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[3] Staff Ex. 5C at 390.

[4] Staff Ex. 5C at 391.

> After analyzing land sales, construction costs, improved sales as well as listings and trends within overall market area, a final estimate of value is determined. Therefore, it is my contention that 'Market Value/Value in Use' for the subject facility . . . as of October 24, 2007, is as follows:
>
> **FIVE HUNDRED THOUSAND DOLLARS**
> **$500,000.00**
>
> The opinion of value expressed in the appraisal is contingent upon basic assumptions presented herein and those stated in the Contingent and Limiting Conditions. . . . This value reported in this appraisal is presented in a letter of value format with pertinent data retained in the appraiser's file. Upon presentation of a full narrative appraisal report, the value may or may not change.
>
> If further information or services are needed, please advise.[5]

Respondent then included six pages of photographs and two pages with various attestations, assumptions, and limiting conditions, such as:

> The analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with [USPAP] and the reporting requirements of various regulatory agencies;
>
> The reported analyses, opinions, and conclusions have been developed and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the [TALCB];
>
> . . . Title is assumed to be marketable and free and clear of all liens, encumbrances, easements, and restriction[s] except those specifically discussed in this report. The property is appraised assuming it to be under responsible ownership and competent management and available for its highest and best use;
>
> . . . Except as specifically stated, data relative to size, location and dimensions, were taken from sources considered reliable and no encroachment or real property improvement is assumed to exist; and
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> . . . all existing liens and encumbrances have been disregarded, unless specifically stated so in the report.[6]

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[5] Staff Ex. 5C at 392. (Emphasis in the original.)

[6] Staff Ex. 5C at 399-400.

B. Testimony of John "Jack" F. McCombs, Jr.

Mr. McCombs has been a Board investigator for almost twelve years and a licensed appraiser for more than thirty-five years. He has testified as an expert in several forums. Mr. McCombs said Staff requested three appraisal reports from every appraisal log that Respondent submitted during the term of his probation.

Mr. McCombs reviewed some of Respondent's appraisals and completed a "desktop" review of Respondent's report for the Bellfort property to determine whether it complied with USPAP standards.[7] Later, Mr. McCombs went to Houston to view the subject and comparable properties that Respondent relied on to develop the Bellfort report.

In general, Mr. McCombs said Respondent's report did not comply with USPAP requirements for a summary report or an RUR. Instead, it was more like a letter. The quality was so poor that Mr. McCombs considered it an ethical violation to label the report as an appraisal.[8] As to Respondent's assertion that the owners of the Bellfort property wanted only a letter of value, Mr. McCombs testified that USPAP includes no such document. In Mr. McCombs' opinion, Respondent should have turned down the assignment if he was not able to a complete a proper appraisal report. However, Mr. McCombs conceded that he did not personally speak with persons at the church about what they had asked Respondent to do for them.

An appraisal might be used for many purposes, including mortgage lending and estate work, and at a minimum, appraisers must comply with USPAP standards when preparing an appraisal report, Mr. McCombs stated. He also described the three main approaches to determining value in an appraisal – sales, cost, and income value. The cost approach considers the amount necessary to reproduce a property after depreciation is taken into account, the sales approach evaluates what has

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[7] Mr. McCombs' report is Staff Exhibit 7G.

[8] Staff Ex. 7G at 527.

happened recently in the market for similar types of property, and the income approach determines the amount of rent a property would produce and what someone would pay for that income stream.

Mr. McCombs testified that an RUR requires the same work as an appraisal report, even though the format may be different. The only difference between a summary report and an RUR is that, in a summary, the appraiser has to summarize the data and analysis, but for a restricted use report, the appraiser has only to state his conclusions and have the data in his work file.

Mr. McCombs listed numerous ways the Bellfort report failed to meet USPAP standards. It did not address the size of the lot or include neighborhood data. It did not properly identify the problem to be solved and the scope of work necessary to develop credible results. Also, the report did not disclose the intended use of the appraiser's conclusions or define the property's value and source.

Respondent included 12,700 feet in calculating the value of improvements, but the second floor did not cost the same as the first floor. A USPAP appraisal cannot have the same cost method for both floors, and using the square footage for the entire building added extra costs for the foundation and roof, Mr. McCombs testified. In addition, the report does not adequately address the property's possible rent value because the most likely use of a metal building is as a warehouse with storage only on the ground floor. In addition, the property included an area of 1,200 square feet that was labeled "mercy ground" but not further described.

The report also does not indicate whether personal property would be conveyed and does not discuss any kind of restrictions on the property. Although Houston does not have restricted zones, Mr. McCombs said the city restricts uses for certain areas.

In most commercial properties, frontage is paramount and utilities are essential, Mr. McCombs added. Respondent did not identify any easements or analyze the effects of other factors on the property's use and value, such as existing land-use regulations, economic support and demand, physical adaptability of the real estate, and market area trends.

Mr. McCombs also found the report deficient because it did not address the income approach, which could have been highest and best use for the property. Along these lines, an unused billboard on the property was not discussed, even though a billboard is often a potential source of income.

As for the cost approach, even though there were some comparables in the work file, they were not part of Respondent's report to his client, and the report did not include a data summary stating what was in his work file. According to Mr. McCombs, even an RUR should have included Respondent's conclusions.

Moreover, Mr. McCombs testified that Respondent's work file does not show that he adequately collected, verified, analyzed and reconciled comparable sales data. Some comparable properties that Respondent used had different quality construction, Mr. McCombs noted. The Bellfort property is a metal, warehouse building, but sales of some properties used as comparables had concrete block and other types of construction.

The first comparable sale was reported sold for $72,000 more than the listed price. The second comparable was a larger general-purpose building on a smaller site. The third comparable was a smaller general-purpose building on a smaller site. The fourth comparable sale was a small office building and not similar. There were no notes as to the analysis involved and no adjustment to analyze the data, Mr. McCombs testified. All the comparable sales were for single story buildings, and the resulting sales prices per square foot did not apply to second-floor improvement or uses.

Mr. McCombs also disagreed with the way in which Respondent used the Marshall Valuation Service (MVS) to analyze and reconcile the cost, when new, of improvements. Respondent used the section that refers to improvements built as theaters, museums, and churches but should have used the section for low cost Class S storage and showroom buildings. The churches used in the MVS are brick and mortar churches, not metal buildings, and it costs less to build a metal building, Mr. McCombs added.

Furthermore, Mr. McCombs said Respondent did not appropriately address accrued depreciation. The improvements were built in 1979 and were twenty-eight years old on the effective date of the report. MVS indicates that metal buildings should last twenty-five to forty years. As a result, MVS estimates the normal depreciation to be 70%-80%, but Respondent used only 42% depreciation.

Finally, the report states, "[u]pon the presentation of a full narrative appraisal report, the value may or may not change." Therefore, in Mr. McCombs' opinion, Respondent admitted to potential errors in his analysis. In summary, Mr. McCombs said it was obvious that Respondent did not perform a USPAP compliance summary appraisal report or an RUR. Errors of commission and omission significantly affected the report, and the report failed to include sufficient information to enable the intended users of the appraisal to understand the report properly. In Mr. McCombs' opinion, this led to an inflation of the property's value.

C. Respondent's Evidence Regarding Bellfort Property

During Respondent's testimony, his attorney asked him to consider whether the Bellfort report complied with minimum USPAP requirements for an RUR.[9] Respondent indicated how and whether he had complied and affirmed that, for the most part, the letter meets the requirements.

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[9] The requirements are:
(i) state the identity of the client, by name and type; and state a prominent use restriction that limits use of the report to the client and warns that the appraiser's opinions and conclusions set forth in the report may not be understood properly without additional information in the appraiser's workfile;
(ii) state the intended use of the appraisal;
(iii) state information sufficient to identify the real estate involved in the appraisal;
(iv) state the real property interest appraised;
(v) state the type of value, and cite the source of its definition;
(vi) state the effective date of the appraisal and the date of the report;
(vii) state the scope of work used to develop the appraisal;
(viii) state the appraisal methods and techniques employed, state the value opinion(s) and conclusions(s) reached, and reference the workfile; exclusion of the sales comparison approach, cost approach, or income approach must be explained;
(ix) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and when an opinion of highest and best use was developed by the appraisal, state that opinion;
(x) clearly and conspicuously:
State all extraordinary assumptions and hypothetical conditions; and
State that their use might have affected the assignment results; and
(xi) include a signed certification in accordance with Standard Rule 2-3. USPAP Standard Rule 2-2(c).

Respondent's report quotes the definition of market value, and Respondent said he used that approach because it was responsive to the church's question. He also identified the date of the appraisal and the date of his letter. The scope of his work was explicit in the methodology he used, and his analysis was in his work file and available to the church upon request, Respondent testified.

Respondent also said that his work papers demonstrate that he used a sales comparison approach and each of comparables has a corresponding sales sheet.[10] The first comparable sale was a metal building used for a motor vehicle repair shop that could be retrofitted as a church.[11] The second sale was also a metal building used as an automobile sales center.[12] The third comparable sale was a convenience store.[13] Respondent said he selected these comparable sales because the properties could be adapted to a special-purpose use.

Two comparables were similar properties, Respondent testified. He said he corresponded the square footage with value per square foot based on past sales and showed his adjustment range. Then, he showed comparable sales for land value only. He determined a $3.40 per-square-foot value and used cost per square foot to determine the cost of the subject property. He correlated the land value and calculated a depreciated cost for the subject property.

Respondent provided an estimated value with an appropriate definition,[14] using the appraisal institute's definition. In Respondent's work file, he included a sketch of property.[15] He showed the total square footage, including the upper level. Respondent said the "mercy ground" area was a 1,200 square foot sand pit covered by a gazebo that the church members built themselves. Respondent included the 1,200 square feet in the total square footage but did not specifically describe the area in the report because it did not have any value other than square footage.

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[10] *See* Staff Ex. 5C at 426.

[11] Staff Ex. 5C at 408.

[12] Staff Ex. 5C at 409.

[13] Staff Ex. 5C at 410.

[14] Staff Ex. 5C at 391.

[15] Staff Ex. 5C at 390.

Furthermore, Respondent did not include a value for personal property because he was asked only to value the land and improvements. As for easements and restrictions, the report expressly states that they were disregarded.[16]

Under the circumstances, Respondent thought it was reasonable not to address the billboard in his letter of value because the church was not using it for income at the time. However, he recognized that he violated USPAP by not including the billboard's possible value at least in his work papers.[17]

The Bellfort property has churches on either side of it, and the neighborhood is 75-80% built. Respondent said he used comparable sales from the same socio-economic climate, thereby accounting for crime rates in the area. He said he reflected the fact that the improvement was a metal building by noting the improvements were "low cost."[18] Moreover, Respondent said the Bellfort area is still a good area for real estate,[19] and the property has about the same value today as when he appraised it.

No one from the church ever told Respondent that he or she could not understand what was in letter. Respondent said he would have explained anything that was not clear. Even so, Respondent testified that it was an error to label the letter as a "summary report."[20] Most appraisers know a letter of value is synonymous with an RUR, Respondent stated, but he knew the church was not asking for an RUR. They simply wanted him to tell them what he thought the property was worth.

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[16] Staff Ex. 5C at 400, 3rd paragraph.

[17] See the bottom photograph on Respondent Ex. 6 and the top photograph on Respondent Ex. 7, which Respondent took a few weeks before the hearing.

[18] *See* Staff Ex. 5C at 427.

[19] *Citing* the bottom photograph on Respondent Ex. 7, and the photographs n Respondent Exs. 8 and 9.

[20] Staff Ex. 5C at 390 and 392.

D. Analysis of Bellfort Evidence

Respondent admitted that he made errors in the Bellfort report. He included terms that would lead a reader to believe he had prepared a summary appraisal. He informed the church that he had analyzed land sales, construction costs, improved sales, listings, and trends within the market. All of those steps imply that he was providing at least an RUR.

It would have been more prudent if Respondent had not presented a document to the church that used the term "appraisal" and included some aspects of a summary appraisal report and if he had not listed it as an RUR on his appraisal log when he gave the church something less. Mr. McCombs testified the USPAP has no such document as a letter of value, so Respondent should not have used terms that would lead one to think he was writing a summary appraisal or an RUR.

An RUR must explain the exclusion of the income approach, and Respondent failed to explain that exclusion or to address the possible value of the billboard. The report miscalculates the value of the property based on the second floor footage and use of the incorrect section in MVS. Rather than describing easements, Respondent stated only that he had assumed there were none. He did not explicitly discuss the physical adaptability of the building or market trends in the area. Respondent did not summarize the data in his work file. He also did not use the correct section of the MVS, and he miscalculated deprecation. It appears that Respondent prepared the report as a favor and did not intend to offer it as an appraisal summary or RUR; nevertheless, he should have either prepared an RUR that complied with USPAP or declined to assist the church. As a result, he is responsible for the errors in the report.

V. RENEE PROPERTY

A. Overview

The Renee property is a 2,698 square foot house on a 2.0694 acre lot. Staff had four appraisal reports for the property – the initial appraisal report that Respondent submitted as part of

his probation audit, the report he submitted in response to Staff's complaint, a report that Staff acquired from the lender shortly before the hearing commenced, and a fourth report, prepared two months later than the other three appraisals.

Report Number	Date	Type	Estimated Market Value	Exhibit Reference
Appraisal 1	10-15-07	Exterior only.	$240,000	Staff Ex. 6F at 444-457.
Appraisal 2	10-15-07	Exterior only.	$240,000	Staff Ex. 6F at 458-471.
Appraisal 3	10-15-07	Exterior only.	$240,000	Staff Ex. 12 (sent to lender).
Appraisal 4	12-13-07	Interior and exterior.	$205,000	Staff Ex. 6F at 472-493.

The second and third reports have only one difference – trainee's names were included on the third report. Staff did not contest the fourth appraisal but does allege that the versions completed in October 2007 have errors.

B. Testimony of Jeff Strawmyer

Mr. Strawmyer holds a bachelor's degree in architecture and has been a real estate appraiser for twenty-four years. He has been employed by the Board for eight years and currently serves as a case manager. He performs compliance reviews, completes experience audits, and trains new investigators.

Mr. Strawmyer prepared an investigative report for the Renee property.[21] To Mr. Strawmyer, the different versions of the Renee property's appraisal appeared to indicate that Respondent attempted to alter them to avoid disciplinary action. He testified that the Renee appraisal failed to adequately identify and report the site description, develop an opinion of the highest and best use for

[21] Staff Ex. 7H.

the property, support the estimated lot value of $70,000, and properly represent the sales comparison approach.

Furthermore, Mr. Strawmyer said Respondent did not calculate physical depreciation properly, which created a misleading indication of value. And the appraisal failed to make adjustments for numerous aspects of the comparable properties, such as swimming pools and other features that affected the comparable properties' values.

In addition, Mr. Strawmyer said the appraisal did not demonstrate that Respondent was aware of, understood, and correctly used recognized methods and techniques to produce a credible appraisal. Since Respondent is an experienced appraiser, he should have used appropriate methods so that land value was not inflated and the sales comparison approach was not misrepresented.

C. Respondent's Evidence Regarding Renee Property

When Staff contacted Respondent about the Renee property, Respondent wrote a letter, dated January 3, 2008, which states, in part:

> . . . the report submitted to [the Board] is the incorrect version of the report. Due to critical illness of my father and subsequent amputation of his foot, the report in question was shuffled between the hospital and office via computer data stick. The correct report was not transferred to the original main frame computer and upon request for review by [Staff] the unrevised version of the report was sent to your office. The correct version of this report has been submitted with this response for your review.

At the hearing, Respondent further explained his challenges in writing the Renee property appraisal. His father, Rev. Etheal Lewis, Sr., was in the hospital and, at least once, required "code blue" care. Rev. Lewis's hospitalization was traumatic for the family. He was admitted to a Houston hospital on October 11, 2007 and airlifted to St. Louis on October 30, 2007,[22] where he was treated

[22] Respondent Ex. 4.

for four-to-five months. Respondent worked on the Renee report at the hospital, using two or three computer flash drives as he worked.

LSI Title Agency, Inc. (LSI), the entity that requested the Renee appraisal, allowed only seven days for an appraiser to write a report, Respondent stated. As Respondent was with his father at the hospital, LSI called him repeatedly to find out when the report was going to be submitted. While working at the hospital, Respondent sometimes saved changes to the appraisal on a flash drive but not to his computer's hard drive. The cost approach on the version sent to LSI lists an inflated site value of $70,000,[23] while the version Respondent sent to Staff has a correct site value of $40,500.[24]

Respondent said all versions of the Renee appraisals were completed before Staff sent a complaint. He thought he had sent LSI the version that he sent to Staff, but the versions were different. When Respondent was asked why his corrections on subsequent versions tended to mirror Mr. Strawmyer's notes, Respondent said he was able to see the errors he had made once the crisis with his father had passed. He corrected the errors before he knew about Mr. Strawmyer's notes. Further, Respondent testified that an appraiser does not typically perform a cost-approach analysis on an exterior-only review.

Respondent said the Renee property sold on January 31, 2005, for $269,178,[25] but then the real estate market dropped. At first, LSI asked him to complete only an exterior "drive by" appraisal since the property was in foreclosure. When he had a chance to go inside the property in December, he changed the value from $240,000 to $205,000 because the house had interior damage. Also, the square footage was 1,216 feet different than what was shown on HCAD's records. As a result, Respondent said his earlier appraisal reports were based on erroneous assumptions, *i.e.*, that the property was in good condition and was the size that HCAD had recorded. The property was listed

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[23] Staff Ex. 12 at 598.

[24] Staff Ex. 6F at 463.

[25] Respondent Ex. 5.

on the market on January 8, 2008, for the amount that Respondent last appraised it, $205,000, and sold in May 2008 for $190,000.

D. Dr. Sabrina Lewis-Jones

Dr. Lewis-Jones, a Houston Community College teacher and administrator, has a master's degree in business administration and a doctorate in management and organizational leadership. She is Respondent's sister and assisted in caring for their father during his hospitalization.

Dr. Lewis-Jones confirmed Respondent's explanation of their father's experience during October 2007. She said Rev. Lewis's illness originated when he stepped on a nail but was not aware that he had done so. He developed blood poisoning and had to be rushed to hospital. Later, he was moved to another hospital for an immediate operation. After surgery, Rev. Lewis was transferred back to the first hospital. During a blood transfusion, he was given the wrong type of blood which caused him to go into a coma. Eventually, Rev. Lewis had to be transported to St. Louis and was in a coma for about two weeks. The family stayed with him "around the clock," Dr. Lewis-Jones testified. She said her brother, Respondent, worked on his appraisals at the hospital, even on the days when doctors told them their father might not survive.

The experience was very traumatic for the entire family, and traumatic experiences can cause a delay in thinking and making decisions, Dr. Lewis-Jones noted. In her opinion, excessive stress during this time could have altered her brother's thinking.

E. Other Appraisers

1. Testimony of Mr. Strawmyer

In Respondent's discovery responses, he verified that he completed the Renee appraisal without the assistance of other persons. To Mr. Strawmyer, this statement proved that Respondent is

untruthful because one version of the Renee appraisal shows that Zolee Joshua and Keith Claiborne provided significant assistance with the property inspection and preparation of the report.[26]

Mr. Strawmyer said that when Respondent put the names of other appraisers on the report, he informed both the property owner and the lender that those appraisers had participated in the appraisal. Ms. Joshua was licensed on April 16, 2007, and the appraisal was in October 2007, so, legally, she could have participated in the appraisal. However, Mr. Claiborne's trainee authorization had expired by October 2007, so he would not have been allowed to participate even if the Agreed Order had permitted Respondent to have trainees.

2. Respondent's Evidence

Respondent testified that Ms. Joshua and Mr. Claiborne did not work with him after 2006. In September 2006, Respondent decided he would no longer supervise trainees, and he sent in the appropriate forms to end all of his trainee relationships. Nevertheless, he used a template that had Ms. Joshua's and Mr. Claiborne's names on it, and he admitted it was an error to include them. Mr. Strawmyer conceded that he, like Respondent, uses templates and recognized that outdated information is left on a template at times when a new document is created from it.

3. Testimony of Zolee Joshua Thomas

In 2007, Ms. Thomas was not yet married and her last name was Joshua. She testified that Respondent sponsored her as an appraisal trainee beginning in early 2006 but stopped sponsoring her in August or September 2006. Subsequently, Ms. Thomas trained with another appraiser; she was not sponsored by two persons at a time. She became licensed in April 2007 and continues to practice in the profession. Ms. Thomas did not recall working on the Renee property with Respondent and said she did not do any work with Respondent in 2007.

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[26] Staff Ex. 12 at 602. Compare Staff Ex. 6F at pages 450, 464, and 483, which do not include their names.

F. Analysis of Renee Evidence

The ALJ agrees with Mr. Strawmyer that the Renee appraisal has errors. Considering the various versions of the appraisal, Staff's assertion that Respondent attempted to correct an inadequate report has some merit. However, the evidence more persuasively proved a different version of the events. Given the disruption in Respondent's life at the time when his father was so ill, Respondent's explanation is entirely reasonable. Even though the exterior-only versions of the report have some errors, such as the difference in lot value, those errors do not prove that Respondent is generally unable to perform a proper appraisal or unwilling to comply with Board requirements. On the contrary, the evidence shows that he worked very hard to comply and to provide LSI with correct information, even when it was almost impossible to do so. Based on the evidence, the ALJ finds that while the October 2007 Renee appraisals have errors, those errors were made at a time of extreme duress in Respondent's life. There was no evidence that they are typical of Respondent's work.

Similarly, the evidence proved that including Ms. Joshua's and Mr. Claiborne's names was an inadvertent error. No finding should be issued for that mistake.

VI. PROPOSED PENALTY

Mr. McCombs testified that the violations for which Respondent was disciplined in the May 2007 order are the same as proven by the facts in this case. The current violations reflect gross negligence. Therefore, in Mr. McCombs' opinion, Respondent's license should be revoked.

Mr. Strawmyer said the deficits in the appraisal reports support his recommendation that Respondent's license be suspended. Because Respondent applied improper techniques in his appraisals, his reports either inflated or deflated the properties' values and could have misled a lender and violated the terms of Respondent's probation. Thus, the violations justify revocation of his certification.

Respondent testified that he never intended to mislead the Board and acted as carefully as possible under the circumstances. He explained that he never tried to conceal or change a report. He could not have altered the Renee appraisal based on Mr. Strawmyer's notes because he did not have those notes when he filed his reports with the Board. Respondent also said he had never deliberately, intentionally, or willfully violated USPAP standards in preparing an appraisal. He added that it is not in his nature or his character to be deceitful or dishonest. Finally, Respondent testified that he recognizes he made mistakes but stated he is becoming a better appraiser and cares about the quality of his work.

Respondent made some of the same errors with the Bellfort and Renee appraisals that he did in the appraisals addressed in the Agreed Order. This might lead one to conclude he is unable to properly perform an appraisal. However, the ALJ finds that Respondent is neither unwilling nor unable to comply with USPAP requirements.

When Respondent prepared the Bellfort appraisal, he mixed appraisal terms with what he intended as an informal estimate. While Respondent used poor judgment in his attempt to assist the church, the evidence does not prove that Respondent was unable to complete a proper appraisal for them. True, he should not have performed an inadequate appraisal as a favor, and he should be sanctioned for this. But the deficits in Respondent's Bellfort report do not prove that he is unable to practice the appraisal profession properly.

As for the Renee property, the evidence again shows that Respondent had the knowledge to complete a proper appraisal report. Even though the errors he made were the same or similar to the ones addressed in the Agreed Order, Respondent was able to see and correct the errors once he returned to his regular work situation. Therefore, the errors are attributable to the extreme stress Respondent was experiencing at the time.

As a result, the ALJ recommends that the Board follow its penalty matrix for a second occurrence that does constitute evidence of a serious inability or unwillingness to comply. The evidence does not establish either that Respondent was unable to complete a USPAP-compliance

appraisal or unwilling to comply with the standards. The suggested penalty for such a violation is $500 to $1,500 per violation with requirement to take remedial course work or to adopt preventive policies and procedures, or both. The ALJ recommends that Respondent be required to pay a $3,000 monetary penalty. Yet, the evidence does not support a requirement of remedial education, given the fact that the fourth Renee appraisal demonstrates that Respondent knows how to prepare a proper appraisal.

The Renee appraisal was prepared when Respondent was not able to work properly due to family circumstances. The Bellfort report was prepared without remuneration, thus implying that it may have been done as a favor. As a preventative measure to address these types of situations, the ALJ recommends that Respondent be restricted from performing any appraisals other than for his employer for a period of one year. In the alternative, if Respondent's relationship with HUD ends, he should be limited to preparing a reasonable number of appraisals per year. The Board will know better than the ALJ what that number should be, but Respondent listed 28 appraisals on his log for October 2007. The ALJ assumes something less than that number would be appropriate.

VII. FINDINGS OF FACT

1. Ronald Craig Lewis (Respondent) holds certification number TX-1329836-G issued by the Texas Appraiser Licensing and Certification Board.

2. Respondent began working as a real estate agent in 1992 and was licensed as an appraiser on December 18, 2000. He is a general certificate real estate appraiser and thus allowed to appraise both commercial and residential properties.

3. Respondent has completed more than 1,000 appraisals since being licensed.

4. Since August 2011, Respondent has worked as a review appraiser for the Department of Housing and Urban Development (HUD).

5. Prior to his employment with HUD, Respondent had own his appraisal company

6. On May 11, 2007, the Board issued an Agreed Final Order which found that Respondent failed to comply with Uniform Standards of Professional Appraisal Practice (USPAP) in appraisals he prepared for four properties. As a result, the Board revoked Respondent's

certification but probated the revocation for two years and six months (*i.e.*, until November 11, 2009) and set conditions with which Respondent was required to comply during the period of probation. The conditions included, among other things, that Respondent submit a quarterly log of his appraisals and, at the Board's request, provide his work files.

7. While Respondent was on probation, Staff reviewed the appraisal logs that Respondent submitted quarterly, and Staff requested work files for various properties.

8. In the work files that Respondent submitted, Staff found errors for two of the properties, the "Bellfort property" and the "Renee property" that Respondent appraised during the term of his probation.

Bellfort Property

9. The Bellfort property, located at 9430 West Bellfort in Houston, Texas is a 0.6731 acre tract with a metal warehouse building that was used as a church.

10. The Bellfort property has 6,350 square feet of net rentable area, but a second level has been added, making the total heated and cooled area 12,700 square feet.

11. Respondent informed the Board that he had prepared a restricted use report (RUR) for the Bellfort property on October 24, 2007, and had issued his report on November 2, 2007.

12. The report Respondent prepared was an attempt to provide a "letter of value" so that church leaders could make an internal decision about whether to sell the property or keep it.

13. USPAP does not include a "letter of value."

14. The Bellfort property report has some attributes of a summary appraisal or an RUR but does not comply with USPAP in that it does not:

- explain the exclusion of the income approach,
- address the possible value of a billboard on the property;
- properly account for the second-floor footage;
- use the correct section in Marshall Valuation Service;
- describe easements;
- discuss the physical adaptability of the building or market trends in the area;
- summarize the data in his work file; and
- properly calculate deprecation.

Renee Property

15. The Renee property, is located 14502 Renee Lane in Crosby, Texas, and the improvement on it is a house.

16. For the Renee property, Staff had three versions of the exterior only appraisal and one version of the interior and exterior appraisal.

17. Some versions of the appraisal had USPAP errors but Staff did not contest the fourth version of the appraisal.

18. At least one version of the Renee appraisal failed to adequately identify and report the site description, develop an opinion of the highest and best use for the property, support the estimated lot value of $70,000, properly represent the sales comparison approach, properly calculate physical depreciation, and make appropriate adjustments for numerous aspects of the comparable properties, such as swimming pools and other features.

19. Respondent prepared the first three versions of the Renee appraisals in October 2007 while staying with his father who was hospitalized with life-threatening illnesses.

20. Respondent had only one week to write the Renee appraisal.

21. Respondent transferred his work between the hospital where his father was and Respondent's office using computer data sticks.

22. Respondent did not transfer the correct version of the report to his main computer.

23. The cost approach on the version of the Renee appraisal sent to LSI Title Agency, Inc., lists an inflated site value of $70,000, while the version Respondent sent to Staff has a correct site value of $40,500.

24. Respondent was able to see the errors he had made once the crisis with his father had passed, and all versions of the Renee appraisals were completed before Staff sent a complaint.

25. While the October 2007 Renee appraisals have USPAP errors, those errors were made at a time of extreme duress in Respondent's life; there was no evidence that they are typical of Respondent's work.

Procedural History and Notice

26. On August 25, 2011, the Board's Staff sent notice of hearing to Respondent proposing revocation of the certification referred to in Finding of Fact No. 1.

27. Staff sent Respondent its first amended statement of charges on April 12, 2012, a supplemental statement of charges on April 23, 2012, and a second supplemental statement of charges on May 2, 2012.

28. The notice of hearing and various statements of charges stated the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statues and rules involved; and the matters asserted.

29. The hearing was held on May 14, May 15, and July 12, 2012, by Administrative Law Judge Sarah G. Ramos at the William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Staff attorneys Troy Beaulieu and Kyle Wolfe represented Staff. Attorney Sadiyah Evangelista represented Respondent. The record closed on July 24, 2012.

VIII. CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to Tex. Occ. Code (Code) ch. 1103.

2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code chs. 2001 and 2003.

3. Respondent received adequate and timely notice of the hearing, as required by Tex. Gov't Code §§ 2001.051 and 2001.052.

4. Staff had the burden of proof on its allegations. 1 Tex. Admin. Code (TAC) § 155.427.

5. Appraisals must conform to the USPAP standards developed and published by the Appraisal Foundation and in effect at the time the appraisal is performed. Code § 1103.405 and 22 TAC § 155.1(a).

6. Respondent violated the USPAP Standards in preparing the Bellfort and Renee appraisals in 2007.

7. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent violated Code § 1103.405 and 22 TAC § 155.1(a).

8. The Board may suspend or revoke the certification of an appraiser who has failed to comply with the applicable USPAP Standards. Code § 1103.552.

9. The Board's penalty matrix for a second occurrence that does constitute evidence of a serious inability or unwillingness to comply provides for a monetary penalty of $500 to $1,500 per violation with requirement to take remedial course work or to adopt preventive policies and procedures, or both. 22 Tex. Admin. Code §153.24(9).

ALJ'S RECOMMENDATION

- Given the fact that the fourth Renee appraisal demonstrates that Respondent knows how to prepare a proper appraisal, remedial education is not required.

- Respondent should be assessed a monetary penalty of $1,500 each for the Bellfort and Renee appraisals, for a total of $3,000.

- As a preventative measure, Respondent should be restricted from performing any appraisals other than for his employer for a period of one year. In the alternative, if Respondent does not work for an employer, he should be limited to preparing a reasonable number of appraisals per year.

SIGNED September 21, 2012.

SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

DOUGLAS E. OLDMIXON, COMMISSIONER

VIA FAX: (512) 322-2061

October 15, 2012

State Office of Administrative Hearings
Attn: Deputy Clerk
P.O. Box 13025
Austin, TX 78711

Re: *Texas Appraiser Licensing and Certification Board vs. Ronald Craig Lewis*
TALCB Complaint # 08-065 / SOAH Docket # 329-11-9425.ALC

Dear Deputy Clerk:

Enclosed please find a copy of the Petitioner's Exceptions for the above referenced case.

If you have any questions, please do not hesitate to call me.

Sincerely,

Britta Mutschler
TALCB Lead Legal Assistant
(512) 936-3640
Brittany.mutschler@talcb.state.tx.us

/bm

Enclosure

cc: Sadiyah Evangelista, Attorney for Respondent **(VIA FAX: (832) 518-2323)**

DOCKET NO. 329-11-9425.ALC

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§ BEFORE THE STATE OFFICE § §
vs.	§ OF §
RONALD CRAIG LEWIS TX-1329836-G	§ § ADMINISTRATIVE HEARINGS

PETITIONER'S EXCEPTIONS

The Texas Appraiser Licensing and Certification Board ("TALCB") files these Exceptions and would show the Court as follows:

I. BACKGROUND

1. A hearing was held on this matter on May 14-15, 2012 and after recessing the trial, was completed on July 12, 2012.

2. The Court heard closing arguments on July 24, 2012 and then issued its Proposal for Decision ("PFD") on September 21· 212.

3. On October 3rd, 2012, the Court granted Petitioner's request for extension of time to file exceptions by October 15th, 2012.

4. Petitioner now files these Exceptions.

II. ARGUMENT: THE COURT SHOULD MODIFY THE PROPOSAL FOR DECISION TO CORRECT LEGAL ERRORS AND FINDINGS CONTRARY TO THE EVIDENTIARY RECORD AND TO MAKE ADDITIONAL FINDINGS ON THE ALLEGATIONS CONTAINED IN THE DISCIPLINARY CHARGES

5. The Court should modify the PFD for three main reasons. First, the Court should modify its PFD because Respondent submitted his Renee report in his complaint response in an effort to obfuscate USPAP violations he knew existed and feared would result in further disciplinary action. Second, the Court's PFD fails to address several allegations pled by Board staff which the evidence in the

record demonstrates did occur. Finally, the Court should amend its PFD to correct its recommendation regarding sanctions and the underlying factual findings.

A. RESPONDENT DID NOT ACCIDENTALLY SUBMIT THE WRONG VERSION OF THE RENEE REPORT[1] TO THE BOARD

6. The Court should modify its findings connected with the October 15th, 2007 Renee property appraisal submission to the Board because Respondent's submission was not an accidental transmission of the wrong report version. Rather Respondent engaged in deliberate efforts to conceal deficiencies in the report from Board staff. The notion that Respondent accidentally submitted an erroneous version of the report does not comport the testimony and evidence presented at trial. For this reason, the Court should modify its PFD.

1. Respondent was Aware His Work Product was Deficient and Had Motive to Alter the Renee Report

7. Respondent's Renee report[2] submitted to his client (LSI) contained extensive violations which he had previously been sanctioned for. (Staff Exhibit 8 at 573-579). He had also been admonished to correct these areas in his future appraisal practice by Board staff in connection with those prior complaints. Record at page 347, ln. 5-24; pages 348-349. So severe were the shortcomings

---

[1] For the Renee property, the only real estate appraisal report Petitioner charged Respondent with disciplinary action in connection with is the appraisal report performed on October 15th, 2007, with an effective date of October 15th, 2007. The 4th appraisal report completed on December 18th, 2007, with an effective date of value of December 13th, 2007 was an entirely different appraisal assignment with a different scope of work (exterior and interior inspection) and different effective date of value. (Staff Exhibit 6F at 481); Record at page 438; Record at pages 337, ln. 13-25 and 338, ln. 1-2. This 4th appraisal report has no connection whatsoever to the allegations in this case and is irrelevant. The report does not demonstrate Lewis knows how to properly conduct appraisal assignments because Staff never reviewed that report to determine whether any existed since it had already uncovered a host of problems with the other reports. Record at pages 444-448; page 448, ln. 10-11.

[2] Staff Exhibit 12.

in the previous work product that he was placed on a probated revocation with remedial education and other probation conditions. (Staff Exhibit 8 at 580-581); Record at pages 348-349. In fact, Respondent and his legal counsel specifically agreed in that consent order to the following:

> should violations of the Uniform Standards of Professional Appraisal Practice, Board rules or other applicable state law occur in connection with real estate appraisal activities occurring after February 6th, 2007, any such violations may serve as the basis for revocation of Respondent's probation and the revocation of his certification

Id at 582. Thus, Respondent was well aware that the prospect of future deficient work product would result in revocation of his certification. Record at pages 301, ln. 10-25 and-302, ln. 1-11 ; 350-351.

8. In addition to the previous discipline placing him on notice of these deficiencies, Respondent was also aware of the deficiencies prior to submitting his complaint response to the Board because he accidentally received a marked-up version of the report in his complaint notice. Record at pages 360-362; (Staff Exhibit 4 at 241-243). This marked-up copy had been annotated by investigator Jeff Strawmyer with notations of the various USPAP violations uncovered when it was submitted as part of Respondent's probation. Record at page 359, ln. 5-17.

2. Respondent Altered the Renee Report He Submitted to the Board in His Complaint Response in an Effort to Avoid Disciplinary Action

i. Lewis' Statements About the Matter Prove He Altered the Renee Report

9. Respondent's written complaint response claims that "[i]n this particular case, the report submitted to TALCB Enforcement committee is the incorrect version of the report." (Staff Exhibit 6D at 437).

10. When called as a witness in Petitioner's case in chief on May 15th, Mr. Lewis testified about the Renee assignment and explained that he submitted the "the corrected report" to Board staff because what he had previously submitted was the wrong version. Record at page 335, ln. 9 – page 337, ln. 3. From this testimony the Court can see that Mr. Lewis testified that what he had submitted to the Board in his complaint response was what he had provided his client, LSI. Record at page 331, ln.13-19; page 332, ln. 6-8; page 714, ln. 24-25 and page 715, ln.1-9.

11. Based on these written statements from Mr. Lewis, coupled with his testimony *prior* to hearing investigator Jeff Strawmyer's testimony[3], the Court should conclude Mr. Lewis did submit a fabricated version of the Renee report to Board staff; this submission was not mere accident or oversight.

ii. The Documents Themselves are Inconsistent with Lewis' Explanation and Show Lewis was Altering the Renee Report

12. Apart from Lewis' inconsistent testimony about the different "versions" of the Renee report, the documents themselves are inconsistent with Lewis' claims and prove Lewis was altering the Renee report.

13. The report Lewis claims is the "correct appraisal report" was provided to Board staff *after* Respondent received notice of the complaint; Lewis submitted it along with his complaint response in which he explains the problems that supposedly caused him to submit a draft version to Board staff accidentally:

[3] It was only on July 12th, realizing he'd made inconsistent statements, that Mr. Lewis altered his testimony and tried to explain away the obvious inconsistencies between his testimony and written response and what LSI received. Record at pages 715, ln. 10-16; 716, ln. 14-16; pages 719-730.

> In this particular case, the report submitted to TALCB Enforcement committee is the incorrect version of the report...The correct report was not transferred to the original main frame computer and upon request for review by the TALCB, the unrevised version of the report was went to your office. The correct version of this report has been submitted with this response for your review.

(Staff Exhibit 6D at 437).

14. Lewis' statements do not make any sense when compared to the documents in evidence. If Lewis had simply submitted "the unrevised version of the report" to Board staff as he claims, the "correct version of this report" (Staff Exhibit 6F at 458-471) would be identical to what his client, LSI, received from him. (Staff Exhibit 12). It is not. If Lewis really did what he claims to have done then upon discovering this supposed mistake, he would have merely printed and mailed "the correct version" he had stored in his "computer data stick" (but had failed to transfer to his "main frame computer") and mail it to Board staff. (Staff Exhibit 4D at 437). Unless Lewis was opening the electronic document and altering it *before* sending it to the Board, "the correct version of the report" should not have changes; it should mirror what LSI received. In other words, it should be devoid of the USPAP violations Lewis testified that he uncovered and corrected on his own. Record at page 720, ln. 8-15. It is not.

15. If Lewis were telling the truth, the LSI report would also not contain references to appraiser trainees. Here again though, comparing the different versions[4] to Lewis' version of events also falls short of ringing true. (Staff Exhibit

[4] The "version" submitted as part of the probation lacks any references to appraiser trainees (Staff Exhibit 4 at 239-250) and the addendum page present in the other two "versions" is absent. (Staff Exhibit 6F at 450 and 464). Indeed, the "correct version" Respondent claims truly represents what his client received has no trainee references in it anywhere. (Staff Exhibit 6F at 458-471).

6F at 450 and 464 and Staff Exhibit 12 at 602). The fact that the LSI "version" has trainee references absent in all the other "versions" is further evidence Respondent altered the report.

16. The only report LSI has contains all the USPAP violations Jeff Strawmyer testified about uncovering in his investigation. (Staff Exhibit 6F at 458-471 and Staff Exhibit 12). It also is the only "version" which contains references to trainee participation. (Staff Exhibit 12 at 602). Thus, the version LSI received does not match the "corrected version" Lewis claimed (in his written complaint submission) he sent to LSI. (Staff Exhibit 6D at 437). The only way to reconcile this evidence is to conclude that Lewis' testimony and statements are not true and that he did indeed alter the Renee report *before* submitting it to the Board in an effort to conceal USPAP violations and avoid feared disciplinary action. The Court should amend its PFD so that it accounts for all the evidence.

B. VIOLATIONS OF USPAP AND BOARD RULES WHICH WERE PLED AND SUPPORTED BY CONCLUSIVE EVIDENCE WERE NOT ADDRESSED BY THE COURT

17. The evidence and testimony at trial established Respondent's violation of an extensive list of the Uniform Standards of Professional Appraisal Practice ("USPAP"), Board Rules and the Occupations Code.

18. The Court did not address Petitioner's allegations that Respondent had made material misrepresentations and omissions of material fact in violation of 22 TEX. ADMIN. CODE § 153.20(a)(9).

19. However, the Court did find numerous violations of the USPAP in both the Bellfort and Renee property appraisals.

20. Since the USPAP are the minimum professional standards which outline minimum disclosure and analysis requirements in appraisal reports, the Court should find violations of 22 TEX. ADMIN. CODE § 153.20(a)(9) occurred because material information was omitted and/or misrepresented (i.e. material which USPAP requires disclosure and analysis of).

21. In addition, the Court also did not make findings regarding a number of other USPAP violations alleged in connection with the Bellfort and Renee property appraisals. These include:

a. Failing to maintain a work file containing all the documentation necessary to support Respondent's analyses, opinions and conclusions under the USPAP Ethics Rule (record keeping) [Statement of Charges ¶ 14(b) and 15(b)] (Bellfort and Renee appraisals);

b. Failing to identify and report the scope of work necessary for credible assignment results under the Scope of Work Rule and USPAP Standards 1-2(h) & 2-2(b)(vii) or 2-2(c)(vii) [Statement of Charges ¶ 14(c)] (Bellfort appraisal);

c. Failing to identify the intended use of his opinions and conclusions under USPAP Standards 1-2(a) & 2-2(b)(ii) or 2-2(c)(ii) [Statement of Charges ¶ 14(d)] (Bellfort appraisal);

d. Failing to provide a definition of value and its source and failing to indicate whether this was in terms of cash or terms equivalent to

cash under USPAP Standards 1-2(c) & 2-2(b)(v) or 2-2(c)(v) [Statement of Charges ¶ 14(e)] (Bellfort appraisal);

e. Failing to identify and report the site description adequately, including frontage and depth dimensions, available utilities, access and any limits to fee simple title as required by USPAP Standards 1-2(e)(i) & 2-2(b)(iii) or 2-2(c)(iii) [Statement of Charges ¶ 14(f)] (Bellfort appraisal);

f. Failing to report the improvements description adequately as required by USPAP Standards 1-2(e)(i) & 2-2(b)(iii) or 2-2(c)(iii) [Statement of Charges ¶ 14(g)] (Bellfort appraisal);

g. Failing to report (and if necessary) analyze the presence of any personal property as required by USPAP Standards 1-2(e)(iii), 1-4(g) & 2-2(b)(viii) or 2-2(c)(viii) [Statement of Charges ¶ 14(h)] (Bellfort appraisal);

h. Failing to provide a brief summary of his rationale for his determination of the properties' highest and best use as required by USPAP Standards 1-3(b) & 2-2(b)(ix) or 2-2(c)(ix) [Statement of Charges ¶ 14(k)] (Bellfort appraisal);

i. Failing to use an appropriate method or technique to develop an opinion of site value, and did not summarize the data presented in his report or state his conclusions as required under USPAP Standards 1-4(b)(i) & 2-2(b)(viii) or 2-2(c)(viii) [Statement of Charges ¶ 14(l)] (Bellfort appraisal);

j. Failing to collect, verify, analyze and reconcile the cost new of improvements, failing to summarize or state the construction cost and generally failing to employ recognized methods and techniques in the cost approach as required by USPAP Standards 1-4(b)(ii), 1-4(b)(iii) & 2-2(b)(viii) or 2-2(c)(viii) & 1-1(a) & 1-4(b) [Statement of Charges ¶ 14(m) and 15(d)] (Belfort and Renee appraisals);

k. Failing to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach. Failing to report or summarize his analyses, opinions and conclusions and the reasoning that supported them. Making inconsistent, inadequate and/or no adjustments at all to the sales he employed in his report as required by USPAP Standards 1-1(a) & 1-4(a); 1-4(a) & 2-2(b)(viii) or 2-2(c)(viii) [Statement of Charges ¶ 14(n)] (Bellfort appraisal);

l. Failing to reconcile the quality and quantity of the date within the approaches used and the applicability or suitability of the approaches as required by USPAP Standards 1-6(a) & (b) & 2-2(b)(viii) or 2-2(c)(viii) [Statement of Charges ¶ 14(p)] (Bellfort appraisal);

m. Producing misleading appraisal reports that contained several substantial errors of omission or commission by not employing correct methods and techniques and which were not credible or

reliable and were inflated in violation of USPAP Standards 1-1(a), 1-1(b), 1-1(c); and, 2-1(a) [Statement of Charges ¶ 14(q)] and 15(g)] (Bellfort and Renee appraisals); and,

n. Failing to provide required information necessary for one to understand the appraisal report as required by USPAP Standard 2-1(b) [Statement of Charges ¶ 14(r)] (Bellfort appraisal)

22. The unequivocal evidence shows that Respondent did commit these violations. As such, the Court should make findings on these allegations and conclude that these violations did occur. In addition, based on these additional violations, the Court should reevaluate its sanctions recommendation.

C. THE ONLY EVIDENCE IN THE RECORD DEMONSTRATES RESPONDENT IS EITHER UNWILLING OR UNABLE TO COMPLY WITH USPAP AND AGREED TO REVOCATION OF HIS CERTIFICATION FOR FUTURE VIOLATIONS

1. Respondent's Violations are Typical of His Appraisal Practice and These Coupled with His Continued Recalcitrance Demonstrate Either Gross Negligence or Deliberate Conduct

23. Respondent was previously sanctioned by the Board with an order that imposed a probated revocation with various conditions, including remedial education. (Staff Exhibit 8).

24. That prior discipline identified a variety of USPAP violations in Respondent's work product, which he was also made aware of through discussions with investigator Jeff Strawmyer.

25. Respondent then prepared the Renee and Belfort appraisals at issue in these proceedings and committed the same litany of violations in that work product.

26. While the health problems Respondent's father was experiencing during the time the Renee appraisal report was prepared may give some context to some of the deficiencies, those life stressors were not a factor in Respondent's preparation of the Bellfort appraisal report, which was performed later (November 2nd, 2007). (Staff Exhibit 5C at 391).

27. Thus, the only evidence in the record shows that making these types of USPAP violations are a repeated occurrence in Respondent's appraisal practice and not an aberration caused by his father's medical condition.

28. Respondent's testimony at trial also demonstrates an unwillingness or inability to comply with USPAP. Several years after the Renee and Bellfort appraisals, he still is unwilling to acknowledge and correct clear shortcomings in his work product. Record at page 340, ln. 15-18; page 28-29; pages 35-41. He repeatedly refused to acknowledge USPAP violations which were evident from the face of the reports when asked. His recalcitrance and unwillingness to take ownership of his deficient work product demonstrates he either does not understand his obligations under the professional standards or has deliberately chosen to eschew them.

29. In either event, Respondent's own testimony is not consistent with concluding that he is willing or able to comply with the USPAP standards. None of the evidence supports this conclusion.

30. Based on this evidence, the Court should modify its findings and conclusions, and its sanctions recommendation.

2. Respondent Agreed that Further USPAP Violations Would Result in Revocation of His Certification

31. Respondent and his legal counsel specifically agreed in the prior disciplinary order that future violations would suffice for "the revocation of his certification." (Staff Exhibit 8 at 582).

32. The evidence before the Court establishes extensive violations in both the Renee and Bellfort appraisals, many of which Respondent was previously sanctioned for. These violations are not minor or insignificant, rather the testimony from the investigators was that these were fundament problems with the reports. Record at pages 299-300.

33. Thus, the Court should amend its PFD consistent with the testimonial and documentary evidence and the parties agreed upon discipline (memorialized in the prior disciplinary order) and recommend revocation of Respondent's certification.

III. PRAYER

34. Accordingly, Petitioner asks this Court to modify its original PFD, find Respondent has made the violations noted above and recommend revocation of Respondent's certification because he has committed violations that constitute gross negligence or willful or deliberate conduct. Alternatively, the Court should at least recommend Respondent be placed on a probated revocation so that his further real estate appraisal activities can be monitored to ensure protection of the public due to the nature and extent of the violations which exist in this case and Respondent's unwillingness to acknowledge and remedy them.

Respectfully Submitted,

By: _____
Troy Beaulieu, TALCB Attorney
Texas Bar No. 24044518
Texas Appraiser Licensing & Certification Board
P.O. Box 12188
Austin, TX 78711-2188
Telephone: (512) 936-3623
Fax: (512) 936-3966

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Petitioner's Exceptions was sent via facsimile, hand-delivered, or sent certified mail, return receipt requested to:

Sadiyah Evangelista
Attorney at Law
P.O. Box 1092
Houston, Texas 77251
Attorney for Respondent

(VIA FAX: (832) 518-2323))

On this 15th day of OCTOBER, 2012

_____
Troy Beaulieu
TALCB Attorney

Phone: (832) 623-2323
Fax:

Fax

To: Troy Beaulieu	**From: Sadiyah Evangelista**
Fax: 5129363966	**Pages: 6**
Re:	**Date: October 29, 2012**

P.O. Box 1092, Houston, TX 77251

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TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	
	§	
	§	
	§	
V.	§	**DOCKETED COMPLAINT NO. 329-11-9425.ALC**
	§	
RONALD LEWIS TX-1329836-G	§	
	§	

RESPONDENT'S REPONSE TO PETITIONER'S EXCEPTIONS

Ronald Lewis (Respondent), in the above complaint, files Respondent's Response to Petitioner's Exceptions and would show the Court as follows:

I. BACKGROUND: RESPONDENT'S PROCEDURAL HISTORY WITH TALCB

1. On May 11, 2007, Respondent signed an Agreed Order for Uniform Standards of Professional Appraisal Practice (USPAP) violations.

   (a) The probated order required a 2.5 year probation period beginning with an immediate $2,000 fine within 30 days. Respondent paid the fine well before the imposed deadline of 30 days;

   (b) an immediate 30-day suspension with no appraisal or real estate related work to be performed. Respondent complied with this stipulation;

   (c) Respondent was to not sponsor any trainees during the entire 2.5 years of probation;

   (d) Respondent rescinded all trainees and did not sponsor any trainees during the agreed probationary period;

   (e) Respondent was to take 5 Remedial classes which had to be approved first by the TALCB before attending. The courses had to be fully completed within one year; and

   (f) lastly, Respondent submitted a prescribed log of all work performed and upon request provided selected files for meticulous review by the TALCB Enforcement Division.
2. August 28, 2007 Texas Appraiser Licensing and Certification Board (TALB) sent a letter to Respondent to cease using his license because of failure to submit experience logs. However, September 11, 2007 is when his experience logs were due.
3. October 2007 Respondent's license was reinstated after Respondent attended a Board meeting contesting the removal of his license by staff attorney.
4. October 21, 2007 is when Respondent logged his appraisal report for the 14502 Renee Lane in Crosby, Texas (Renee property).
5. October 24, 2007 is the date Respondent logged his appraisal report for 9430 West Bellfort in Houston, Texas (Bellfort property).

6. December 13, 2007, Respondent performed appraisal number four on the Renee property remedying any issues or errors he had previously performed with the appraisal of the Renee property.
7. December 17, 2007 TALCB sends a staff initiated complaint for the Bellfort and Renee property.
8. January 2, 2008 Respondent submitted his work file which included corrected version of Renee property.
9. February 11, 2008 Respondent submitted prescribed log to TALCB. Three files were selected and reviewed by the TALCB. There were no USPAP violations or similar mistakes/errors found in any of the report.
10. May 11, 2008 Respondent submitted log; files reviewed by TALCB; no USPAP violations or errors were noted.
11. August 11, 2008 Respondent submitted log; three files reviewed; no USPAP violation or errors were noted.
12. November 11, 2008 Respondent submitted prescribed logs to TALCB. Three files were requested, reviewed and no USPAP violations or errors noted.
13. February 11, 2009 Respondent submitted prescribed logs to TALCB. Three files were requested, reviewed and no USPAP violations or errors were noted.
14. August 11, 2008 Respondent submitted prescribed logs to TALCB. Three files were requested, reviewed and no USPAP violations or errors were noted.
15. November 11, 2008 Respondent submitted logs to TALCB. Three files were requested, reviewed and no USPAP violations or errors were noted.
16. February 11, 2009 Respondent submitted log; three files reviewed; no USPAP violation or errors were noted.
17. May 11, 2009 Respondent submitted prescribed logs to TALCB; Three files were requested; reviewed and no USPAP violations or errors noted.
18. August 11, 2009 Respondent submitted log; again three files reviewed by TALCB; no USPAP violations or errors were noted.
19. November 11, 2009 Respondent submitted log; again three files reviewed; no USPAP violation or errors were noted.
20. December 31, 2010 Respondent's license expired.
21. January 1, 2011 Respondent's license is renewed.
22. August 23, 2011 TALCB sends letter to Respondent to turn license in and files formal charges on Respondent.
23. April 12, 2012 TALCB sends First Amended Statement of Charges to Respondent.
24. May 2, 2012 TALCB sends Second Amended Statement of Charges to Respondent.
25. May 11, 2012 TALCB attorneys last contacted Ms. Zolee Joshua and confirmed that she was not a trainee at any time during the probated order. In addition, Ms. Joshua informed the attorneys that she had no knowledge of these appraisal reports and did not participate or assist with any of them. Moreover, it is noted the TALCB issued Ms. Joshua her license six months (April of 2007) prior to the performance of the appraisal of Renee and Bellfort properties. Thus, she could not be a trainee sponsored by Respondent since she was already licensed. However, the TALCB would later present this erroneous information to the TO Judge Jenkins to suspend the Respondent's certification despite the improbability of Respondent sponsoring Ms. Joshua or Mr. Clairborne, who is currently a Deputy with the New Orleans Sheriff Department, during the probationary period. The

TALCB spent considerable time, effort and testimonies regarding the notion that the Respondent deliberately and defiantly sponsored trainees against the provisions of the probated order when in fact he did not.

26. May 14 and 15, 2012 the Administrative Law Judge Sarah G. Ramos (ALJ and or the Court) heard testimony and was presented with evidence in a formal hearing. The Court recessed proceedings to July 12, 2012 to continue testimony so Respondent can present his case-in-chief.
27. May 15, 2012 TALCB filed for an Emergency Temporary Suspension of Respondent's license due to the Renee and Bellfort appraisal that were done in October and December of 2007.
28. July 1, 2012 Respondent's license once again was reinstated.
29. September 21, 2012 the ALJ recommends in her Proposal for Decision (PFD) that Respondent be assessed a monetary penalty of $1,500 each for the Belfort and Renee appraisals, for a total of $3,000. Also, the ALJ subsequently as a preventative measure, stipulated that Respondent should be restricted from performing any appraisals other than for his employer for a period of one year. In the alternative, if Respondent does not work for an employer, he should be limited to preparing reasonable number of appraisal per year. The ALJ stated that "[g]iven the fact that the fourth Renee appraisal demonstrates that Respondent knew how to prepare a proper appraisal, remedial education is not required.
30. Finally, October 15, 2012, TALCB disagrees with the ALJ's PFD and files Exceptions to the ALJ's PFD and wants to continue to seek revocation of Respondent's license.

II. ARGUMENT

THE COURT SHOULD NOT MODIFY THE PROPOSAL FOR DECISION TO CORRECT LEGAL ERRORS AND FINDINGS CONTRARY TO THE EVIDENTIARY RECORD AND TO MAKE ADDITIONAL FINDINGS ON THE ALLEGATIONS CONTAINIED IN THE DISCIPLIANARY CHARGES.

A. The Court should not modify as requested by Petitioner in its Exceptions because Respondent did not submit his Renee reports in his complaint in an effort to "obfuscate" USPAP violations he knew existed and feared would result in further disciplinary actions.

B. The Court's Proposal for Decision (PFD) did in fact address all allegations pled by the Texas Appraiser Licensing and Certification Board (TALCB) staff; and finally

C. The Court should not amend as requested by Petitioner; amend its PFD to correct its recommendation regarding sanctions and the underlying factual finds.

1. RESPONDENT DID NOT DELIBERATELY, INTENTIONALLY OR WILLFULLY SUBMIT THE WRONG VERSION OF THE RENEE PROPERTY APPRAISAL REPORT TO THE BOARD

As testified to, Respondent never deliberately, intentionally, or willfully violated USPAP standards in preparing appraisals. Respondent did testify that he recognizes he made mistakes due to extreme stress of his father's impending death but stated he is and has become a better appraiser and cares about the quality of his work since the three year time span of performing the appraisal reports.

The ALJ found that Respondent did make some of the same errors with the Bellfort and Renee appraisals that he did in the appraisals addressed in the Agreed Order. However, the ALJ found that Respondent is neither unwilling nor unable to comply with USPAP requirement.

2. Violations of USPAP and Board Rules which were pled and supported by conclusive evidence were addressed by the Court.

The Court did in fact address Petitioner's allegations that Respondent made material misrepresentations and omissions of material fact in violation of 22 Tex. Admin. Code §153.20(a)(9). In addressing these allegation, the Court in its Conclusion of Law in the PFD found that Respondent violated Code §1103.405 and 22 TAC §155.1(a) but not 22 Tex. Admin. Code §153(a)(9). Therefore Respondent did not make any material misrepresentations and omission of material fact in violation of 22 Tex. Admin. Code §153.20(a)(9).

3. Petitioner is selectively and maliciously prosecuting Respondent in an attempt to have the TALCB revoke Respondent's appraisal license and it is not in the interest of justice that Respondent's license be revoked.

During the May 14, 15th and July 12, 2012 administrative law hearing, the Court, heard testimony from TALCB and Respondent. Judge Ramos was the trier of fact in this proceeding on all days the hearing convened. Judge Ramos heard testimony from witnesses and collected evidence from both parties concerning complaints filed against Respondent by TALCB staff. TALCB staff attorney has always maintained that Respondent be given the death penalty, i.e. revocation of his appraisal license for errors occurring in appraisal reports of 9430 West Bellfort in Houston, Texas ("Belfort property") and 14502 Renee in Crosby, Texas ("Renee property") regardless of any fact, explanations or reasoning.

If you look at the procedural history of when the alleged violations first occurred and when the actual formal complaint was filed spans approximately three years and 2 months. This was very shortly after the Agreed Order before Respondent had an opportunity to take any remedial courses that was ordered. These classes were taken after the alleged incidents that occurred once TALCB approved the classes.

On two separate occasions prior to this attempt, TALCB staff attorney filed for Respondent's license to be temporarily suspended in hopes of an actual total revocation. Respondent's attorney has been very outspoken and zealous about TALCB staff attorney's unfair handling of her client.

TALCB would like to discredit and disregard ALJ Ramos' PFD regardless of her expertise, time, analysis, reasoning and efforts in deciding the proposed penalty for errors committed in the above appraisal reports.

Respondent maintains that ALJ Ramos did in fact correctly weigh, balance and analyze all facts, evidence and testimony along with the appropriate rule of law and sanctions. It is very evident that ALJ Ramos in her PFD was very thorough and exhaustive in analyzing the evidence as illustrated in her PFD and rationales of her decision.

Again, as part of Respondent's defense from the very beginning, this is an attempt by TALCB staff attorney to selectively and maliciously prosecute. By TALCB revoking Respondent's license after four years from the occurrence of the alleged errors, hundreds of appraisals and extra remedial classes later, would not result in a just penalty.

III. PRAYER

Accordingly, Respondent asks this Court not to modify its original PFD and allow the Respondent to continue with ALJ's original proposed penalty.

Respectfully Submitted,

By: Sadiyah A. Evangelista

Sadiyah A. Evangelista
Attorney At Law
P.O. Box 1092
Houston, Texas 77251
(832)623-2323
(832)518-2323 (fax)
Attorney for Ronald Lewis

Certificate of Service

I certify that a true copy of the above was served on Troy Beaulieu of TALCB via facsimile 512-465-3955, in accordance with the Texas Rules of Civil Procedure on October 29, 2012.

Sadiyah A Evangelista
Sadiyah A. Evangelista

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

DATE: **12/05/2012**

NUMBER OF PAGES INCLUDING THIS COVER SHEET: **3**

REGARDING: **EXCEPTIONS LETTER (BY ALJ)**

DOCKET NUMBER: **329-11-9425.ALC**

JUDGE SARAH G RAMOS

FAX TO:	FAX TO:
SADIYAH A. EVANGELISTA	(832) 518-2323
TROY BEAULIEU (TEXAS APPRAISER LICENSING & CERTIFICATION BOARD)	VIA EMAIL
DOUGLAS E. OLDMIXON (TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD)	(512) 936-3809
KYLE WOLFE (TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD)	(512) 936-3966

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT LIZ SLICK(lsl) (512) 475-4993

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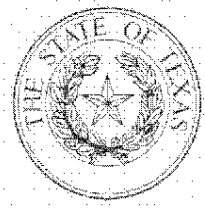
State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

December 5, 2012

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

VIA FACSIMILE: 936-3809

RE: Docket No. 329-11-9425.ALC; Texas Appraiser Licensing and Certification Board v. Ronald Craig Lewis

Dear Mr. Oldmixon:

The Staff of the Texas Appraiser Licensing and Certification Board filed exceptions to the Proposal for Decision (PFD), and Ronald Craig Lewis (Respondent) filed responses.

Staff asserts that the PFD includes errors of fact and law, and in particular, asserts the findings are contrary to the preponderance of the evidence. The Administrative Law Judge (ALJ) respectfully disagrees. Although Staff presented evidence in support of its allegations, the ALJ found Respondent's contradictory evidence to be credible. Respondent's reasons for submitting various versions of the Renee appraisal were reasonable and supported by the evidence. In addition, although the Bellfort letter of value had confusing references to a restricted use appraisal, the ALJ was convinced that it was neither intended to be a restricted use report nor a formal appraisal.

Staff also objects because the ALJ did not list each violation by USPAP number. Given the unique circumstances under which the Bellfort and Renee appraisals were written, the ALJ thought it more appropriate to include Conclusion of Law No. 6, which states that Respondent violated USPAP Standards, and Conclusion of Law No. 7, which finds that Respondent violated the Texas Occupations Code and Board rules.

300 W. 15th Street, Suite 502, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025
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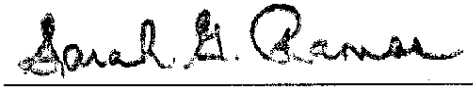
www.soah.state.tx.us

While the ALJ respects and carefully considered the opinions of the expert witnesses who testified on behalf of Staff, the ALJ was not persuaded that Respondent intentionally misled Staff, altered any report to avoid disciplinary action, or is unable or unwilling to comply with USPAP standards. Therefore, I have no changes to suggest to the Proposal for Decision issued on September 21, 2012.

Sincerely,



SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SRG/lh
xc: Kyle Wolfe, Attorney, TALCB, 1700 N. Congress Ave., Suite 400, Austin, TX – **VIA FACSIMILE: 936-3966**
Troy Beaulieu, TALCB, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 -- **VIA-FACSIMILE: 936-3966**
Sadiyah A Evangelista, Attorney, P.O. Box 1092, Houston, TX 77251 - **VIA FACSIMILE: (832)518-2323**

AGENDA ITEM 14(b)

Discussion and possible action on proposal for decision from the State Office of Administrative Hearings regarding complaint file number 10-376 (Terry McDaniel, TX-1328118-R)

State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

December 5, 2012

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

VIA INTERAGENCY

RE: Docket No. 329-12-6067.ALC; Texas Appraiser Licensing and Certification Board v. Terry Ottis McDaniel

Dear Mr. Oldmixon:

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

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

Sincerely,

Roy G. Scudday
Administrative Law Judge

RGS/ap
Enclosure
xc: Kyle Wolfe, Staff Attorney, TALCB 1700 N. Congress Ave., Suite 400, Austin, TX – **VIA INTERAGENCY**
Ted Whitmer, Attorney at Law, 2508 Merrimac Court, College Station, TX 77845 – **VIA REGULAR MAIL**
Troy Beaulieu, TALCB, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 – **VIA-INTERAGENCY**

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SOAH DOCKET NO. 329-12-6067.ALC

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD, **Petitioner**	§	**BEFORE THE STATE OFFICE**
	§	
	§	
	§	**OF**
V.	§	
	§	
TERRY OTTIS MCDANIEL, **Respondent**	§	
	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

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

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

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

Staff offered the appraisal report at issue, Respondent's workfile, its expert witness's investigative report, and related documents into the record. Staff also offered the testimony of its expert witness Larry Ray and called Respondent as a witness as well. Respondent testified on his own behalf and offered documentary evidence into the record. Respondent also offered the testimony of an expert witness, Diana Jacob.

II. REASONS FOR DECISION

A. Background and Applicable Law

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

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

B. Staff's Allegations

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

C. Evidence

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

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

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

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

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

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

[1] Staff Ex. 5B.

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

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

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

C. Analysis and Recommendation

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

[2] Staff Ex. 6.

1. First Charge

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

a. Respondent communicated assignment results in a misleading manner through the omission of material information and commission of significant errors in violation of the Ethics Rule (conduct);

b. Respondent failed to maintain a workfile containing all data, information, and documentation necessary to support his opinions, analyses, and conclusions in violation of the Ethics Rule (record keeping);

c. Respondent lacked the skills, education, experience, training, and knowledge necessary to do commercial real estate appraisals because he was not a general certified real estate appraiser and not permitted by law to conduct commercial real estate activities such as the subject appraisal in violation of Ethics Rule (competency);

d. Respondent failed to support his work with the relevant evidence and logic to obtain credible assignment results in violation of the Ethics Rule (scope of work);

e. Respondent failed to adequately identify and report the site description in violation of Standards 1-2(e)(i) and 2-2(b)(iii);

f. Respondent failed to summarize whether the subject property's use was permitted by zoning regulations and whether the property was rented or owner-occupied in violation of Standards 1-2(e)(iv) and 2-2(b)(viii);

g. Respondent failed to develop and report his analysis and the reasoning behind his determination of the property's highest and best use in violation of Standards 1-3(b) and 2-2(b)(ix);

h. Respondent failed to use an appropriate technique to develop a site value determination and did not provide supporting documentation or data for his determination in violation of Standards 1-4(b)(i), 2-2(b)(viii), and 1-1(a);

i. Respondent failed to collect, verify, analyze, and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach in violation of Standards 1-4(a), 2-2(b)(viii), and 1-1(a);

j. Respondent failed to summarize whether the subject was leased in violation of Standard 2-2(b)(viii);

k. Respondent failed to reconcile the quality and quantity of the data used in the sales comparison approach in violation of Standards 1-6(a) and (b), and 2-2(b)(viii);

l. Respondent failed to report whether there was a lease on the property and

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

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

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

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

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

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

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[3] Staff Ex. 5B, p. 436.

[4] Staff Ex. 5B, p. 480.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[6] Staff Ex. 5B, p. 467.

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

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

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

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

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

Standard 1-1(b-c) provides that an appraiser should not commit a substantial error of omission or commission that significantly affects an appraisal, and should not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affect the credibility of those results. Standard 2-1(a-b) provides that an appraiser should clearly and accurately set forth the appraisal in a manner that will not be misleading; and provide an

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

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

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

2. Second Charge

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

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

3. Third Charge

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

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

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

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

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

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

III. FINDINGS OF FACT

1. Terry Ottis McDaniel (Respondent) holds a certificate as a state certified residential real property appraiser issued by the Texas Appraiser Licensing and Certification Board (Board).

2. On September 4, 2012, staff of the Board (Staff) sent a First Amended Statement of Charges to Respondent proposing revocation of the license referred to in Finding of Fact No. 1.

3. On June 7, 2012, a notice of hearing was mailed to Respondent.

4. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the matters asserted.

5. The hearing on the merits was held on September 24, 2012, before Administrative Law Judge (ALJ) Roy G. Scudday in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. All parties appeared and participated in the hearing.

6. On November 17, 2009, Respondent issued a limited summary appraisal report (Report) for the commercial property, the Red Mesa Grill, consisting of a single-story brick building 3,254 square feet (sq. ft.) in size, located on a 32,844.24 sq. ft. lot at 2401 Gregg St., Big Spring, Texas. The report was prepared for Keith D. McGuire, III's attorney to

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

7. Respondent's Report and workfile adequately identified and reported the site description except for the inclusion of a flood map of the area.

8. Respondent's Report summarized whether the subject property's use was permitted by zoning regulations and was not required to state whether the property was leased or owner-occupied because its intended user was the owner who occupied the site.

9. Respondent's Report and workfile failed to develop and report his analysis and reasoning behind his determination of the property's highest and best use, specifically regarding the financial feasibility and maximally productive test analyses.

10. Respondent's Report and workfile failed to use an appropriate technique to develop a site value determination and did not provide supporting documentation or data for his determination, specifically by failing to supply the documentation for the single sale he relied upon for his appraised land value.

11. Respondent's Report and workfile failed to reconcile the quality and quantity of the data used in the sales comparison approach, specifically by failing to contain any indications of what adjustments were made to comparable sales to reach the value, or to show that the comparable sales were verified.

12. Respondent's Report and workfile failed to reconcile the quality and quantity of the data used in the sales comparison approach, specifically by using gross sales rather than adjusted sales in the sales comparison reconciliation.

13. Respondent's Report and workfile contained several substantial errors of omission by not providing sufficient support for the methods and techniques used, which errors affected the credibility of the Report.

14. Respondent failed to maintain a workfile containing all data, information, and documentation necessary to support the opinions, analyses, and conclusions set forth in his Report.

15. Respondent failed to support his work with the relevant evidence and logic to obtain credible assignment results.

16. Respondent did not communicate his results in a misleading or fraudulent manner.

17. Respondent did not lack the skills, education, experience, training, and knowledge necessary to do commercial real estate appraisals.

18. Respondent was not a general certified real estate appraiser and was not permitted by law to conduct commercial real estate activities.

19. Respondent never held himself out as a certified general real estate appraiser, but he did act as one.

20. Respondent did not knowingly or willfully engage in false or misleading advertising, because at the time he was advertising on his website that he did commercial real estate appraisals, he was not aware that he could not do so under his certification.

IV. CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board (Board) has jurisdiction over this matter pursuant to Tex. Occ. Code (Code) ch. 1103.

2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code ch. 2003.

3. Notice of the complaint and of the hearing on the merits was provided as required by the Administrative Procedure Act, Tex. Gov't Code §§ 2001.051 and 2001.052.

4. Petitioner had the burden of proving the case by a preponderance of the evidence pursuant to 1 Tex. Admin. Code (TAC) § 155.427.

5. Based on Finding of Fact No. 7, Respondent violated Uniform Standards of Professional Appraisal Practice (USPAP) Standards Rules 1-2(e)(i) and 2-2(b)(iii).

6. Based on Finding of Fact No. 8, Respondent did not violate USPAP Standards Rules 1-1(b), 1-4(d), 1-2(e)(iv), and 2-2(b)(viii).

7. Based on Finding of Fact No. 9, Respondent violated USPAP Standards Rule 2-2(b)(ix).

8. Based on Finding of Fact No. 10, Respondent violated USPAP Standards Rules 1-1(a) and 2-2(b)(viii).

9. Based on Finding of Fact No. 11, Respondent violated USPAP Standards Rules 1-1(a), 1-4(a), and 2-2(b)(viii).

10. Based on Finding of Fact No. 12, Respondent violated USPAP Standards Rules 1-6(a) and 2-2(b)(viii).

11. Based on Finding of Fact No. 13, Respondent violated USPAP Standards Rules 1-1(a), 1-1(b), 1-1(c), and 2-1(b).

12. Based on Findings of Fact Nos. 14 and 15, Respondent violated USPAP Ethics Rule-Record Keeping and Scope of Work.

13. Based on Findings of Fact Nos. 16 and 17, Respondent did not violate USPAP Ethics Rule-Conduct and Competency.

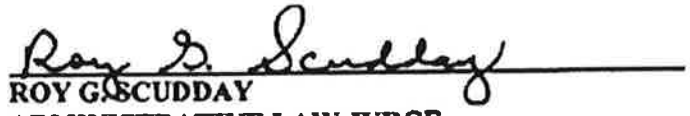
14. Based on Findings of Fact Nos. 18 and 19, Respondent violated 22 TAC §§ 153.8(b), 153.20(a)(2), (4), (9), (17) and (18).

15. Based on Finding of Fact No. 20, Respondent did not violate 22 TAC § 153.20(a)(16).

V. RECOMMENDATION

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

SIGNED December 5, 2012.



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

APPENDIX

- Ethics Rule-To promote and preserve the public trust inherent in professional appraisal practice, an appraiser must observe the highest standards of professional ethics.

- Conduct:

  . . . . . .

  - An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.

- Record Keeping

  - An appraiser must prepare a workfile for each appraisal, or appraisal review, or appraisal consulting assignment. The workfile must include:

    - the name of the client and the identity, by name or type, of any other intended users;
    - true copies of any written reports, documented on any type of media;
    - summaries of all oral reports or testimony, or a transcript of testimony, including the appraiser's signed and dated certification; and
    - all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with this Rule, and all other applicable Standards, or references to the location(s) of such other documentation.

  . . . . . .

- Competency:
  - Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently; . . . .

- Scope of Work:

  . . . . . .

  - The scope of work must include the research and analyses that are necessary to develop credible assignment results.

- Standards Rule 1-1-In developing a real property appraisal, an appraiser must:

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

- Standards Rule 1-2(e)- In developing a real property appraisal, an appraiser must identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal, including: (i) its location and physical, legal, and economic attributes; and (iv) any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature.

- Standards Rule 1-3-When necessary for credible assignment results in developing a market value opinion, an appraiser must

  . . . . . .

  - (b) develop an opinion of the highest and best use of the real estate.

- Standards Rule 1-4-In developing a real estate appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.
  - (a) When a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.
  - (b) When a cost approach is applicable, an appraiser must (i) develop an opinion of site value by an appropriate appraisal method or technique; (ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and (iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).

    . . . . . .

  - (d) When developing an opinion of the value of a leased fee estate or a leasehold estate, an appraiser must analyze the effect on value, if any, of the terms and conditions of the lease(s).

- Standards Rule 1-6-In developing a real property appraisal, and appraiser must:
  - (a) Reconcile the quality and quantity of data available and analyzed within the approaches used; and
  - (b) reconcile the availability and relevance of the approaches,

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

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

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

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

DOUGLAS E. OLDMIXON, COMMISSIONER

VIA FAX: (512) 322-2061

December 20, 2012

State Office of Administrative Hearings
Attn: Deputy Clerk
P.O. Box 13025
Austin, TX 78711

Re: Texas Appraiser Licensing and Certification Board v. Terry Ottis McDaniel
SOAH Docket No: 329-12-6067.ALC

Dear Deputy Clerk:

Enclosed please find a copy of the Petitioner's Exceptions for the above-referenced contested case.

If you have any questions, please do not hesitate to call me.

Sincerely,

Britta Mutschler
TALCB Lead Legal Assistant
(512) 936-3640

Enclosure

cc: Ted Whitmer, Attorney for Respondent **(VIA FAX: (979) 987-2630)**

DOCKET NO. 329-12-6067.ALC

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§ BEFORE THE STATE OFFICE
	§
	§ OF
vs.	§
	§
TERRY OTTIS MCDANIEL	§
TX-1328118-R	§ ADMINISTRATIVE HEARINGS

PETITIONER'S EXCEPTIONS

TO THE HONORABLE COURT:

The Texas Appraiser Licensing and Certification Board ("TALCB") respectfully files these Exceptions and would show the Court as follows:

I. BACKGROUND

1. A hearing was held on this matter on September 24, 2012.

2. The parties submitted written closing arguments and the record closed on November 12, 2012.

2. The Court issued its Proposal for Decision ("PFD") on December 5, 2012.

3. Petitioner now respectfully files these Exceptions.

II. ARGUMENT: THE COURT SHOULD MODIFY THE PROPOSAL FOR DECISION TO ADDRESS THE ALLEGATION OF GROSS NEGLIGENCE

5. Although not directly addressed, it appears implied that the Court did not find Respondent willfully violated USPAP, the Act or Board Rules. However, in addition to willful violations, Petitioner alternatively pled, "violations of USPAP and state law ***were committed with gross neglect*** and failure to comply with the minimum USPAP standards and Board rules." (emphasis added)(First Amended Statement of Charges 2-3 ¶ 10). Furthermore, 22 TEX. ADMIN. CODE § 153.24(9), the penalty matrix, contemplates the nature of violation(s), "1st

occurrence – violation(s) of the Act, Rules, or USPAP that, individually or collectively, was done willfully or in a grossly negligent manner." Therefore, Petitioner respectfully requests the court to modify its PFD to address if Respondent acted in a grossly negligent manner.

6. The court found, "Respondent was not a general certified real estate appraiser and was not permitted by law to conduct commercial real estate activities." (PFD 15 ¶ 18). The evidence shows Respondent acted in a grossly negligent manner by failing to comply with the scope of his credential/certification.

7. Respondent's unlawful actions rose above ordinary negligence. Respondent's failure to comply with the scope of his credential was a blatant violation of his legal duty. If Respondent even used the slightest care he would have been aware of the scope of his credential. Especially, considering the name of his credential is -- certified "residential" real estate appraiser. Even a careless person would have been aware of the scope of a certified "residential" credential. Respondent's serious carelessness and reckless disregard of the scope of his credential was gross negligence.

III. PRAYER

8. Accordingly, Petitioner respectfully asks this Court to modify its original PFD and find Respondent acted outside the scope of his credential in a grossly negligent manner. Furthermore, if the Court does not recommend suspension or revocation, the Court should at least recommend Respondent be placed on a

serious probated revocation or suspension so that his further real estate appraisal activities can be monitored to ensure protection of the public.

Respectfully Submitted,

By:_____

Kyle Wolfe, TALCB Attorney
Texas Bar No. 24070872
Texas Appraiser Licensing & Certification Board
P.O. Box 12188
Austin, TX 78711-2188
Telephone: (512) 936-3625
Fax: (512) 936-3966

CERTIFICATE OF SERVICE

I certify that in accordance with TEX. OCC. CODE §§ 1103.502-1103.503, TEX. GOV'T. CODE § 2001.052, and 1 TEX. ADMIN. CODE §§ 155.103, 155.401, and 155.301 a true and correct copy of the foregoing Petitioner's Exceptions was sent via certified mail, return receipt requested, fax or hand delivery to:

Mr. Ted Whitmer
2508 Merrimac Ct.
College Station, TX 77845
Attorney for Respondent

(VIA FAX# (979) 987-2530)

On this 20th day of December, 2012

Kyle Wolfe
TALCB Attorney

- Fax Transmission

To: SOAH FILING CLERK

From: ted@tedwhitmer.com

Fax: +1 (512) 3222061

Date: 12/20/2012

RE: 329-12-6067.ALC MCDANIEL

Pages: 4

Comments:

FAX COVER

FROM	TO
Ted Whitmer, Attorney [Bar: 21380020]	Attn: Deputy Clerk - SOAH
2508 Merrimac Ct	Fax Number: (512) 322-2061
College Station, TX 77845	Phone: 512.475.3445
979.690.9465	
979.987.2530 (F)	William P. Clements Building
979.492.4124 (C)	300 West 15th Street, STE 504
ted@tedwhitmer.com	Austin, TX 78701
	Date: 12/20/12

DOCKET NO. 329-12-6067.ALC

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	BEFORE THE STATE OFFICE
	§	
	§	OF
vs.	§	
	§	ADMINISTRATIVE HEARINGS
TERRY OTTIS MCDANIEL	§	
	§	
TX-1328118-R	§	

Dear Deputy Clerk,
I am transmitting the following document: **RESPONDENT'S RESPONSE TO PETITIONER'S EXCEPTIONS**

For the above mentioned hearing. If you have any questions, please don't hesitate to contact my office.

Ted Whitmer, Attorney
Counsel for the Respondent

DOCKET NO. 329-12-6067.ALC

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	BEFORE THE STATE OFFICE
	§	
	§	OF
vs.	§	
	§	ADMINISTRATIVE HEARINGS
TERRY OTTIS MCDANIEL	§	
	§	
TX-1328118-R	§	

RESPONDENT'S RESPONSE TO PETITIONER'S EXCEPTIONS

TO THE HONORABLE COURT:

The following addresses Respondent's response to Petitioner's Exceptions to the Proposal for Decision.

RESPONSE

1. The Proposal for Decision (PFD) of the court was well thought out, well presented and set forth reasonable recommendations based upon the court's findings of fact and conclusions of law.
2. The proposal made it clear that the court concluded that any deficiencies in Respondent's appraisal practice can be remediated with education and any punishment is within the recommended administrative penalty.
3. Because the PFD is a recommendation to the Texas Appraiser Licensing & Certification Board, the Enforcement Division can give recommendations to the TALCB outside of the PFD.
4. As the evidence showed through Diana Jacob, a substantial percentage of residential appraisers are confused about their legal scope of practice.

PRAYER

Respondent asks the court to modify its findings by reducing the administrative penalty from the recommended $3,500 to $3,000 to cover the costs of Respondent addressing the exceptions of the TALCB Enforcement Division. In the alternative, Respondent asks the court to modify its PFD to recommend "no more than $3,500" to the TALCB. Otherwise, Respondent asks the court to overrule Petitioner's exceptions to the PFD.

Respectfully Submitted,

By:_____

Ted Whitmer, CRE CCIM MAI Attorney
CERTIFIED USPAP INSTRUCTOR
Texas Bar No. 21380020
2508 Merrimac Court
College Station, Texas 77845
(979) 690-9465 (office)
(979) 987-2530 (fax)
(979) 492-4124 (cell)
Email: ted@tedwhitmer.com

Certificate of Service

Per 1 TEX. ADMIN. CODE §155.03 Service of Documents on Parties

I, Ted Whitmer, certify that on the following date, a true and correct copy of this document, Respondent's First Motion for Continuance, has been sent to the Texas Appraiser Licensing and Certification Board, Kyle Wolfe, TALCB Attorney, VIA Fax No. (512) 936-3966.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

DATE: **01/07/2013**

NUMBER OF PAGES INCLUDING THIS COVER SHEET: **5**

REGARDING: **EXCEPTIONS LETTER (BY ALJ)**

DOCKET NUMBER: **329-12-6067.ALC**

JUDGE ROY SCUDDAY

FAX TO:	FAX TO:
TED WHITMER	(979) 987-2530
TROY BEAULIEU (TEXAS APPRAISER LICENSING & CERTIFICATION BOARD)	VIA EMAIL
DOUGLAS E. OLDMIXON (TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD)	(512) 936-3809
KYLE WOLFE (TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD)	(512) 936-3966

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT ANGELA PARDO(apa) (512) 475-4993

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State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

January 7, 2013

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

VIA FACSIMILE NO. 512/936-3809

RE: Docket No. 329-12-6067.ALC; Texas Appraiser Licensing and Certification Board v. Terry Ottis McDaniel

Dear Mr. Oldmixon:

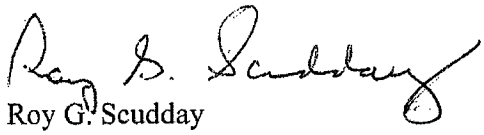
I have reviewed Staff's Exceptions, filed December 20, 2012, to the Proposal for Decision (PFD) issued in the above-referenced case, as well as Respondent's Reply to Exceptions filed December 20, 2012. Having considered Staff's comments, I do not find any reason to change the PFD.

Staff excepts to the failure of the PFD to discuss the issue of gross negligence. However, despite the assertion in Staff's exception, Staff's pleadings failed to specifically allege gross negligence, making only a general reference to the issue in the factual background before setting forth the specific charges. In addition, again Staff made no mention of gross negligence in its Closing Argument Brief except when using the same factual background language, even when discussing the appropriate sanction to be applied. Nor was there any testimony in the record to support a finding of gross negligence.

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

For the reasons expressed herein, my recommendation remains unchanged. Thank you for your attention to this matter.

Sincerely,



Roy G. Scudday
Administrative Law Judge

RGS/ap

xc: Kyle Wolfe, Staff Attorney, TALCB 1700 N. Congress Ave., Suite 400, Austin, TX – **VIA FACSIMILE NO. 512/936-3966**
Ted Whitmer, Attorney at Law, 2508 Merrimac Court, College Station, TX 77845 – **VIA FACSIMILE NO. 979/987-2530**
Troy Beaulieu, TALCB, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 – **VIA EMAIL AND CERTIFIED EVIDENTIARY RECORD VIA HAND DELIVERY ON JANUARY 8, 2013.**

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

SERVICE LIST

AGENCY: **Real Estate Commission, Texas (REC)**

STYLE/CASE: **TERRY O. McDANIEL**

SOAH DOCKET NUMBER: **329-12-6067.ALC**

REFERRING AGENCY CASE:

STATE OFFICE OF ADMINISTRATIVE HEARINGS	ADMINISTRATIVE LAW JUDGE ALJ ROY SCUDDAY
REPRESENTATIVE / ADDRESS	**PARTIES**
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TEXAS APPRAISER LICENSING AND CERTIFICATION
BOARD

Angela Pardo

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Sent: Monday, January 07, 2013 4:15 PM
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AGENDA ITEM 14(c)

Discussion and possible action on proposal for decision from the State Office of Administrative Hearings regarding complaint file numbers 11-203 & 11-280 (Clifford Parvin Dodson, Jr., TX-1337922-G)

State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

November 27, 2012

VIA INTERAGENCY

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

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

Dear Mr. Oldmixon:

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

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

Sincerely,

Joanne Summerhays
Administrative Law Judge

JS/me

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

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SOAH DOCKET NO. 329-12-6477.ALC

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD, Petitioner	§	BEFORE THE STATE OFFICE
V.	§	OF
CLIFFORD PARVIN DODSON, JR., Respondent	§	ADMINISTRATIVE HEARINGS

TABLE OF CONTENTS

I. Jurisdiction, Notice, and Procedural History 1

II. Discussion 2

A. Overview of the Allegations and the Parties' Positions 2

B. Legal Authorities 3

C. Backgrounds and Qualifications of Respondent and the Board's Expert Witness 5
1. Respondent's Background and Qualifications 5
2. Background and Qualifications of Staff's Expert Witness, John F. McComb, Jr., and his Role in this Case 5
3. Diana Jacob Tidwell 6

D. Relevant Terminology 8
1. Market Value Defined 8
2. The Three Primary Approaches to Value 8

E. Analysis of the Allegations, Applicable Law and USPAP Standards, and Evidence 9
1. The Wesley Property 9
2. The Enon Property Appraisal 29

F. Recommendation 55

III. Findings Of Fact 57

IV. Conclusions Of Law 63

SOAH DOCKET NO. 329-12-6477.ALC

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	**OF**
	§	
CLIFFORD PARVIN DODSON, JR.,	§	
Respondent	§	
	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

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

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

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

II. DISCUSSION

A. Overview of the Allegations and the Parties' Positions

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

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

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

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

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

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

B. Legal Authorities

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

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[3] The Board's current sanctions rule is found at 22 TAC § 153.24(9). The Board is authorized to impose an administrative penalty not to exceed $5,000.00 for multiple violations. Code § 1103.552.

[4] Code § 1103.405; 22 Tex. Admin Code § 155.1.

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

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

> (i) reducing or increasing the recommended penalty based on documented factors that support the deviation, including but not limited to the number or seriousness of the violation(s) and degree of harm to the public;
>
> (ii) probating all or a portion of a sanction or administrative penalty for a period not to exceed five years;
>
> (iii) requiring additional reporting requirements; and
>
> (iv) such other recommendations, with documented support, as will achieve the purposes of the Act (Code ch. 1103) , the Rules (22 Tex. Admin. Code ch. 153, 154, and 155), and/or USPAP.[8]

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[5] 22 Tex. Admin. Code § 153.20(a)(3), renumbered effective December 27, 2010, as § 153.20(a)(6).

[6] 22 Tex. Admin. Code § 153.24(9).

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

[8] 22 Tex. Admin. Code § 153.24(9)(B).

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

1. Respondent's Background and Qualifications

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

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

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

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[9] According to the testimony, Respondent's certificate was revoked by summary action of the Board two days prior to the hearing.

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

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

3. Diana Jacob Tidwell[10]

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

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

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

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

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

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

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

D. Relevant Terminology

1. Market Value Defined

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

2. The Three Primary Approaches to Value

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

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

1. The Wesley Property

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

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

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

a. <u>USPAP Ethics Rule (Conduct):</u>

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

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

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

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

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

Evidence:

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

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

Analysis:

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

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

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

b. <u>USPAP Ethics Rule (Record Keeping)</u>:

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

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

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

Evidence:

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

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

[13] Petitioner's Exhibit 6H.

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

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

Analysis:

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

c. <u>USBPAP Standards Rules 1-2(e)(iv) and 2-2(b)(viii):</u>

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

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

Evidence:

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

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

Analysis:

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

d. <u>USPAP Standards Rules 1-1(b),1-3(a) and 2-2(b)(viii):</u>

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

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

Evidence:

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

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

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

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

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

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

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

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

Analysis:

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

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[14] Petitioner Ex. 6

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

e. <u>USPAP Standards Rules 1-4(b), 1-1(a), and 2-2(b)(viii):</u>

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

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

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

Evidence:

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

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

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

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

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

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

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

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

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

Analysis:

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

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

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

Staff alleged that Respondent violated Standards Rules1-1(a), 1-4(a), and 2-2(b)(viii) by failing to collect, verify, analyze, and reconcile comparable sales data adequately and failing to employ recognized methods and techniques in his sales comparison approach. Staff alleged that Respondent failed to use sales comparables from the neighborhood in which the Wesley property was located or to explain why he went outside that neighborhood for comparable sales on which to base his sales comparison approach. According to Staff, Respondent also failed to analyze or point out the difference in the neighborhood characteristics where the subject property and the sales comparables were located. Staff alleged that the report was intentionally misleading and demonstrated that Respondent used a predetermined value.

Evidence:

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

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

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

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

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

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

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

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

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

[15] Transcript pp. 271-272.

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

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

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

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

Analysis:

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

[16] Petitioner Ex. 6 at 627.

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

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

g. <u>USPAP Standards Rules 1-6(a) and (b) and 2-2(b)(viii):</u>

USPAP Standards Rules1-6(a) and (b) provide that, in developing a real property appraisal, an appraiser must reconcile the quality and quantity of data available and analyzed within the approaches used and reconcile the availability or suitability of the approaches used to arrive at the value conclusion(s). USPAP Standards Rule 2-2(b)(viii) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

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

Evidence:

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

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

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

Analysis:

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

h. 22 Tex. Admin Code § 153.20(a)(9):

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

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

Analysis:

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

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

2. The Enon Property Appraisal

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

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

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

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

a. <u>USPAP Ethics Rule (Conduct)</u>:

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

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

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

Evidence:

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

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

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

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

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

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

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

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[17] Petitioner Ex. 5C at 491.

[18] Petitioner Ex. 6 at 864.

Analysis:

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

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

b. USBPAP Scope of Work Rule:

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

[19] Petitioner Ex. 3 at 54.

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

Evidence:

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

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

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

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

Analysis:

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

c. <u>USPAP Standards 1-2(e)(i) and 2-2(b)(iii):</u>

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

Staff alleged that Respondent violated USPAP Standards Rules1-2(e)(i) and 2-2(b)(iii) by failing to identify the three producing gas wells on the property and the service road to the gas wells, and by stating that the property needed no repairs despite the fact that the owner had disclosed needed repairs.

Evidence:

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

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

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

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

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

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[20] The second appraiser's field review was the complaint received by the Board against Respondent.

[21] Petitioner Ex. 20II.

[22] Petitioner Ex. 4A at 442.

[23] Petitioner Ex. 20HH at 864.

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

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

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

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

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

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

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

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

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[24] Respondent Ex. 33. This exhibit consists of the client file subpoenaed by Respondent.

[25] The third report was not admitted into evidence.

[26] Respondent Ex. 1.

[27] Respondent Ex. 33.

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

Analysis:

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

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

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

d. <u>USPAP Standards Rules 1-2(e)(iv) and 2-2(b)(viii):</u>

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

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

Evidence:

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

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

report that a survey had not been provided.

Analysis:

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

e. <u>USPAP Standards 1-3(a) and 2-2(b)(viii):</u>

Standards Rule1-3(a) requires an appraiser, when forming an opinion as to market value, to identify and analyze the effect on use and value of existing land use regulations, economic supply and demand, physical adaptability of the real estate, and market area trends. Standards Rule 2-2(b)(viii) requires that an appraisal report summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

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

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[28] Petitioner Ex. 6 at 864.

Evidence:

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

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

Analysis:

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

f. <u>USPAP Standards 1-3(b) , 2-2(b)(ix), 1-6(a) and (b), and 2-2(b)(viii):</u>

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

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

Evidence:

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

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

[29] Petitioner Ex. 20 at 864, 871.

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

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

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

Analysis:

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

i. <u>USPAP Standards 1-4(b), 2-2(b)(viii), and 1-1(a):</u>

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

[30] Petitioner Ex. 18 (Aerial photograph of area)

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

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

Evidence:

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

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

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

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

Analysis:

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

j. <u>USPAP Standards Rules 1-4(a), 1-1(a), and 2-2(b)(viii):</u>

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

to produce a credible appraisal.

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

Evidence:

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

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

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

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

Analysis:

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

k. <u>USPAP Standards Rules 1-4(c)(i), 1-1(a), and 2-2(b)(viii):</u>

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

[31] Petitioner Ex. 20 at 872.

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

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

Evidence:

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

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

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

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

Analysis:

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

I. <u>USPAP Standards Rules 1-6(a) and (b) and 2-2(b)(viii):</u>

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

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

Evidence

Mr. McComb testified that Respondent performed a reconciliation, but that it was not properly "analyzed, supported and reported."[32] Mr. McComb read aloud the portion of the addendum that addressed reconciliation and concluded that it was not supported in Respondent's workfile.

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

Analysis:

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

m. <u>USPAP Standards Rules 1-4(d) and (e) and 2-2(b)(viii):</u>

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

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[32] Transcript at 204, lines 18-20.

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

Evidence

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

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

Analysis:

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

n. <u>USPAP Standards Rules 1-1(a),(b) and (c) and 2-1(a) and (b):</u>

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

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

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

Evidence:

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

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

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

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

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

Analysis:

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

o. <u>22 Tex. Admin Code § 153.20(a)(9):</u>

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

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

Analysis:

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

F. Recommendation

The ALJ has found the following violations:

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

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

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

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

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

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

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

III. FINDINGS OF FACT

1. Clifford Parvin Dobson (Respondent) currently holds and held general real estate appraiser certification number TX-1337922-G issued by the Texas Appraiser Licensing and Certification Board (Board) at all times material to the allegations in this case.

2. On May 22, 2012, staff of the Board (Staff) sent an Original Statement of Charges to Respondent proposing revocation of the certification referred to in Finding of Fact No. 1, and an administrative penalty of $5,000. On August 20, 2012, a First Amended Statement of Charges was sent to Respondent.

3. On May 23, 2012, Staff sent Notice of Hearing to Respondent.

4. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statues and rules involved; and a short plain statement of the matters asserted.

5. The hearing on the merits convened on August 27-29, 2012, at the State Office of Administrative Hearings, William P. Clements Office Building, 300 West 15th Street, Austin, Texas. Staff appeared through attorneys Kyle Wolfe and Troy Beaulieu. Respondent was represented by attorney Ted Whitmer. After the taking of evidence and written argument, the record closed on September 28, 2012.

6. Before and after obtaining his general real estate appraiser certification, Respondent took courses in proper appraisal methods and appropriate methodologies for determining market value.

7. Respondent has practiced as an appraiser for sixteen years, primarily in the Fort Worth/Mesquite, Texas area.

8. Respondent entered into two previous agreed disciplinary orders with the Board, one in 2002 and one in 2008. The 2002 Order required a two-year probated suspension of Respondent's certification, suspension of sponsorship of trainees, a $5,000.00 administrative penalty, and a promise to comply with the regulations in the future. The 2008 Order required an eighteen-month probated suspension, remedial education, and a promise to comply with regulations in the future.

9. In the 2002 Order, Respondent was found to have signed an appraisal report "that was not substantially produced by the person." In the 2008 Order, the Board found that Respondent submitted "a draft report without identifying it as a draft report, and this report lacked the signature of a certified general appraiser. A subsequent report was eventually submitted with the signature of a general appraiser."

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

11. Appraisers use three primary approaches or methodologies to determine value: the sales comparison, income, and cost approaches.

12. Under the sales comparison approach, the appraiser "brackets sales" for characteristics such as improvement size (square footage), lot size, quality of construction, and location, thereby seeking to find the sale of the property that is most similar, *i.e.,* most comparable, to the property being appraised.

13. Using the income approach, an appraiser determines the likely income stream and expenses associated with rental property.

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

Respondent's Appraisal of the Wesley Property

15. Respondent issued an appraisal report for a single-family residence at 1517 Wesley Drive, Mesquite, Texas (the Wesley property) on March 17, 2011, effective March 16, 2011.

16. The Wesley property consisted of a single-family residence with a total of 1,571 square feet living area and a site of 6360 square feet, located in the Spring Ridge Estates subdivision which is located west of Interstate Highway (IH) 635.

17. The purpose of the appraisal as set out in the assignment was for a mortgage finance transaction in which the lender, who was Respondent's client, was seeking to determine the value of the property so the lender/client could make a lending decision.

18. The transaction was subject to Federal Housing Administration (FHA) regulations.

19. Respondent appraised the Wesley property at $104,000 using the sales comparison approach.

20. Respondent employed appropriate and recognized methods and techniques in his sales comparison approach to valuation of the Wesley property.

21. Respondent's use of comparables from different neighborhoods was acceptable because more similar comparables in the specific neighborhood were not available and the neighborhood from which the comparables were chosen was a competing neighborhood.

22. The sales comparables used by Respondent supported his appraisal value.

23. Respondent did not retain in his workfile Marshall and Swift worksheets reflecting his calculations of the cost of improvements.

24. In forming his value opinion of the Wesley property, Respondent referenced in his file to Multiple Listing Service (MLS) data that he viewed on the internet in calculating his Sales Comparable value. He later printed those records out to include in his workfile.

25. Respondent utilized photographs of comparables from MLS listings in his report, one of which was photo-shopped to remove the for sale sign from the picture, in violation of FHA requirements.

26. Respondent failed to use the appropriate zoning code, R-3, for residential zoning utilized by the City of Mesquite on his appraisal report. He stated instead the more detailed description denoting single-family residence (SF) used on the tax assessment records.

27. The evidence was insufficient to prove that Respondent failed to identify and analyze significant and material information concerning economic supply and demand and market area trends, or that Respondent misrepresented sales prices and general market area trends in the area which were misleading to the client.

28. Respondent erroneously used seventy-five years as his depreciation factor and failed to compare local builder's sales with the Marshall and Swift figures in his cost approach analysis.

29. The evidence did not establish that the cost approach was necessary to a credible result in the Wesley appraisal.

30. The evidence was insufficient to establish that Respondent misrepresented the predominant price of similar construction in the neighborhood.

31. Respondent's appraisal report of the Wesley property was credible and reliable.

32. Respondent did not misrepresent or omit any material fact in regard to the Wesley appraisal.

33. Respondent did not intentionally inflate his value opinion of the Wesley property or use a predetermined value.

Respondent's Appraisal of the Enon Property

34. On November 19, 2010, Respondent issued an appraisal report for an eleven acre rural property with a log cabin construction located at 4420 E. Enon Road, Fort Worth, Texas (the Enon property), effective November 18, 2010, that valued the property at $230,000.

35. On December 28, 2010, Respondent issued a corrected report for the Enon property that included three operating gas wells that had been omitted from the original report and valued the property at $220,000 and added "negative view."

36. The appraisal was requested by AmeriPro Funding, Inc. and both reports and invoice were sent to Valore Management, as requested in the assignment.

37. Both reports were signed and certified by Respondent. Both were dated November 18, 2010.

38. The appraisal assignment was a rush job, and Respondent was required to do the appraisal the same day he received the assignment.

39. Respondent did not use due care to determine that there were gas wells on the property when he did his inspection.

40. Respondent disclosed in his report that he did not have a survey of the property at the time of the inspection and appraisal and that the client/lender would need to rely on a survey for title and legal conditions. A survey would have revealed the existence of gas wells on the property.

41. Respondent described the neighborhood market as a healthy market based on seller concessions of less than two percent and average days on the market as ninety to 120.

42. At the time Respondent performed the appraisal, the seller of the Enon property had made a three point concession in offering price and the property had been on the market for 227 days.

43. Respondent failed to explain in his appraisal why the Enon property did not fit the marketability parameters described in his report.

44. Respondent failed to address the effect of gas production in the neighborhood on the marketability of the property.

45. Respondent failed to disclose and analyze in the appraisal report that there was commercial property nearby.

46. Respondent erroneously stated on the appraisal report that the property was zoned residential when in fact there was no zoning.

47. In forming his value opinion based on the sales comparable approach, Respondent employed recognized methods and techniques and analyzed the comparable sales data that was available.

48. Log cabins are unusual and unique properties and typically require analysis of comparables that are further in distance and that have similar structures but not necessarily a log cabin in formulating a value based on sales comparable approach.

49. Appraisal of rural properties typically requires analysis of sales comparables that are further in distance.

50. Respondent used nine sales comparables, six of which were log cabins and three of which, while not log cabins, were similar in market appeal.

51. Respondent disclosed in the report that there were limited sales comparisons available due to the log construction type and the rural property.

52. Respondent provided sufficient supporting data in his workfile to support his determination of the site value of the Enon property when evaluating the cost approach to the appraisal value.

53. Respondent utilized the Marshall and Swift data, which is a recognized source and methodology, to calculate the cost of improvements in his cost approach.

54. Respondent used seventy-five year life in his depreciation analysis, which is not a recognized technique under the cost approach analysis.

55. Respondent did not retain in his workfile the Marshall and Swift worksheet he used to calculate the cost approach to value.

56. Respondent did not describe the effect of the gas leases on the income approach in his appraisal in part because he was not aware of the gas leases, and even if he had been aware of them, he would not have had the expertise to analyze them from an income standpoint.

57. Respondent sufficiently explained his failure to include the income approach in his report, based on his knowledge at the time.

58. Respondent performed an adequate and appropriate reconciliation of the data he used.

59. Respondent was not required by the terms of his assignment to evaluate the mineral estate in his appraisal.

60. Respondent did not make an intentional misrepresentation, purposefully inflate the value, or attempt to reach a predetermined value in his appraisal of the Enon property.

61. Respondent made a significant error of omission that affected the credibility of the appraisal report by failing to ascertain that the property had three producing gas wells when doing his inspection of the property.

62. Respondent made an omission of material fact from his appraisal report by failing to include the gas wells.

Findings Common to Both Appraisals

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

IV. CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board (Board) has jurisdiction over this matter pursuant to Tex. Occ. Code (Code) ch. 1103.

2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code chs. 2001 and 2003.

3. Respondent received adequate and timely notice of the hearing, as required by Tex. Gov't Code §§ 2001.051 and 2001.052.

4. Staff had the burden of proof on its allegations. 1 Tex. Admin. Code § 155.427

5. Appraisals must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) developed and published by the Appraisal Foundation and in effect at the time the appraisal is performed. Code § 1103.405 and 22 Tex. Admin. Code § 155.1(a).

6. Based on the above Findings of Fact, Respondent violated the following USPAP Standards in effect in 2010-2011: The Ethics Rules regarding recordkeeping; Rules 1-1(a); 1-2(e)(i)and(iv); 1-3(a) and (b); 1-4(a); 1-4(b)(i) and (ii); 1-4(c)(iv); 1-5(b); 1-6(a) and (b); 2-1(a); and 2-2(b)(iii), (viii), (ix), and (x).

7. By making omissions of material facts in the Enon appraisal, Respondent violated 22 Tex. Admin. Code § 153.20(a)(9)[34].

8. The Board may suspend or revoke the certification of an appraiser who has failed to comply with the applicable USPAP Standards. Code § 1103.518(2)(B) and 22 Tex. Admin. Code § 155.20(a)(3).

9. Based on the foregoing Findings of Fact and Conclusions of Law, and the Board's penalty matrix, the Board should assess an administrative penalty of up to $1,500.00 per violation, with the requirement to take remedial in-class course work or to adopt preventive policies and procedures or both. 22 Tex. Admin. Code § 153.24(9).

10. The Board may reduce or increase the recommended penalty based on documented factors that support the deviation, including but not limited to the number or seriousness of the violation(s); and degree of harm to the public; probate all or a portion of a sanction or administrative penalty for a period not to exceed five years; require additional reporting requirements; such other recommendations, with documented support, as will achieve the

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

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

V. RECOMMENDATION

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

SIGNED November 27, 2012.

JOANNE SUMMERHAYS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

DOUGLAS E. OLDMIXON, COMMISSIONER

Standards and Enforcement Services Division
(512) 936-3621

VIA FACSIMILE: (512) 322-2061

December 12, 2012

State Office of Administrative Hearings
Attn: Deputy Clerk
P.O. Box 13025
Austin, Texas 78711

Re: Texas Appraiser Licensing and Certification Board vs. CLIFFORD PARVIN DODSON, JR.
SOAH Docket. No. 329-12-6477.LIC

Dear Deputy Clerk:

Enclosed please find the Petitioner's Exceptions to the Proposal for Decision pertaining to the above referenced matter.

Please do not hesitate to contact us should you have any questions.

Sincerely,

Megan Polansky
TALCB Legal Assistant
(512) 936-3639

cc:
Ted Whitmer – Attorney for Respondent
2508 Merrimac Court
College Station, Texas 77845

VIA FACSIMILE: (979) 987-2530

DOCKET NO. 329-12-6477.ALC

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§ BEFORE THE STATE OFFICE
	§
	§ OF
vs.	§
	§
CLIFFORD PARVIN DODSON JR.	§ ADMINISTRATIVE HEARINGS
	§
	§
TX-1337922-G	§

PETITIONER'S EXCEPTIONS

TO THE HONORABLE COURT:

The Texas Appraiser Licensing and Certification Board ("TALCB") respectfully files these Exceptions and would show the Court as follows:

I. BACKGROUND

1. A hearing was held on this matter on August 27-29, 2012.

2. The parties submitted written closing arguments and the record closed on September 28, 2012.

2. The Court issued its Proposal for Decision ("PFD") on November 27, 2012.

3. Petitioner now files these Exceptions

II. ARGUMENT: THE COURT SHOULD MODIFY THE PROPOSAL FOR DECISION TO CORRECT LEGAL ERRORS AND FINDINGS CONTRARY TO THE EVIDENTIARY RECORD AND TO MAKE ADDITIONAL FINDINGS ON THE ALLEGATIONS CONTAINED IN THE DISCIPLINARY CHARGES

4. The Court should modify the PFD for the following reasons.

A. WESLEY PROPERTY

1. PETITIONER DID NOT PLEAD INFLATION ON THE WESLEY PROPERTY

5. Several times in the PFD the Court states Petitioner failed to prove inflation on the Wesley property. Petitioner did not plead inflation on the Wesley property. (*See* Petitioner's First Amended Statement of Charges). Nor did Petitioner's expert allege inflation in his investigative report of the Wesley property. (See Petitioner's Ex. 7, Bates 00671-95). Nor did Petitioner reference or allege inflation on the Wesley property in its Closing Argument Brief or Response to Respondent's Trial Brief. The Court is holding Petitioner to an allegation it did not plead on the Wesley property.

6. Evidence of inflating a value and intent to reach a predetermined value are separate concepts. An appraiser can reach a predetermined value, often times the pending contract price, without evidence of inflation. Petitioner did plead intent to reach a predetermined value on the Wesley property. As Petitioner's expert summed this up, after listing his findings, "It was obvious that the report was designed to hide information from the client so that the loan would be made." (Petitioner's Ex. 7, Bates 00684). An appraiser can make misrepresentations and omissions in an appraisal to meet the pending contract price, which would be evidence of a predetermined value. An appraiser can also deflate or inflate a value; however, Petitioner did not plead either on the Wesley property.

7. In its PFD, in regards to evidence of inflation on the Wesley property, in a footnote, "Mr. McComb's contradictions weakened his credibility in regard to this particular evidence." (PFD 10 n. 12). Again, reviewing the voluminous record, Petitioner did not allege inflation on the Wesley property. The Court should modify its PFD to show Petitioner did not allege inflation on the Wesley property.

2. THE COURT DID NOT ADDRESS ALL OF THE USPAP ETHICS (CONDUCT) VIOLATIONS

8. As discussed above, the Court based its analysis of the evidence of Respondent's USPAP ethics violations on allegations of inflation. In the PFD, the Court states, "Even Mr. McComb stated, contrary to his investigative report, that he did believe that the market value which Respondent reached was predetermined or inflated." (PFD 11). Again, reviewing the voluminous record, the evidence does not show Petitioner's expert contradicted his investigative report in regards to inflating the value of Wesley report. The Court should modify its PFD.

9. Akin to the pleadings, the USPAP Ethics rule also states an appraiser, "must not perform an assignment in a grossly negligent manner." The Court did not address if the Respondent performed the assignment in a grossly negligent manner in violation of USPAP.

a). RESPONDENT SUBMITTED AN ALTERED PHOTO MLS PHOTO TO THE INTENDED USERS

10. In its PFD, the Court states, "Respondent stated that he was not aware that FHA required him to take his own photographs and not use photographs from the MLS listing. He stated that there was no intent to deceive in using those photographs, and that he was not aware that the photograph had been changed to take out the for sale sign." This is not what the evidence shows. In the hearing the Respondent testified:

> Q. You photo-shopped on how many of the photos in these appraisal reports?
> A. One
> . . .

> Q. Well, then why would you take out the for sale sign?
> A. Because it would be an underwriter issue if there was a for sale sign.
> . . .
> Q. Okay. So did you take out the for sale sign in that photo? Did you photo-shop it – I believe that is the right way to say it – did you photo-shop that?
> A. We did.

(Hr'g Tr. 830-32). The evidence clearly shows the Respondent altered the photo to deceive the lender. The Respondent admitted to altering the photo. The Respondent also testified that you take out the for sale sign because it is an underwriter issue. His testimony shows he willfully altered the photo to deceive the intended users of his appraisal report.

11. Respondent's alteration of the photo is clear evidence of a USPAP ethics violation. The Respondent communicated assignment results with the intent to mislead or to defraud and communicated a report that is known to be misleading or fraudulent. At the very least, Respondent violated the USPAP ethics rule by performing the assignment in a grossly negligent manner.

12. In fact, Respondent's own expert testified that altering a photograph is a USPAP ethics violation:

> Q. Right. What about photoshopping – if he photoshopped the photos submitted as part of the FHA assignment, would that have been an ethics violation?
> A. I'm just going to plead ignorance here. What is photoshopping? What do you mean?
> Q. Oh, I'm sorry. Altering a photograph.
> A. Oh, yes. No you don't alter a photograph
> Q. Taking a for sale sign out, would that have been proper under USPAP?
> A. No.

(Hr'g Tr. 615). The Court should modify the PFD to reflect Respondent's USPAP ethics violation.

b). RESPONDENT SUBMITTED MLS PHOTOS TO INTENDED USERS

13. FHA, which provides government assistance to home buyers by providing mortgage insurance, requires comparable photos from the appraiser to demonstrate the appraiser has inspected each comparable sale. The Respondent cites he has complied with the FHA guidelines in the addendum of the Wesley appraisal report. (Petitioner's Ex. 6-H, Bates 00627). Respondent also testified:

> Q. And the photos of the comparables, again I'm going to ask you, Mr. Dodson, if you require – if you complied with FHA?
> A. I did.

(Hr'g Tr. 56) Contrary to this testimony, Respondent then later stipulated that he used MLS photos in his Wesley property appraisal report, which was a violation of FHA guidelines. (Hr'g Tr. 201). Respondent's own expert testified that he did not adhere to the FHA assignment conditions. (Hr'g Tr. 614).

14. This is also a clear USPAP ethics violation because he cites to the FHA guidelines in his report and is aware of the guidelines. If not willful, the Respondent at least performed the assignment in a grossly negligent manner by failing to comply with the very FHA guidelines he cites in the Wesley appraisal report. The Court should modify its PFD to reflect the Respondent's willful conduct or gross negligence.

3. THE COURT DID NOT ADDRESS ALL OF THE ETHICS (RECORD KEEPING) VIOLATIONS

15. The Court did not address Respondent's failure to provide the data necessary to support his opinions or conclusion regarding sales prices, market area trends and economic supply and demand. Respondent did not provide the data to support his opinions and conclusions in the neighborhood section of his report or the market conditions addendum. (*See* Petitioner's Ex. 6).

16. The Court also did not address Respondent's failure to provide the data necessary to support his opinions or conclusion in the cost approach. The Court also did not address Respondent's failure to provide data or market analysis, as discussed below, to support his opinions or conclusions in his sales comparison approach. The Court should modify its PFD to reflect the evidence.

4. THE COURT DID NOT ADDRESS RESPONDENT'S MISREPRESENTATIVE SALES PRICES IN THE NEIGHBORHOOD SECTION OF THE WESLEY PROPERTY REPORT

17. In its analysis of the alleged violations of USPAP Standards Rule 1-1(b), 1-3(a) and 2-2(b), the Court seems to be conflating the allegations with the selection of comparables and the determination of value. Petitioner alleged violations, in the Wesley property report, of USPAP Standards 1-3(a) & 2-2(b)(viii); 1-1(b), "Respondent failed to identify and analyze significant and material information concerning economic supply and demand and market area trends. Respondent misrepresented the ***sales prices*** and general market area trends and influences occurring in the Wesley property's area, which misled the users of his appraisal report." (emphasis added)(First Amended Statement of Charges ¶ 16(d)).

18. The evidence shows Respondent used misrepresentative and/or incorrect sales prices in the One-Unit Housing portion of the Neighborhood section of his appraisal report. (Petitioner's Ex. 6-H, Bates 00620). The sales prices are historical objective data and Petitioner provided the objective historical sales prices of the subject's described neighborhood in Petitioner's Exhibit 9-K. Petitioner's exhibit 9-K is not the product of Petitioner's expert's calculations but from objective historical sales prices of Respondent's described neighborhood. The sales prices are presented in the Neighborhood section for the intended users to understand the subject's neighborhood market not the comparables market.

19. Respondent testified he used sales prices from the different comparables neighborhood for the one unit housing prices instead of using sales prices from the subject property's neighborhood:

> Q. So you're saying – so those figures there, 18 low, 262 high and 100 predominant, are those the figures you're referencing?
> A. Yes.
> . . .
> Q. And, I'm sorry, where did you specifically get those prices right there listed under the one-unit housing price?
> A. If you look on the CMA on page 640 of the evidence it's got the market range. Here's your low of 18,000 and there's a high listing of 262 on the very first page of 640.
> Q. And what neighborhood is that – is that data from? Is that from your described neighborhood in your report?
> A. Yes, it should be the same.
> Q. Okay.
> A. It's the same neighborhood or market area that you've got your comparables from.
> Q. So you're saying that the one-unit housing price is from the same market as your comparables are from?
> A. Right.

(Hr'g Tr. 55-56). There are multiple problems with Respondent's testimony. The comparative market analysis (CMA) Respondent references in his workfile do not reflect the comparable properties nor the sales prices reported by Respondent. (Petitioner's Ex. 6-H, Bates 00640-41). The CMA the Respondent cites has two sections: active listings and properties sold. Respondent cites "a high listing of 262," a listing is not a sales price and is incredibly misleading to the intended users. Also, neither section has a predominant price of $100,000. (Petitioner's Ex. 6-H, Bates 00640-41). The Respondent's evidence does not support the one unit housing sales prices listed in his report.

20. In its PFD, the Court also cites Respondent's "Market Conditions Addendum." However, in the "Market Conditions Addendum" Respondent cites multiple listing service as his data source. (Petitioner's Ex. 6-H, Bates 00629). The Respondent failed to provide any data, multiple listing service or otherwise, supporting the figures and conclusions in the "Market Conditions Addendum." (*See* Petitioner's Ex. 6) Without supporting any data sources the opinions and conclusions are not credible. This is a significant error of omission affecting the credibility of the report, which misled the intended users.

21. Respondent's incorrect sales prices made the Wesley property's neighborhood appear to have higher sales prices. The Respondent's purported source does not reflect the sales prices and these misrepresentative and false sales prices misled the intended users of the Wesley property's report. (*See* Petitioner's Ex. 6). This misrepresentative and incorrect market data is a significant error that affected the credibility of the report. The intended users

were misled about the historical data of market sales prices. The Court should modify the PFD to reflect the Respondent's incorrect methodology and sales prices.

5. RESPONDENT DETERMINED THE COST APPROACH WAS NECESSARY AND THE NECESSITY OF THE COST APPROACH DOES NOT OBVIATE THE RESPONDENT'S MISREPRESENTATIONS

22. In its PFD, the Court states, "However, Standards Rule 1-4(b) states that the Rule only applies if the cost approach is necessary to a credible result. The evidence did not establish that the cost approach was necessary to a credible result in this case." (PFD 20 ¶ 3). This is not supported by the evidence.

23. The Respondent put on no evidence that the cost approach was not necessary for credible assignment results. In fact, Respondent himself determined it was necessary to provide a cost approach to the intended users. The USPAP Scope of Work Rule states, "an appraiser must . . . determine and perform the scope of work necessary to develop credible assignment results." (Petitioner's Ex. 3, Bates 0054). The appraiser determines the scope of work and the Respondent determined it was necessary to support his value and for credible assignment results. In his report, Respondent stated, "The final value estimate is based on the Sales Comparison Approach and is supported by the Cost Approach." (Petitioner's Ex. 6-H, Bates 00628). The Respondent is representing to the intended users that his Cost Approach supported his final value estimate. Respondent also used the value from the Cost Approach in the Reconciliation section of his Wesley report. Respondent clearly determined it

was necessary and represented to the intended users it "supported" his final value.

24. Furthermore, the Court did not address the material misrepresentations and omissions in the Respondent's cost approach. . In regards to site value, Respondent testified:

> Q. Did you have the single vacant land sales in your workfile?
> A. I did not.
> Q. Was that a failure of a workfile?
> A. Yes.
> Q. Did you actually look at land sales when you did the appraisal? Do you recall?
> A. Could have.
> Q. So you might have failed to use an appropriate technique in developing a site value?
> A. Could have.
> . . .
> Q. Yeah but you just testified there were land sales. Correct?
> A. Yes.
> Q. So this wouldn't have been an appropriate method in this case?
> A. It wouldn't.
> Q. Is that right?
> A. Yes.

(Hr'g Tr. 825-26). Also, as discussed above, the Court based its analysis on inflation, which Petitioner did not plead. The Court should modify its PFD to reflect the evidence that Respondent determined the cost approach was necessary for credible assignment results and that the cost approach was deficient.

6. THE EVIDENCE SHOWS RESPONDENT'S SALES COMPARISON APPROACH VIOLATED BOARD RULES AND USPAP

25. In the PFD, the Court stated Petitioner failed to prove violations in the sales comparison approach in part because, "He stated he did not know the age of the houses in the immediate subdivision of the Wesley property, while

Respondent testified that that was one of the reasons he chose comparables that were not in the immediate neighborhood." (PFD 25 ¶ 2). In regards to selecting comparables Respondent testified:

> Q. Okay. How did you choose the sales comparables for this property?
> A Number one, they're all in Mesquite school district. Number two, they were – in my response I wrote that based on the age, the –age range, square footage range, and within a six-month time period.
> Q Is there any other reasons why you chose these specific sales comparables for this property?
> A None.
> Q And just to recap, that was age range, square footage and within six months, sir?
> A Yes. And school district.

(Hr'g Tr. 49-50). In Respondent's own workfile he has comparative market analysis with his own search parameters. (Petitioner's Ex. 6-H, Bates 00640). In this market analysis, there are several properties listed which sold within six months prior to the appraisal, within 300 square feet, within 3 miles, within 5 years of age and in the same school district. (Petitioner Ex.6-H, Bates 00641). The Respondent did not address or report these lower priced comparables sales listed in his own workfile. Conversely, there is no comparative market analysis containing his chosen comparables or statistics supporting his selection of comparables, which is material omission of material facts. (Petitioner's Ex. 6). The comparative market analysis in Respondent's own workfile contradicts his testimony. Furthermore, two of Respondent's chosen sales comparables had not sold in the prior six months, comparable sale no. 4 and 5, 1505 Colborne and 805 Creekside Drive. These comparables were listings -- not sales. (Petitioner's Ex. 6-H, Bates 00626 and Petitioner's Ex. 13-T & 13-U). This is evidence

Respondent has failed to use recognized methods and techniques, and ignored the lower priced comparable sales in his own workfile. These were also a significant error of omission affecting the credibility of the report.

26. In his response, Respondent provided more market analysis, which also does not reflect or list his comparables. (Petitioner's Ex. 6-F, Bates 00583-00585). In fact, Respondent's provided market analysis reflects a much lower average price per square foot than the price per square foot of his chosen comparables. In the Wesley report, Respondent states, "No adjustment for locational differences was indicated from the mls market data." (Petitioner's Ex. 6-H, Bates 00627). This is either a misrepresentation or a significant and material omission. Respondent did not provide mls market data or analysis for his comparables. There is no data supporting Respondent's analysis or conclusion regarding locational difference. On the other hand, Petitioner's expert provided a mapped area and market statistics for Respondent's comparables, which showed a higher price per square foot and higher sales prices. (Petitioner's Ex. 13, Bates 00728-29).

27. Also in its analysis, the Court stated, "Mr. McComb agreed that the house next door to the Wesley property, which he would have used as a comparable, sold at a value very similar to the appraised value of the Wesley property." (PFD 26). The Court should not base its analysis on the above sale for two reasons. First, Respondent as a market analyst did not utilize this data. Second, Respondent's client did not request analysis of sales outside its requirements. This sale on the same street was not reported or analyzed by Respondent.

Further, this one sale was not used by Respondent's and does not justify significant errors, misrepresentations and omissions in his sales comparison approach and market analysis. One sale, not required by the client or used by Respondent, should not be used to justify value and then absolve an appraiser for his errors, omissions and misrepresentations in the sales comparison approach. Furthermore, there was no sales comparison approach in evidence utilizing this sale and thus no evidence showing this sale justified Respondent's final value. The Court should not base its analysis on this sale and should modify its PFD.

28. Petitioner alleged, "USPAP Standards 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a) – Respondent has failed to collect, verify, analyze and reconcile comparable sales data adequately and has not employed recognized methods and techniques in his sales comparison approach". (Petitioner's First Amended Statement of Charges 8 ¶ 16(h)). The Court did not address his failure to collect, verify, analyze and reconcile the comparables sales data. As discussed above, none of Respondent's market analysis data supported his chosen comparables and instead listed alternative comparable sales. (*See* Petitioner's Ex. 5).

29. Petitioner also alleged, "Misrepresenting the sales Respondent employed were the most comparable to the Wesley property and omitting discussion, analysis and reconciliation of properties that were more similar to it . . . Omitting documentation from his work file necessary to support his analysis, opinions and conclusions for items such as . . . comparable sales analysis . . . Omitting any supporting rationale and discussion regarding his analysis opinions and

conclusions made in the appraisal." (First Amended Statement of Charges 10-11). The Court should modify its PFD to reflect these material omissions and misrepresentations of material fact.

30. In its analysis the Court also states:

> Although Mr. McComb's primary concern seems to be that Respondent did not adjust for the difference in the site appraisals, the Addendum to the appraisal report states, 'Site differences were adjusted at a market extracted value. This derived from recent land sales and land to improvements ratio.'

PFD 25 ¶ 2). The report shows on its face that Respondent did not make site adjustments. In the sales comparison approach grid (Petitioner's Ex. 6-H, Bates 00621) the Respondent did not put any adjustments in the boxes designated for site adjustments nor did he provide any adjustments in his workfile. The site of Comparable Sale No. 1 is double the size of the Wesley property's site and Respondent made no adjustment. (Petitioner's Ex. 6-H, Bates 00621). The Respondent made the above statement about adjusting for site differences but provided no adjustments in his report or his workfile. Respondent's statement is misleading and another material misrepresentation and omission because he did not provide any site adjustments. These misrepresentations, contradictions and omissions in his sales comparison approach are serious deficiencies. The misrepresentations and omissions support the Petitioner's allegation that the selection of comparable sales was done to meet the contract price of the Wesley property. The Court should modify its PFD to reflect the misrepresentations, contradictions and omissions in Respondent's sales comparison approach.

7. RESPONDENT FAILED TO RECONCILE THE QUALITY AND QUANTITY OF DATA WITHIN THE APPROACHES USED

31. Petitioner alleged, "USPAP Standards 1-6(a) & (b) & 2-2(b)(viii) – Respondent failed to reconcile the quality and quantity of the data within the approaches used." (First Amended Statement of Charges). This implicates the data supporting the sales comparison approach and the cost approach. In its analysis, the Court stated, "Staff . . . failed to establish that those comparables were not reconcilable with the appraisal value that Respondent calculated . . . Mr. McComb did not establish that Respondent's failure to use the comparables in the neighborhood he identified on the west side of IH 635 led to an inflated appraisal." (PFD 28 ¶ 1). As discussed above, Respondent had no meaningful data supporting either the cost approach or the sales comparison approach nor did he reconcile the quality and quantity of the data. The Court did not address reconciliation of the quality and quantity of data within Respondent's cost approach. It was uncontroverted Respondent failed to include the data supporting his cost approach. Also, reconciliation is a different concept determining comparables and an opinion of value. Again, the Court based its analysis of Respondent's reconciliation on an inflation allegation, which Petitioner did not allege. The Court should modify its PFD to reflect Respondent's failure to reconcile the quality and quantity of data within the cost approach and the sales comparison approach.

8. THE COURT FAILED TO ADDRESS RESPONDENT'S VIOLATIONS OF USPAP STANDARDS 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b)

32. In its PFD the Court failed to address the Petitioners allegations of violations of 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b). Petitioner alleged, "USPAP

Standards 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b) – For the reasons detailed above, Respondent produced a deliberately misleading appraisal report for the Wesley property that contained several substantial errors of omission or commission by choosing not to employ correct methods and techniques. This resulted in an appraisal report that was not credible or reliable." (First Amended Statement of Charges 9 ¶ 16(j)).

33. USPAP Standard 1-1(a), "In developing a real property appraisal, an appraiser must . . . be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal." As an experience certified general appraiser, Respondent has either disregarded the recognized methods or techniques or is unaware of the recognized methods and techniques. Respondent did not provide the data to support his opinions and conclusions.

34. USPAP Standard 1-1(b) provides, "In developing a real property appraisal, an appraiser must . . . not commit a substantial error of omission or commission that significantly affects an appraisal." As the evidence shows, Respondent committed significant errors of omission and/or commission that significantly affected the appraisal. Respondent made substantial errors of omission and/or commission in the neighborhood section, which includes market trends and sales prices. Respondent omitted necessary data and analysis supporting both the cost approach and the sales comparison approach. These errors or omission and/or commission are significant because the approaches are used to determine value.

35. USPAP Standard 1-1(c) provides, "In developing a real property appraisal, an appraiser must . . . not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results." This Rule shows USPAP contemplates the aggregate of errors and not just errors in isolation. As the evidence presented at the hearing and above shows, Respondent made a number of errors, omissions and misrepresentations in his appraisal of the Wesley property. Respondent made errors, omissions and misrepresentation in the neighborhood section of his report, the sales comparison approach, the cost approach and the reconciliation. Individually these errors might not significantly affect the results. However, these errors taken together and in the aggregate affect the credibility of the results.

36. USPAP Standard 2-1(a) provides, "Each written or oral real property appraisal report must . . . clearly and accurately set forth the appraisal in a manner that will not be misleading." As discussed above, Respondent set forth opinions and conclusions that are not supported by data. Because of the errors, contradictions and omissions, Respondent did not clearly and accurately set forth an appraisal. Most importantly, his appraisal is misleading because his approaches to value are not credible and not supported by the market data.

37. USPAP Standard 2-1(b) provides, "Each written or oral real property appraisal report must . . . contain sufficient information to enable the intended users of the appraisal to understand the report properly." As discussed above, Respondent's Wesley property report does not contain sufficient information.

The information presented in the neighborhood section, sales comparison approach and cost approach are not supported by the market data and contain significant errors and omissions.

38. In light of the evidence presented above, the Court should modify its PFD and address Petitioner's allegation of USPAP Standards 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b) violations.

9. THE COURT DID NOT ADDRESSS THE MATERIAL MISREPRESENTATIONS AND OMMISSIONS PLEAD BY PETITIONER

39. Petitioner alleged a number of material misrepresentations and omissions of material facts in the Wesley property appraisal report, which were not addressed by the Court. In its PFD, the Court states, "Because the evidence failed to establish an inflated value, and because the violations found did not affect the credibility of the report, there is no ground for finding that Respondent misrepresented material facts in his appraisal report on the Wesley property." (PFD 29 ¶ 1).

40. As discussed above, Petitioner did not plead inflated value on the Wesley property. (*See* First Amended Statement of Charges). Also, inflating a value is an entirely different allegation from material misrepresentations and omissions of material facts.

41. Furthermore, credibility pertaining to USPAP violations is a separate standard from material misrepresentations and omissions of material facts. In light of the evidence discussed above, the Court should modify its PFD and address the material misrepresentations of material fact separately from credibility pertaining to USPAP.

42. In addition to misrepresentations of material facts, Petitioner pled "material omissions" of material facts. The Court did not address the material omissions of material fact in Wesley property appraisal report.

43. On the Wesley property, Petitioner alleged, "Omitting significant and material information concerning economic supply and demand and market area trends." (First Amended Statement of Charges10 ¶ 21(a)). As discussed above, Petitioner omitted significant and material information concerning economic supply and demand and market area trends. Respondent has no data in his workfile supporting his opinions or conclusions concerning economic supply and demand and market area trends. Respondent's market conditions addendum is not supported by any market data. The market analysis in his workfile contradicted the sales prices in the neighborhood section of his report.

44. On the Wesley property, Petitioner also alleged, "Misrepresenting the sales Respondent employed were the most comparable to the Wesley property and omitting discussion, analysis and reconciliation of properties that were more similar to it." (First Amended Statement of Charges 10 ¶ 21(c)). Respondent disregarded comparables and market data in his own workfile and chose comparables that were further away and located in a different market. Respondent failed to adjust for site differences in the adjustment grid of his sales comparison approach. Respondent provided no market analysis, in his report or workfile, for his chosen comparables. Respondent omitted any discussion, analysis or reconciliation of the market analysis he did have in his workfile.

45. On the Wesley property, Petitioner also alleged, "Fabricating and misrepresenting the cost approach." (First Amended Statement of Charges 10 ¶ 21(d)). It was uncontroverted Respondent did not have the Marshall and Swift data, in his workfile or report, he represented he used in his cost approach. He did not use market data to determine site value and used incorrect methods and techniques to determine accrued depreciation. A discussed above, the appraiser determines what is necessary for credible assignment results in his scope of work and Respondent determined a cost approach was necessary. He also represented to the client that it "supported" his final value and included it in the reconciliation.

46. On the Wesley property, Petitioner also alleged, "Omitting documentation from his work file necessary to support his analysis, opinions and conclusions for items such as site value determination, cost of improvements, accrued depreciations, and comparable sales analysis . . . Omitting any supporting rationale and discussion regarding his analysis opinions and conclusions made in the appraisal." (First Amended Statement of Charges 10 ¶ 21(e)-(f)). As discussed above, Respondent omitted necessary documentation from his workfile to support his analysis, opinions and conclusion in his sales comparison approach and cost approach. It is uncontroverted Respondent did not provide the necessary documentation for his cost approach. Respondent did not provide the necessary documentation for his comparable sales analysis. The market analysis he did provided does not have his comparables and contains comparables he did not address. Also, aside from false statements about

available sales and Mesquite ISD, Respondent does not have any supporting rationale or discussion for his sales comparison approach. Also, Respondent provides no rationale or discussion for his conclusions regarding market conditions; he only provides his search parameters.

47. The Court should modify its PFD because Petitioner did not plead inflation and the Court did not address the material misrepresentations and omissions plead by Petitioner.

B. ENON PROPERTY

1. RESPONDENT VIOLATED THE USPAP ETHICS (CONDUCT) RULE

48. In its analysis, the Court states, "However, the fact that Respondent included in the appraisal an admonishment that the lender must rely on a survey indicated that Respondent was taking care not to misrepresent the legal characteristics." (PFD 33 ¶ 1). However, the Respondent did not use any care in identifying the conspicuous physical characteristics. Also, this "admonishment" does not obviate the misrepresentations that he made in his certification that he "performed a complete visual inspection of the interior and exterior areas of the subject property." (Petitioner's Ex. 20-HH, Bates 00872). Also, a disclaimer about the lack of survey does not remove the obligation he has under USPAP Standards Rule 2-3 requiring a true and correct certification. Otherwise, a survey disclaimer would release an appraiser from reporting any property conditions. If Respondent could not perform the assignment without a survey it is his responsibility to turn down the assignment. In fact, Respondent identifies the problem to be solved in his scope of work. The client required a 1004 form, the

minimum scope of work on a 1004 form states, "the appraiser must, at a minimum . . . perform a complete visual inspection of the interior and exterior areas of the subject property." (Petitioner's Ex. 20-HH, Bates 00867). In fact, Respondent also pasted this minimum scope of work in his addendum above his statement about FHA compliance. (Petitioner's Ex. 20-HH, Bates 00872). A survey is one of many sources to identify site conditions and Respondent chose not to use any other sources. In this appraisal, if Respondent simply walked the Enon property he would have identified the conspicuous road and gas wells. In this case, a survey is not needed to identify a conspicuous road and noise emanating gas wells. Petitioner's photographs of the Enon property show a highly visible road leading to a large conspicuous area with active gas wells. (*See* Petitioner's Ex.16). Respondent's minimum scope of work required a visual inspection and he certified he performed a complete visual inspection. If not intentional, his failure to inspect the property as he certified was the result of his gross neglect and is at least a serious but remediable deficiency.

49. In its analysis, the Court also stated, "While the client's file does not contain a copy of the corrected report, it contains a copy of a rebuttal from Respondent that references the corrected report." (PFD 33 ¶ 2). This is not what the evidence shows. There is no evidence of any rebuttal in the client's file. There is a memorandum referencing gas wells, in response to the field review, directed to Valore Management not the client. (Petitioner's Ex. 5-C, Bates 00489 and Respondent's Ex. 33). Valore Management is the appraisal management company not the client. AmeriPro Funding was the client Regardless, this

Valore memorandum is in response to the appraisal review "Re: Appraisal Review" and is dated "12/28/10" well after the client, AmeriPro Funding, declined the loan, ordered an appraisal review and reported the Respondent's appraisal deficiencies to Valore Management. (Petitioner's Ex. 20-HH, Bates 00885-00886). The appraisal report sent to the Board was also created after the client, AmeriPro Funding, declined the loan, ordered an appraisal review and reported the deficiencies to Valore. (Hr'g Tr. 726). The Court should modify its PFD to reflect there is no rebuttal in the client's file.

50. The Court also states, "Staff failed to submit ***any*** evidence from the client or anyone else that the report was not submitted as testified, and as the evidence indicated." (emphasis added)(PFD 33 ¶ 2). This is not what the evidence shows. Petitioner's exhibit 20 contains the appraisal report and business records from the actual client, AmeriPro Funding. The client's business records are clear evidence that the report received by the Board (Petitioner's Ex. 5-E) was not received by the client, AmeriPro Funding. (Petitioner's Ex. 20). Furthermore, all of these business records are dated before the memorandum to Valore Management. The client's business records dated "12/22/10" state, "In addition to reporting the above referenced appraiser to our internal QC department, a copy of the review has been provided to Valore for their review . . . Major discrepancies were noted by the reviewer including the fact there are actively producing gas wells on the subjects site which were not mentioned by the Valore appraiser." (Petitioner's Ex 20-II, Bates 00886). Respondent did not give that referenced report to the Board. Instead, Respondent testified he created the

falsely dated report disclosing the gas wells, the only report submitted to the Board, on December 28, 2010 after he received appraisal review and after the dates in the client's business records. (Hr'g Tr. 726). The Court should modify its PFD to reflect this evidence.

2. THE COURT DID NOT ADDRESS ALL OF THE ETHICS (RECORD KEEPING) VIOLATIONS

51. The Court did not address Petitioner's allegation, "USPAP Ethics Rule (record keeping) -- Respondent violated the Ethics Rule because he failed to maintain a work file containing all data, information and documentation necessary to support his opinions, analyses and conclusions as required by the record keeping provisions."

52. Respondent failed to maintain a workfile or provide any documentation supporting the opinions, analysis and conclusions in the neighborhood section of his report, which encompasses market area trends and economic supply and demand. The court should modify its PFD to reflect this evidence.

53. Respondent failed to maintain a workfile or provide any documentation supporting his cost approach, which includes site value, cost new of replacements and accrued depreciation. The court should modify its PFD to reflect this evidence.

54. Respondent also failed to maintain a workfile with data, information and documentation supporting the opinions and conclusions in the sales comparison approach. This includes his data, information and documentation necessary to support his adjustments and opinions and conclusion concerning market value. The court should modify its PFD to reflect this evidence.

3. RESPONDENT'S SCOPE OF WORK VIOLATED USPAP

55. Respondent's scope of work is the minimum scope of work required by every 1004 form – it is a part of the 1004 form. The Respondent merely copied the 1004 form's minimum scope of work in his addendum. Beyond this generic minimum scope of work, there is no evidence that Respondent determined any kind of scope of work for this assignment. There is no evidence that he identified the problem to be solved or determined the work necessary to develop credible assignment results. Additionally, he even failed to follow the 1004 form minimum scope of work by not performing a complete visually inspection of the subject property. The Court should modify its PFD to show Respondent failed to identify any problem to be solved or any work necessary for a credible assignment relating to the scope of work required for the Enon property.

4. RESPONDENT VIOLATED USPAP BY REPRESENTING THE ENON PROPERTY HAD NO NEEDED REPAIRS

56. "The evidence did not establish that Respondent violated standards by not reporting the logs needed replacement." (PFD 39 ¶ 4). Respondent's omission of disclosing the needed repairs and representing there were "no evident needed repairs" was a significant error that misled the intended users. Petitioner does not contend that an appraiser be an expert on log replacement. Petitioner alleges Respondent's appraisal was inaccurate and misled the intended users. The evidence shows the seller disclosed that the log house had wood rot and logs needed to be replaced, clear evidence of deterioration and needed repairs. (Petitioner's Ex. 4-A, Bates 00441-00442). In the Respondent's own workfile he had the sale contract, which Respondent stated he analyzed, stating a seller's

disclosure was available. (Petitioner's Exhibit 5-C, Bates 00528-00535). However, the Respondent failed to analyze or disclose the information provided in his own workfile. The 1004 form in the improvements section states, "Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.)." (Petitioner's Exhibit 20-HH, Bates 00864). Respondent on his own accord represented and certified that there were no needed evident repairs. (Petitioner's Exhibit 20-HH, Bates 00864 and 00868). The seller had provided needed repair and deterioration information, which was indicated in Respondent's own workfile. He either did this intentionally or he failed to use due diligence and due care. No log replacement expertise is required to disclose the information he represented that he analyzed. No log replacement expertise is required to review an available seller's disclosure. The very purpose of a seller's disclosure is to inform parties about the condition of a property. His representation that there were no evident needed repairs and omission of deterioration is a significant error of omission or commission. The Court should modify its PFD to address Respondent's inaccurate representations and failure to use due care and due diligence.

5. THE COURT DID NOT ADDRESS ALL OF THE USPAP VIOLATIONS IN RESPONDENT'S COST APPROACH

57. In its PFD, the Court states, "The evidence was insufficient to prove that Respondent failed to make a site value calculation or support it in his report." Petitioner alleged, "USPAP Standards 1-4(b)(i) & 2-2(b)(viii) ; 1-1(a) & 1-4(b) – Respondent failed to use an appropriate method or technique to develop a site value determination and did not provide supporting documentation, analysis or

data for his determination." Respondent provided no supporting documentation, analysis or data for his determination to support his site value determination. (Hr'g Tr. 195-96). In his Cost Approach to Value section, Respondent states, "The subject site value is based on vacant lot sales . . . Site value is based on recent land sales." (Petitioner's Ex. 20, Bates 00866). However, there are no vacant land sales in his workfile nor is there any analysis or calculation of site values in his report or workfile. In its evidence section the Court references an MLS run, which Respondent claims supports his site value. (PFD 45-46). The MLS run referenced (Petitioner's Ex. 5-C, Bates 00521) is not a vacant land sale – it has a home, a garage and a barn. This cannot possibly support site value in the cost approach. Respondent's testimony misled and confused the Court. Also, this sale was not listed in the Cost Approach section of the report. It is referenced in his addendum under Comments on Sales Comparison; there are no comments in the addendum concerning the Cost Approach. The sales comparison approach and cost approach are entirely different approaches to value. Even if the MLS run, which is not a vacant lot sale, relates to the cost approach the Respondent failed to provide any analysis or calculations of how a home sale determined the Enon property's site value. The MLS run is mere presentation of inapplicable raw data and Respondent has provided no calculations or analysis. This is not a recognized method and technique. Respondent provided no data supporting his site value and no evidence that he analyzed data supporting his site value. Even though Respondent provided no vacant land sales in his workfile and failed to use an appropriate method, the

Court found, "Respondent provided sufficient supporting data in his workfile to support his determination of the site value of the Enon property when evaluating the cost approach to the appraisal value." (PFD 62 ¶ 52). The Court should modify its PFD to reflect the evidence that Respondent did not utilize recognized methods and techniques and failed to provide sufficient supporting data to support his determination of the site value.

6. RESPONDENT'S SALES COMPARISON APPROACH VIOLATED USPAP

58. The Court failed to fully address Petitioner's allegation that "Respondent failed to collect, verify, analyze and reconcile comparable sales data adequately, which had similar mineral production, and has not employed recognized methods and techniques in his sales comparison approach." (First Amended Statement of Charges 6 ¶ 15(k)). In its analysis the Courts stated, "The evidence was insufficient to establish that Respondent failed to use appropriate comparables in the sales approach to value on the Enon appraisal." The Court did not address Respondent's failure to collect, verify, analyze and reconcile comparable sales data. The allegations are focused on Respondent's methods and techniques and analysis not just the appropriateness of his comparables. Again, similar to the cost approach, Respondent provides no analysis supporting his opinions or conclusions. Respondent states in the Summary of the Sales Comparison Approach, "Estimated market value is above final list price, but well below the original list price, this is unavoidable due to land value." The Respondent did not reconcile the marketing time or perform any analysis to support this statement as required by USPAP Standards Rules 1-6 and 2-2(b)(viii). (Hearing Transcript,

pg. 199-200)(Petitioner's Exhibit 3, Bates 00061 and 00066). Furthermore, Respondent provided no analysis how he determined he determined his adjustments, particularly site adjustments. In the comments, he states he adjusted at a market extracted value, but provides no market data, analysis or calculations concerning market extracted value. The comments are boilerplate, conclusory statements without any supporting data or analysis.

59. Furthermore, Respondent failed to use recognized methods or techniques because he failed to use comparables with gas production. If there were no comparables with similar gas production he failed to adjust for gas production. Either way, Respondent failed to use recognized methods and techniques. It was a significant error that at least inflated the value by at least $10,000, evidenced by his adjustment in his response to the field review. The Court failed to address how the omission of the gas wells affected the sales comparison approach. The Court should modify its PFD to reflect Respondent's failure to use recognized methods and techniques in his sales comparison approach.

7. THE COURT FAILED TO ADDRESS RESPONDENT'S VIOLATIONS OF USPAP STANDARDS 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b)

60. In its PFD the Court failed to address the Petitioners allegations of violations of 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b). Petitioner alleged, "USPAP Standards 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b) – For the reasons detailed above, Respondent produced a deliberately misleading appraisal report for the Enon property that contained several substantial errors of omission or commission by choosing not to employ correct methods and techniques. This

resulted in an inflated appraisal report that was not credible or reliable." (First Amended Statement of Charges 7 ¶ 15(o)).

61. USPAP Standard 1-1(a), "In developing a real property appraisal, an appraiser must . . . be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal." As an experience certified general appraiser, Respondent has either disregarded the recognized methods or techniques or is unaware of the recognized methods and techniques. Respondent did not provide the data to support his opinions and conclusions.

62. USPAP Standard 1-1(b) provides, "In developing a real property appraisal, an appraiser must . . . not commit a substantial error of omission or commission that significantly affects an appraisal." As the evidence shows, Respondent committed significant errors of omission and/or commission that significantly affected the appraisal. Respondent made substantial errors of omission and/or commission in the neighborhood section, which includes market trends and sales prices. Respondent omitted necessary data and analysis supporting both the cost approach and the sales comparison approach. These errors or omission and/or commission are significant because the approaches are used to determine value.

63. USPAP Standard 1-1(c) provides, "In developing a real property appraisal, an appraiser must . . . not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the

credibility of those results." This Rule shows USPAP contemplates the errors in the aggregate and not just in isolation. As the evidence presented at the hearing and above shows, Respondent made a number of errors, omissions and misrepresentations in his appraisal of the Enon property. Respondent made errors, omissions and misrepresentation in the neighborhood section of his report, the sales comparison approach, the cost approach and the reconciliation. Individually these errors might not significantly affect the results. However, these errors taken together and in the aggregate affect the credibility of the results.

64. USPAP Standard 2-1(a) provides, "Each written or oral real property appraisal report must . . . clearly and accurately set forth the appraisal in a manner that will not be misleading." As discussed above, Respondent set forth opinions and conclusions that are not supported by data. Because of Respondent's errors, contradictions and omissions, Respondent did not clearly and accurately set forth an appraisal. Most importantly, his appraisal was misleading because his approaches to value are not credible and not supported by the market data.

65. USPAP Standard 2-1(b) provides, "Each written or oral real property appraisal report must . . . contain sufficient information to enable the intended users of the appraisal to understand the report properly." As discussed above, Respondent's Enon property report does not contain sufficient information. Respondent did not disclose gas wells. The information presented in the neighborhood section, sales comparison approach and cost approach are not supported by the market data and contain significant errors and omissions.

66. In light of the evidence presented above, the Court should modify its PFD and address Petitioner's allegations of USPAP Standards 1-1(a), 1-1(b), 1-1(c), 2-1(a) and 2-1(b) violations.

8. THE COURT DID NOT ADDRESS ALL OF THE MATERIAL MISREPRESENTATIONS AND OMISSIONS OF MATERIAL FACT

67. In its analysis, the Court stated, "Because the omission of the gas wells affected the credibility of the report, the ALJ finds that it was an omission of material fact, in violation of the Board Rule." However, the Court did not address all of the material misrepresentations and omissions of material fact alleged in Petitioner's Amended Statement of Charges.

68. On the Enon property, Petitioner alleged the following material misrepresentations and omissions of material fact:

a. Misrepresenting the site description and improvements description and omitting significant and material information regarding the site description;
b. Omitting significant and material information concerning neighborhood boundaries, economic supply and demand, and market area trends. Respondent misrepresented the Enon property's area as stable, which misled the users of his appraisal report;
c. Omitting significant and material information concerning the mineral lease, easements, and royalty income;
d. Misrepresenting the Enon property's correct zoning classification;
e. Omitting significant and material information needed to develop an opinion of the highest and best use;
f. Fabricating and misrepresenting the cost approach;
g. Omitting documentation from his work file necessary to support his analysis, opinions and conclusions for items such as site value determination, cost of improvements, accrued depreciations, and comparable sales analysis;
h. Omitting any explanation or support for the exclusion of the income approach;
i. Omitting any income approach and an analysis of the property's income producing potential, and the impact, if any, on market value; and,

j. Omitting any supporting rationale and discussion regarding his analysis opinions and conclusions made in the appraisal.

(Petitioner's First Amended Statement of Charges 9-10 ¶ 20(a)-(j)). These material omissions and misrepresentations concerned material facts, which are vital to the client's lending decision and the FHA mortgage insurance. The Court should modify its PFD to address Petitioner's allegations of both material misrepresentations and material omissions of material fact.

8. RESPONDENT DID NOT SEND THE BOARD THE ACTUAL REPORT RECEIVED BY THE CLIENT

69. Also, the Court failed to address Petitioner's allegations that "Respondent made material misrepresentations in his response to the Complaint, by submitting a false and fabricated copy of his appraisal report for the Enon property and attempted to deceive Board staff that his altered appraisal report was the actual report submitted to his client. He engaged in this conduct knowing these representations were not true." (First Amended Statement of Charges 9 ¶ 18). The evidence is clear the report received by the client (Petitioner's Ex. 20-HH) was not submitted to the Board (Petitioner's Ex. 5-E) and Respondent made material misrepresentations in his response. There was no evidence in the business records corroborating Respondent's testimony that he sent the December 28, 2012 report to the client or Valore. Even though there was no evidence showing either the client or Valore management received the report submitted to the Board, the Court stated the evidence did not establish "that Respondent sent a report to the Board which was not sent to the client." (PFD 33 ¶ 2). However, the allegations focus on the material misrepresentations

to the Board, not if the client or Valore possibly received the December 28, 2010 report he drafted in response to the appraisal review. The Court did not address the misrepresentative response and report sent to the Board (Petitioner's Ex. 5) that did not contain the original November 19, 2010 report (Petitioner's Ex. 20).

70. Petitioner had to request the actual report from Respondent's client. There was uncontroverted evidence, the report received by the client, and subject of the complaint, was never sent to the Board, either in his response or in discovery. The notice of complaint sent to the Respondent (Petitioner's Exhibit 5-C, Bates 00486-487) states, "Include a copy of any appraisal report(s) made the subject of this complaint . . . Include a complete copy of the work file on each appraisal made subject of the complaint." The evidence also shows Respondent was familiar with the complaint response process because he had received at least four prior notices of complaints. (Petitioner's Exhibit 1, Bates 0001). The evidence clearly showed Respondent's response to this notice of complaint only contained the false report and no other appraisal reports or drafts. (Petitioner's Exhibit 5, Bates 00483-00573). This was a material misrepresentation of material facts to the Board. Petitioner had to request these material facts from Respondent's client. No disclosure, including discovery, was made to the Board about alternative reports and the falsely dated December 28, 2010 report was represented as the actual November 19, 2010 report.

71. The Court did not address allegations of material misrepresentations of material fact that Respondent made in his response to the Board. The Court should modify its PFD to reflect these material misrepresentations to the Board.

C. RESPONDENT'S VIOLATIONS WERE WILLFUL OR AT LEAST DONE IN A GROSSLY NEGLIGENT MANNER

72. In addition to deliberate violations, Petitioner pled that the Respondent's violations of USPAP, the Act and Board rules "were at least done with gross neglect." (Petitioner's First Amended Statement of Charges 3 ¶ 13). The Court did not address if Respondent violations were done with gross neglect. In light of the exceptions and evidence above, the Court should modify its PFD to address the allegations of gross neglect. Respondent is an experienced appraiser with previous disciplinary sanctions and previous remedial education he is aware of the rules and appraiser professional standards. Respondent's violations of USPAP, the Act and Board Rules are evidence of a conscious disregard and/or indifference to the public and intended users of his appraisals. Respondent's violations rise above ordinary negligence and constitute a reckless indifference to his intended users and the public.

D. RESPONDENT'S REPEATED VIOLATIONS AND ACTIONS DEMONSTRATE A SERIOUS INABILITY OR UNWILLINGNESS TO COMPLY AND ARE AT LEAST EVIDENCE OF A SERIOUS BUT REMEDIABLE DFEICIENCY

73. In its PFD the Court stated, "Based on the evidence and the findings, the ALJ finds that the above listed violations, collectively, do not constitute evidence of a serious inability or unwillingness to comply." (PFD 56). The Court also notes, "Respondent testified that he has changed his workfile and other documentation habits, based on what he has learned from this process and from recent courses." (PFD 57). Aside from testifying he has improved his workfile for the cost approach, Respondent did not testify how he has improved any of his

other deficiencies. In fact, in Respondent's first agreed order he was previously sanctioned for "No supporting cost data, local contractor data; Marshall & Swift calculations were not reported and were not in the workfile," and he has still continued omitting this information from his workfile. (Petitioner's Ex. 23-VV, Bates 00908). This is evidence of a serious inability and/or unwillingness to comply; he was previously sanctioned for the one item he testified he has improved. Furthermore, Respondent maintained there was nothing wrong with either of his appraisal reports. At the beginning of the hearing, Respondent testified:

> Q. Okay. It takes a lot to become a certified general appraiser?
> A. It does.
> Q. And in that vein would you say you were a knowledgeable appraiser, Mr. Dodson?
> A. Yes, I would
> Q. And are you familiar with the allegations against you? Have you gone over that?
> A. I have.
> Q. Okay. Do you agree with any of those allegations? Maybe we can not have to argue those.
> A. Well, I think if we didn't have to argue it, we wouldn't be here.
> Q. Okay. So you would just agree with – you disagree with every single allegation, Mr. Dodson?
> A. I do.

(Hr'g Tr. 43). At the end of the hearing, after going through each allegation, Respondent testified:

> Q. Your testimony at the beginning of this trial was that you hadn't made any USPAP violations. Is that right?
> A. That's correct.
> . . .
> Q. So but basically, you generally think most of your work is compliant?
> A. I do.

(Hr'g Tr. 834 & 839). This clear evidence of either is unwillingness or inability to comply. Respondent was unable or unwilling to concede his deficiencies. Other than the workfile relating to the cost approach, Respondent did not testify or put any evidence that he was able or willing to improve on his deficiencies.

74. Furthermore, Respondent testified at the end of the hearing that his appraisal reports were Restricted Use reports. (Hr'g Tr. 875). This demonstrates that he does not know or was trying to mislead the Court about the fundamental type of report he is submitting to lending institutions and the FHA. If Respondent does not know the type of report he is preparing then he doesn't even know what standards apply. This is evidence of a serious deficiency that demonstrates his unwillingness or inability to comply.

75. Due to his unwillingness or inability to comply Respondent has confused the record in this case. In addition to misrepresenting the type of his report, Respondent generally denied the vast majority allegations with no supporting evidence. In some cases, as discussed above, Respondent referenced documents in his workfile which failed to support his assertion and contradicted his testimony.

76. In his first agree final order, among other violations, Respondent was sanctioned for: the site description and size were inadequately and incorrectly reported; zoning was incorrectly reported; highest and best use was not summarized with support and rationale; failing to use comparables with flood plain encumbrance, impact on value not discussed nor adjustments applied; lot sales data were not presented, no support for lot value; Marshall & Swift cost

calculations were not reported and were not in the workfile; no comments or explanations were given for taking an "age/life" depreciation of 50%; and signing an appraisal not produced by the person. (Petitioner's Ex. 23-VV, Bates 00907-8). Also, Respondent agreed to comply with all provisions of the Act, the Rules of the Board and USPAP. (Petitioner's Ex. 23-VV, Bates 00909). Respondent's failure to comply as agreed and correct the same serious deficiencies demonstrates a serious inability or unwillingness to comply

77. In his second agreed order, amongst other violations, Respondent was sanctioned for: did not address highest and best use of the property as potential commercial property; scope of work not adequately addressed; did not accurately document zoning; did not employ complete and recognized methods and techniques in his cost approach; did not employ recognized methods and techniques, including not analyzing and reconciling comparable sales data, not making adjustments for site; and submitting a deficient draft report. (Petitioner's Ex. 23-WW, Bates 00914-15). Again, Respondent agreed to comply with all provisions of the Act, the Rules of the Board and USPAP. (Petitioner's Ex. 23-WW, Bates 00916). Respondent's failure to comply as agreed and correct the same serious deficiencies demonstrates a serious inability or unwillingness to comply

78. The fact Respondent did not disclose the gas wells is itself a serious but remediable deficiency. The fact Respondent altered a photograph to deceive the intended users is itself a serious but remediable deficiency. The fact Respondent did not submit the actual November 19, 2010 report to the Board is itself a

serious but remediable deficiency. Respondent's violations taken together demonstrate a serious inability and/or unwillingness to comply. Considering the repeated violations, the evidence presented does not indicate Respondent will address his deficiencies. Furthermore, the fact that Respondent was disciplined for the same violations demonstrates his serious inability and/or unwillingness to comply.

III. PRAYER

79. Accordingly, Petitioner respectfully asks this Court to modify its original PFD, find Respondent has made the violations noted above and recommend revocation of Respondent's certification because he has committed violations that constitute gross negligence or willful conduct, or at least serious but remediable deficiencies. Alternatively, the Court should at least recommend Respondent be placed on a serious probated revocation or suspension so that his further real estate appraisal activities can be monitored to ensure protection of the public, due to the nature and extent of the Respondent's violations and his inability and/or unwillingness to acknowledge and remedy them.

Respectfully Submitted,

By:_____

Kyle Wolfe, TALCB Attorney
Texas Bar No. 24070872
Texas Appraiser Licensing & Certification Board
P.O. Box 12188

Austin, TX 78711-2188
Telephone: (512) 936-3625
Fax: (512) 936-3966

CERTIFICATE OF SERVICE

I certify that in accordance with TEX. OCC. CODE §§ 1103.502-1103.503, TEX. GOV'T. CODE § 2001.052, and 1 TEX. ADMIN. CODE §§ 155.103, 155.401, and 155.301 a true and correct copy of the foregoing Petitioner's Exceptions was sent via certified mail, return receipt requested, fax or hand delivery to:

Mr. Ted Whitmer
2508 Merrimac Ct.
College Station, TX 77845
Attorney for Respondent

(VIA FAX# (979) 987-2530)

On this 12th day of December, 2012

Kyle Wolfe
TALCB Attorney

FAX COVER

FROM	TO
Ted Whitmer, Attorney [Bar: 21380020]	Attn: Deputy Clerk - SOAH
2508 Merrimac Ct	Fax Number: (512) 322-2061
College Station, TX 77845	Phone: 512.475.3445
979.690.9465	
979.987.2530 (F)	William P. Clements Building
979.492.4124 (C)	300 West 15th Street, STE 504
ted@tedwhitmer.com	Austin, TX 78701
	Date: Thursday, July 5, 2012

DOCKET NO. 329-12-6477 .ALC

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	BEFORE THE STATE OFFICE
	§	
	§	OF
VS.	§	
	§	ADMINISTRATIVE HEARINGS
CLIFFORD PARVIN DODSON, JR.	§	
	§	
TX-1337922-G	§	

Dear Deputy Clerk,

I am transmitting the following document: **RESPONDENT'S RESPONSE TO PETITIONER'S EXCEPTIONS TO THE PROPOSAL OF DECISION**

For the above mentioned hearing. If you have any questions, please don't hesitate to contact my office.

Ted Whitmer, Attorney
Counsel for the Respondent

DOCKET NO. 329-12-6477 .ALC

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD	§	BEFORE THE STATE OFFICE
	§	
	§	OF
VS.	§	
	§	ADMINISTRATIVE HEARINGS
CLIFFORD PARVIN DODSON, JR.	§	
	§	
TX-1337922-G	§	

RESPONDENT'S RESPONSE TO PETITIONER'S EXCEPTIONS

TO THE HONORABLE COURT

Respondent, Clifford Dodson, through undersigned counsel, Ted Whitmer, and in accordance with 1 TEX.ADMIN.CODE §155.155, hereby files RESPONDENT'S RESPONSE TO PETITIONER'S EXCEPTIONS.

REPSONSE

Respondent thanks the court for the detail, effort, and thought put into the Proposal for Decision. The following include a summary of Respondent's position on Petitioner's Exceptions.

1. Petitioner has the burden of proof to show the court by the preponderance of the evidence that Respondent violated Uniform Standards of Professional Appraisal Practice (USPAP) or TALCB rules. Petitioner failed to prove intent in all allegations requiring a show of intent.
2. The court covered all USPAP allegations in the Proposal for Decision (PFD) and no modification is necessary.

3. Petitioner would have the court retry the case. The court has both heard and weighed the evidence that is presented in the Exceptions. Your honor, you have done an excellent job presenting your findings and no changes are necessary.
4. Petitioner can always go before the TALCB and offer their opinion to the discipline of Respondent. This court does not have to do anything for the TALCB to take the recommendation and change them.
5. Petitioner reviewed the wrong "report" and failed to obtain the report that should have been reviewed. Petitioner failed to determine the proper area of USPAP to plead against Respondent. The reports were signed as Restricted Use Repots governed by Standard Rule 2-3(c) and were reviewed and pled under the incorrect Standard Rule 2-2(b). The court could find no violations on any USPAP provision that is pled under that provision.
6. The court properly ruled that an appraiser can violate a USPAP provision and it have little or no affect on value or credibility. Ms. Jacob testified that USPAP does not require perfection.
7. Petitioner had questionable investigative techniques and offered an "expert" that did not understand USPAP. Furthermore, the "expert" testified he held USPAP against the Respondent yet did not hold himself to USPAP. The court properly weighed the evidence by Mr. McComb.
8. Respondent will not go through each point brought up by Petitioner. Your honor has spent enough time on this case.

PRAYER

The PFD on the first page summarizes the discipline and sets forth a $3,000 administrative penalty. Page 64 recommends a $3,500 penalty. Respondent asks that you reduce the recommendation of the penalty to $500 (or clarify the amount for the TALCB you recommend). Respondent has been out of work for some time because of the actions of this Enforcement Division and because of filing a 40+ page Exceptions is requiring Respondent to pay more in legal fees to answer this insult to the court.

Respondent is asking the court to reduce the administrative penalty and recommend the original mentorship to the TALCB. This program has served the industry well and offered much needed one-on-one education from some of our industry best appraisers.

Respondent asked for an Expedited Ruling some time ago. That was not possible at the time. Respondent is asking that you deny the Exceptions as soon as it is practically possible. Respondent is asking that you deny the Petitioner's Exceptions and allow legal counsel to take this case back to the Enforcement Committee where I am confident the committee will reinstate Respondent, Mr. Dodson.

Respectfully Submitted,

By:_____

Ted Whitmer, CRE CCIM MAI Attorney
CERTIFIED USPAP INSTRUCTOR
Texas Bar No. 21380020
2508 Merrimac Court
College Station, Texas 77845
(979) 690-9465 (office)
(979) 987-2530 (fax)
(979) 492-4124 (cell)
Email: ted@tedwhitmer.com

Certificate of Service
Per 1 TEX. ADMIN. CODE §155.03 Service of Documents on Parties

I, Ted Whitmer, certify that on the following date, a true and correct copy of this document, Respondent's First Motion for Continuance, has been sent to the Texas Appraiser Licensing and Certification Board, Kyle Wolfe, TALCB Attorney, VIA Fax No. (512) 936-3966

Ted Whitmer, Attorney for Respondent
Wednesday, December 19, 2012

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

DATE: **12/27/2012**

NUMBER OF PAGES INCLUDING THIS COVER SHEET: **6**

REGARDING: **EXCEPTIONS LETTER (BY ALJ)**

DOCKET NUMBER: **329-12-6477.ALC**

JUDGE Joanne Summerhays

FAX TO:	FAX TO:
TED WHITMER	(979) 987-2530
TROY BEAULIEU (TEXAS APPRAISER LICENSING & CERTIFICATION BOARD)	VIA EMAIL
DOUGLAS E. OLDMIXON (TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD)	(512) 936-3809
KYLE WOLFE (TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD)	(512) 936-3966

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT MELISSA ETHRIDGE(met) (512) 475-4993

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Upload Date: 20121227112230 Account Number: 10 Upload Description: 12-6477 ExceptionsLetter

State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

December 27, 2012

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

VIA FACSIMILE NO. 512/936-3809

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

Dear Mr. Oldmixon:

This letter responds to the exceptions to the proposal for decision (PFD) filed by Staff on December 12, 2012. Respondent filed a response to the exceptions and pointed out a clerical error on page 1, where I erroneously stated that I recommended a penalty of $3000. As I stated correctly on page 57, I recommend a penalty of $3500 and explain that it is based on one $1,500 penalty for failure to use due care in determining the existence of the gas wells, and two $1,000 penalties for failing to correctly analyze the market conditions of the Enon property and failing to correctly analyze the best and highest use of the Enon property. The amount recommended is correctly stated in the Recommendation paragraph on page 64.

Staff Exception No. A. 1:

"Petitioner did not plead inflation on the Wesley Property."

Response:

The ALJ would delete the words in Section II.E.1.a., "and inflate the value in the appraisal report" and "or inflated." The ALJ would amend Finding of Fact No. 33 to state, "Respondent did not attempt to reach a predetermined value of the Wesley property."

Staff Exception No. A. 2:

"The Court did not address all of the USPAP Ethics (Conduct) violations."

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

Response:

Staff contends that the ALJ erred in failing to address an allegation that Respondent violated the USPAP Ethics standard on conduct by "performing an assignment in a grossly negligent manner." The ALJ reviewed the pleadings and was unable to find an allegation that Respondent violated the Ethics rule by performing the Wesley assignment in a grossly negligent manner. Rather the pleadings allege only that, in regard to the Wesley property appraisal, Respondent violated the Ethics rule "because he communicated assignment results in a misleading manner with the intent to deceive and reach a predetermined value." The ALJ is precluded from addressing issues that were not addressed in the notice of hearing. Therefore, the ALJ recommends that this exception not be adopted.

Staff Exception No. A. 2a:

"Respondent submitted an altered MLS photo to the intended users."

Response:

The ALJ addressed this violation in proposed Finding of Fact 25: "Respondent utilized photographs of comparables from MLS listings in his report, one of which was photo-shopped to remove the for sale sign from the picture, in violation of FHA requirements." The ALJ weighed all the evidence and testimony submitted to determine that this violation did not rise to the level of an Ethics violation under USPAP. Ms. Jacob did not testify that the use of MLS photos was an Ethics violation. Ms. Jacob agreed that Respondent should have taken his own photographs of the comparable properties under *FHA guidelines*. She stated that this requirement was not a specific requirement set out in USPAP, but would come under the Scope of Work requirement of USPAP. No Scope of Work violation was alleged in regard to the Wesley property.

Staff Exception No. A. 2b:

"Respondent submitted MLS photos to intended users."

Response:

See Response to Exception 2a.

Staff Exceptions No. A. 3 -7, 9 [Not restated]:

Response:

The exceptions should not be adopted. The ALJ weighed the testimony and evidence presented by all witnesses to reach the findings of fact and conclusions of law proposed.

Staff Exception No. A. 8:

"The Court failed to address Respondent's violations of USPAP Standards 1-1(a),(b),and (c) and 2-1(a) and (b)."

Response:

In Section IV. 16. (j.), under the heading *USPAP Standards 1-1(a), (b), and (c) and 2-1(a) and (b)*, Staff alleged, "For the reasons detailed above, Respondent produced a deliberately misleading appraisal report that contained several substantial errors of omission or commission by choosing not to employ correct methods and techniques. This resulted in an appraisal report that was not credible or reliable." The ALJ addressed these allegations in Findings of Fact 20, 31, 32, and 33. The ALJ specifically referenced Standards 1-1(a) or (b) in Sections II.E.1.d, e, and f. Staff's alleged violations are discussed generally within the PFD in relation to the evidence presented, and findings are made regarding those allegations, even if the specific USPAP Standard sections are not cited.

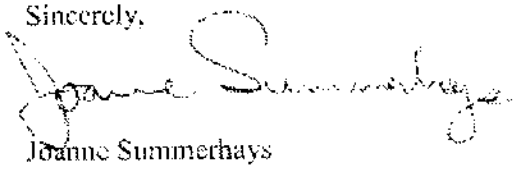
Staff Exceptions No. B. 1-9, C., and D.[Not restated]:

Response:

The exceptions should not be adopted. The ALJ weighed the testimony and evidence presented by all witnesses to reach the findings of fact and conclusions of law proposed.

Thank you for the opportunity to review and address the exceptions filed by Staff.

Sincerely,



Joanne Summerhays
Administrative Law Judge

JS/mle
Enclosure
xc: Kyle Wolfe, Staff Attorney, 1700 N. Congress Avenue, Suite 400, Austin, TX 78701 – **VIA FACSIMILE NO. 512/936-3966**
Ted Whitmer, Attorney at Law, 2508 Merrimac Court, College Station, TX 77845 – **VIA FACSIMILE NO. 979/987-2530**
Troy Beaulieu, TALCB, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 – **VIA ELECTRONIC MAIL**

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
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SERVICE LIST

AGENCY: **Real Estate Commission, Texas (REC)**

STYLE/CASE: **CLIFFORD P. DODSON, Jr.**

SOAH DOCKET NUMBER: **329-12-6477.ALC**

REFERRING AGENCY CASE:

STATE OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ Joanne Summerhays

REPRESENTATIVE / ADDRESS

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ATTORNEY
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CLIFFORD PARVIN DODSON, JR.

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TEXAS APPRAISER LICENSING AND CERTIFICATION
BOARD

Melissa Ethridge

From: XMediusFAX@soah.state.tx.us
Sent: Thursday, December 27, 2012 11:21 AM
To: Melissa Ethridge
Subject: Broadcast Completed: EXCEPTIONS LETTER; 329-12-6477
Attachments: 0B74FC76-2D41-4CA4-929D-1C9C0DA92BBA-6298-BR.pdf

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Success	Thursday, December 27, 2012 11:19:31 AM CT	6	78		9363809	0
Success	Thursday, December 27, 2012 11:19:36 AM CT	6	80		9363966	0
Success	Thursday, December 27, 2012 11:20:34 AM CT	6	141	NEXTIVAFAX	19799872530	0

AGENDA ITEM 15

Report by Enforcement Committee.

TALCB Board Members
Luis F. De La Garza, Jr
Chair

Walker Beard
Vice Chair

Sheryl R. Swift
Secretary

Keith Kidd

Laurie C. Fontana

Mark A. McAnally

Shannon K. McClendon

Donna J. Walz

Jamie S. Wickliffe

Douglas E. Oldmixon
Commissioner

Enforcement Committee Report February 15, 2013

Members: Jamie Wickliffe, Chair, Laurie Fontana and Shannon McClendon

Since the November Board meeting, the Enforcement Committee held a full day committee meeting on December 6, 2012.
Committee Members in attendance: Jamie Wickliffe and Laurie Fontana.
Staff in attendance: Kerri Galvin, General Counsel, Troy Beaulieu, Managing Attorney, Kyle Wolfe, Staff Attorney, and Jeff Stawmyer, Chief Investigator.
Public in attendance: Bobby Crisp, Lee Rogers, Joe Woller representing FACT, and Ted Whitmer.

The Committee continued working with Board staff to clarify the process and procedures for complaint processing and resolution. The committee considered proposals to revise the penalty matrix to make it more encompassing and easier to understand and apply, to expand on guidelines for compliance with Agreed Orders, to revise the jurisdictional exception rule, to expand and advertise the mentorship program, to clarify the informal conference process and to study the possibility of reimbursement of litigation costs by respondents. The Committee appreciates the hours spent by staff and the members of the public who came to the committee meeting and participated in the discussions.

Specific recommendations that the Enforcement Committee supports that are on the agenda for action today are:

- Withdrawal of the amendments to Rule 153.24 concerning Complaint Processing that was proposed at the last meeting so that they can be re-proposed together with the remainder of the rule regarding revisions to the penalty matrix;
- Adoption of amendments to Rule 157.10 prescribing that costs of a hearing transcript be split between the parties when the transcript is ordered by a SOAH judge; and
- Adoption of additional policy guidelines for staff to follow when preparing Agreed Orders with probated revocation or suspension and notice procedures when a respondent is out of compliance.
- The Committee also facilitated an effort to reach out to AQB certified USPAP instructors in Texas to see if they were interested in becoming a mentor and judging by the increase in mentor applications, this effort appears to have been successful.

Items that the Committee is working on include:

- Proposal of rules regarding the Board's policies on alternative dispute resolution;
- Preparation of a flow chart of the complaint process for the website;
- Review the jurisdictional exception for appraisal reviews for staff and PIC members; and
- Research and consider requiring reimbursement of litigation costs in certain cases.

AGENDA ITEM 16

Staff reports by Commissioner, Deputy Commissioner, and Division Directors, which may include reports on processes, monthly activities and statistical data for communications, licensing, education, information technology, staff services, and enforcement; current topics related to regulation of real estate appraisers; discussion of topics raised by monthly reports; introduction of new employees; and questions by Board members to staff regarding issues raised by the staff reports.

ACTIVE CERTIFICATIONS AND LICENSES

Fiscal Year	End of MONTH	GENERAL	RESIDENTIAL	LICENSE	PROV.LIC.	Total G,R,L,&P	*G,R,L,P Change*	TRAINEE	*Trainee Change*	TOTAL	*Total Change*
FY-2008	Sept07	2,268	2,403	942	53	5,666	50	1,166	*-25*	6,832	*25*
	Oct 07	2,281	2,419	951	52	5,703	37	1,196	*30*	6,899	*67*
	Nov 07	2,291	2,436	950	55	5,732	29	1,214	*18*	6,946	*47*
	Dec 07	2,300	2,456	951	59	5,766	34	1,180	*-34*	6,946	*0*
	Jan 08	2,301	2,477	956	65	5,799	33	1,162	*-18*	6,961	*15*
	Feb 08	2,304	2,479	952	64	5,799	0	1,136	*-26*	6,935	*-26*
	March 08	2,296	2,481	944	62	5,783	-16	1,112	*-24*	6,895	*-40*
	April 08	2,308	2,491	933	60	5,792	9	1,087	*-25*	6,879	*-16*
	May 08	2,308	2,497	925	62	5,792	0	1,048	*-39*	6,840	*-39*
	June 08	2,311	2,505	918	61	5,795	3	1,009	*-39*	6,804	*-36*
	July 08	2,321	2,506	915	62	5,804	9	994	*-15*	6,798	*-6*
	Aug 08	2,321	2,502	912	62	5,797	-7	961	*-33*	6,758	*-40*
FY-2009	Sept08	2,328	2,508	903	61	5,800	3	905	*-56*	6,705	*-53*
	Oct 08	2,344	2,519	897	62	5,822	22	903	*-2*	6,725	*20*
	Nov 08	2,338	2,525	888	61	5,812	-10	843	-60	6,655	*-70*
	Dec 08	2,342	2,535	887	62	5,826	14	845	2	6,671	*16*
	Jan 09	2,336	2,534	874	63	5,807	-19	840	-5	6,647	*-24*
	Feb 09	2,335	2,532	862	60	5,789	-18	816	-24	6,605	*-42*
	Mar 09	2,338	2,531	855	57	5,781	-8	786	*-30*	6,567	*-38*
	Apr 09	2,345	2,521	840	55	5,761	-20	729	-57	6,490	*-77*
	May 09	2,346	2,504	826	51	5,727	-34	693	-36	6,420	*-70*
	Jun 09	2,343	2,497	815	50	5,705	-22	679	-14	6,384	*-36*
	Jul 09	2,337	2,488	795	47	5,667	-38	661	-18	6,328	*-56*
	Aug 09	2,341	2,486	787	47	5,661	-6	644	*-17*	6,305	*-23*
FY-2010	Sept09	2,345	2,496	779	44	5,664	3	635	*-9*	6,299	*-6*
	Oct 09	2,347	2,499	773	44	5,663	-1	628	-7	6,291	-8
	Nov 09	2,352	2,505	758	44	5,659	-4	614	-14	6,273	-18
	Dec 09	2,354	2,508	750	41	5,653	-6	609	-5	6,262	-11
	Jan 10	2,352	2,507	747	34	5,640	-13	608	-1	6,248	-14
	Feb 10	2,351	2,508	733	28	5,620	-20	613	5	6,233	-15
	Mar 10	2,353	2,503	722	28	5,606	-14	623	10	6,229	-4
	Apr 10	2,358	2,500	712	28	5,598	-8	599	-24	6,197	-32
	May 10	2,361	2,498	707	27	5,593	-5	592	-7	6,185	-12
	Jun 10	2,360	2,500	694	28	5,582	-11	576	-16	6,158	-27
	Jul 10	2,355	2,490	683	28	5,556	-26	564	-12	6,120	-38
	Aug10	2,358	2,488	671	27	5,544	-12	547	-17	6,091	-29
FY-2011	Sept10	2,366	2,486	651	23	5,526	-18	614	67	6,140	49
	Oct-Dec10*										
	Jan 11**	2,361	2,470	626	21	5,478	-48	520	-94	5,998	-142
	Feb 11	2,370	2,472	628	21	5,491	13	534	14	6,025	27
	Mar 11	2,381	2,482	630	22	5,515	24	553	19	6,068	43
	Apr11	2,379	2,486	629	22	5,516	1	561	*8*	6,077	*9*
	May11	2,368	2,456	596	22	5,442	-74	518	*-43*	5,960	*-117*
	Jun 11	2,374	2,458	598	22	5,452	10	528	*10*	5,980	*20*
	Jul 11	2,379	2,463	604	22	5,468	16	538	*10*	6,006	*26*
	Aug 11	2,396	2,476	605	23	5,500	32	549	*11*	6,049	*43*
FY-2012	Sept11	2,403	2,480	606	23	5,512	12	567	18	6,079	*30*
	Oct 11	2,408	2,486	606	23	5,523	11	574	7	6,097	18
	Nov11	2,417	2,484	614	23	5,538	15	584	*10*	6,122	*25*
	Dec 11	2,369	2,414	543	13	5,339	-199	500	*-84*	5,839	*-283*
	Jan 12	2,376	2,412	542	14	5,344	5	520	*20*	5,864	*25*
	Feb 12	2,358	2,387	527	13	5,285	-59	498	*-22*	5,783	*-81*
	Mar 12	2,364	2,382	522	13	5,281	-4	498	*0*	5,779	*-4*
	Apr12	2,371	2,381	518	13	5,283	2	496	*-2*	5,779	*0*
	May12	2,369	2,380	517	13	5,279	-4	498	*2*	5,777	*-2*
	Jun 12	2,375	2,381	513	11	5,280	1	502	*4*	5,782	*5*
	Jul 12	2,365	2,376	513	10	5,264	-15	512	*14*	5,776	*-1*
	Aug 12	2,371	2,385	515	10	5,281	17	515	*3*	5,796	*20*
FY-2013	Sept12	2,382	2,388	512	9	5,291	10	534	19	5,825	*29*
	Oct 12	2,385	2,389	509	8	5,291	0	531	-3	5,822	*-3*
	Nov12	2,386	2,387	509	7	5,289	-2	534	3	5,823	*1*
	Dec 12	2,390	2,381	501	6	5,278	-11	550	16	5,828	*5*

* Totals for October thru December 2010 are not available due to system conversion.

**Corrected totals: Previous totals on January report included licenses that should have been expired. Expired program had not been run.

APPRAISAL MANAGEMENT COMPANY REGISTRATIONS

	Month	Paper Apps. Received	Online Apps. Received	Total Apps. Received	Total AMC Registrations Issued
FY-2012	Mar-12	18	4	22	0
	Apr-12	16	5	21	0
	May-12	25	16	41	44
	Jun-12	53	14	67	65
	Jul-12	13	6	19	53
	Aug. 12	5	1	6	7
FY- 2013	Sep-12	0	1	1	3
	Oct-12	0	3	3	5
	Nov-12	2	1	3	1
	Dec-12	1	2	3	4
TOTALS		**133**	**53**	**186**	**182**

12/31/2012

Education & Licensing Services Division - TALCB

Fiscal Year Comparison

Fiscal Year - 2013
DECEMBER

	This YTD 9/12 - 12/12	Last YTD 9/11 – 12/11	Change Count	Change Percent
Original Applications Received				
Certified General Applications	28	29	-1	-3.45%
Certified Residential Applications	30	28	2	7.14%
State Licensed Applications	12	13	-1	-7.69%
Appraiser Trainee Applications	65	46	19	41.30%
Non-Residential Temporary Applications	97	95	2	2.11%
Total Original Applications	232	211	21	9.95%
Licenses Issued from Original Applications				
Certified General Licenses	36	39	-3	-7.69%
Certified Residential Licenses	46	47	-1	-2.13%
State Licensed	19	23	-4	-17.39%
Appraiser Trainee Licenses	63	48	15	31.25%
Non-Residential Temporary Licenses	92	97	-5	-5.15%
Total Licenses from Original Applications	256	254	2	0.79%
Licenses Issued from Renewal Applications				
Certified General Renewals	362	338	24	7.10%
Certified Residential Renewals	354	385	-31	-8.05%
State Licensed Renewals	101	87	14	16.09%
Appraiser Trainee Renewals	146	120	26	21.67%
Total Renewal Licenses Issued	963	930	33	3.55%
Licenses Issued from Reinstatement Applications				
Certified General Reinstatements	8	5	3	60.00%
Certified Residential Reinstatements	3	1	2	200.00%
State Licensed Reinstatements	3	1	2	200.00%
Appraiser Trainee Reinstatements	19	11	8	72.73%
Total Reinstatement Licenses Issued	33	18	15	83.33%

Examination Activity - Fiscal Year 2011-2013

YEAR-TO-DATE RESULTS: SEPTEMBER thru DECEMBER 2012	State Licensed	Certified Residential	Certified General	Overall Pass Rate	Overall Failure Rate
Examinations Passed	13	14	11	38	
Examinations Failed	5	1	1		7
Examinations Taken	18	15	12	45	45
Examination Pass Rate (%)	72.22%	93.33%	91.67%	84.44%	15.56%

All examination types	
Total first time candidates:	35
Total repeat candidates:	10
Total pass:	38
Total fail:	7
Total examinations taken:	45

EXAMINATION ACTIVITY

FISCAL YEAR-TO-DATE COMPARISON
DECEMBER

	Sept. 2012 – Dec. 2012 Pass Rate	Sept. 2010 – Dec. 2011 Pass Rate	Difference
Certified General Appraiser	91.67%	61.54%	+30.13
Certified Residential Appraiser	93.33%	55.56%	+37.77
Licensed Appraiser	72.22%	60.87%	+11.35
Overall Appraiser Pass Rate	84.44%	58.33%	+26.11

Information Technology Services Division

Electronic Information Outlet Statistics

As of December 2012

World Wide Web	Latest Fiscal 3 Mo	Prior Yr Fiscal 3 Mo	Total Fiscal YTD	Total Prior Fiscal YTD
Total Pages Viewed	409,237	218,920	504,156	290,247
Total Monthly Unique Visitors	22,167	14,744	28,690	19,628

Online Transactions	Total Latest 3 Mo	Online Latest 3 Mo	Online Percent	Fiscal YTD Online Percent	Prior Fiscal YTD Online Percent
Applications	**11**	**7**	**63.6%**	**63.6%**	**0.0%**
AMC	11	7	63.6%	63.6%	0.0%
Renewals	**518**	**469**	**90.5%**	**78.2%**	**90.4%**
Certified General Appraiser	267	236	88.4%	86.0%	87.9%
Certified Residential Appraiser	251	233	92.8%	85.5%	92.5%

AMC Panel:	Last 3 Months	FY YTD
Invitations	1211	2586
Removals	32	59

Staff & Support Services Division

TALCB Budget Status Report

December 2012

8/12 = 66.7%

Expenditure Category	Budget FY2013	Expenditures	Balance	Budget % Remaining	Comments
Salaries & Wages	$913,500	$262,816	$650,684	71.2%	
Employee Benefits	258,900	76,233	182,667	70.6%	Includes BRP
Other Personnel Costs	35,500	8,370	27,130	76.4%	
Professional Fees & Services	135,000	30,218	104,782	77.6%	
Consumables	8,400	1,760	6,640	79.0%	
Utilities	720	75	645	89.6%	
Travel	27,000	7,500	19,500	72.2%	
Office Rent	97,800	48,854	48,946	50.0%	Lease requires two payments annually. The next one will be due March 1.
Equipment Rental	8,800	2,507	6,294	71.5%	
Registration & Membership	10,850	1,879	8,971	82.7%	
Maintenance & Repairs	13,800	3,273	10,528	76.3%	Versa Maintenance
Reproduction & Printing	1,500	37	1,463	97.5%	
Contract Services	33,400	15,920	17,480	52.3%	SOAH Transcripts for 329-12-6477
Postage	6,000	2,000	4,000	66.7%	
Supplies & Equipment	11,600	501	11,099	95.7%	
Communication Services	7,900	1,931	5,969	75.6%	
Other Operating Expenses	3,600	929	2,671	74.2%	
Subtotal -Operations Expenditures	**1,574,270**	**464,803**	**1,109,467**	**70.5%**	
DPS Criminal History Background Checks	3,000	1,036	1,964	65.5%	Pass through
FBI Criminal History Background Checks	0	0	0	-------	Remove budget-No statutory authority - DPS check only
Texas Online	22,000	5,590	16,410	74.6%	Pass through
Federal Appraiser Registry Fees	208,000	63,060	144,940	69.7%	Pass through
Statewide Cost Allocation Plan (SWCAP)	10,560	8,982	1,578	14.9%	No additional payments due to SWCAP
Contribution to General Revenue	30,000	10,000	20,000	66.7%	Not due until 8/31/13
Subtotal - Nonoperational Expenditures	**273,560**	**88,668**	**184,892**	**67.6%**	
Total Expenditures	**$1,847,830**	**$553,471**	**$1,294,359**	**70.0%**	

Revenue	FY2013 Projected	Revenue Collected	Revenue Remaining to be Collected	Revenue % Remaining	
License Fees	$1,257,548	$355,308	$902,240	71.7%	Certified Res. Appr. renewals down
AMCs	255,000	65,710	$189,290	74.2%	Fewer new AMCs than expected
Other Miscellaneous Revenue	9,100	3,647	$5,453	59.9%	Bulletin Fees/PSI Admin Fees
Criminal History Background Fees	0		0	-------	No Authority
TX Online	22,000	5,590	16,410	74.6%	Pass through
Federal Appraiser Registry Fees	208,000	63,060	144,940	69.7%	Pass through
Total FY13 Revenue	**$1,751,648**	**$493,315**	**$1,258,333**	**71.8%**	

	FY12 Carry Forward	Allocated Amount	Remaining to be Allocated	Carry Forward % Remaining	
AMC Revenue Carry Forward from FY12	**$377,000**	**$125,666.67**	**$251,333**	**66.7%**	**Pro-rated thru December**

Revenue Over/(Under) Expenditures & Transfers	**$280,818**	**$65,511**			**Includes AMC Carry Forward**

TALCB Standards & Enforcement Services

CASE STATUS REPORT FY 2013 as of JANUARY 28, 2013

# of Cases Received

Case Classification	FY2012	12-Sep	12-Oct	12-Nov	12-Dec	13-Jan	13-Feb	13-Mar	13-Apr	13-May	13-Jun	13-Jul	13-Aug	FYTD
Experience Audits	88	14	10	10	6	5								**45**
RFAs & Covert Complaints	8	0	0	0	0	0								**0**
Regulatory Complaints:														
AMCs	0	3	7	4	1	1								**16**
Dodd Frank	16	2	3	1	0	0								**6**
Ethics	7	3	2	1	0	0								**6**
Staff	8	0	0	0	1	1								**2**
USPAP	172	9	14	9	6	11								**49**
Other	8	1	4	0	2	0								**7**
No Jurisdiction	5	0	1	1	0	0								**2**
MCD Inquiries	7	2	0	0	0	0								**2**
Opened During Month	**319**	**34**	**41**	**26**	**16**	**18**								**135**

Total Cases Open at Beginning of Month **263**

# of Cases Closed

Case Disposition	FY2012	12-Sep	12-Oct	12-Nov	12-Dec	13-Jan	13-Feb	13-Mar	13-Apr	13-May	13-Jun	13-Jul	13-Aug	FYTD
Experience Audits	81	7	13	10	11	3								**44**
RFAs	38	4	2	12	1	0								**19**
Regulatory Complaints:														
Surrendered	47	0	0	5	0	0								**5**
Agreed Final Order	85	0	0	11	0	0								**11**
Other Disciplinary Action	16	0	0	0	0	0								**0**
Insufficient Evidence	1	0	0	0	0	0								**0**
Dismissed	216	12	37	32	24	12								**117**
No Jurisdiction	2	1	0	2	0	2								**5**
MCD Inquiries	9	0	2	0	0	0								**2**
Closed During Month	**495**	**24**	**54**	**72**	**36**	**17**								**203**

Total Cases Open at End of Month **264**

III. CASES AT LEAST 1 YR OLD:

	As of 12/22/11	As of 4/30/12	As of 7/31/12	As of 10/22/12	As of 1/28/13	Percentage Change from Reporting Period
Agreed Orders/PFD Received	18	68	7	10	7	(30%)
Awaiting Receipt of PFD	0	1	1	3	4	33%
Set for Hearing	12	15	12	12	6	(50%)
Hearing Required/Being Processed for SOAH	15	13	7	19	15	(21%)
In Negotiations	1	17	9	4	7	75%
RFA/Covert Reviews	120	72	44	42	21	(50%)
Regulatory Reviews in Investigation	142	85	81	57	43	(27%)
Sent to Peer Review Committee	9	3	7	1	7	600%
Total Cases	317	274	168	148	110	(26%)

28 January 2013

VI. TOTAL CASES OPEN AS OF 1/28/2013:

Fiscal Year	No. Pending (as of 4/30/12)		No. Pending (as of 7/31/12)		No. Pending (as of 10/22/12)		No. Pending (as of 1/28/13)		Percentage Change from Previous Reporting Period
2005	1		1		1		0		(100%)
2006	0		0		0		0		-----
2007	4		4		3		2		(33%)
2008	16	4 Reg	10	3 Reg	9	3 Reg	6	2 Reg	(33%)
		12 RFA		7 RFA		6 RFA		4 RFA	
2009	41	25 Reg	21	13 Reg	19	13 Reg	16	12 Reg	(15.8%)
		16 RFA		8 RFA		6 RFA		4 RFA	
2010	116	92 Reg	55	38 Reg	42	28 Reg	28	22 Reg	(33%)
		24 RFA		17 RFA		14 RFA		6 RFA	
2011	129	116 Reg	83	73 Reg	62	55 Reg	34	29 Reg	(25%)
		13 RFA		10 RFA		7 RFA		5 RFA	
2012	101	98 Reg	136	132 Reg	134	130 Reg	82	80 Reg	(38.8%)
		3 RFA		4 RFA		4 RFA		2 RFA	
2013	-----		-----		29	29 Reg	72	72 Reg	65.9%
						0 RFA		0 RFA	
Total	408		310		299		240		(19.4%)

28 January 2013

X. AVERAGE TIME FOR REGULATORY COMPLAINT RESOLUTION:

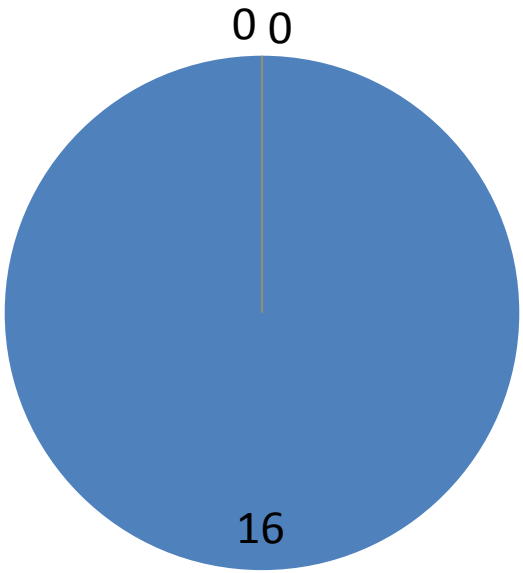
	FY2010	FY2011	FY2012	FY2013 1ST QTR	FY2013 2ND QTR	FY2013 3RD QTR	FY2013 4TH QTR	YTD2013
Average Number of Days for Case Resolution	409.52	417.16	561.8	517.6				

28 January 2013

DISCIPLINARY ACTIONS FY 2013

September 2012 – January 2013

16 Disciplinary Actions



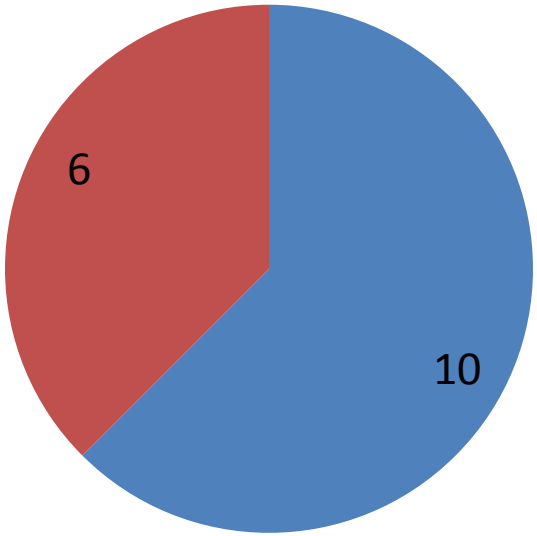
- 16 (100%) Agreed Orders w/o Auto-Revocation Clause & Surrenders
- 0 (0%) Litigated / SOAH Proposal for Decision

All cases set for hearing were resolved prior to hearing date.

- 0 (0%) Agreed Orders with Auto-Revocation Clause

Disciplinary Recidivism

- 10 (62.5%) Distinct Respondents
- 6 (37.5%) Repeat Offenders

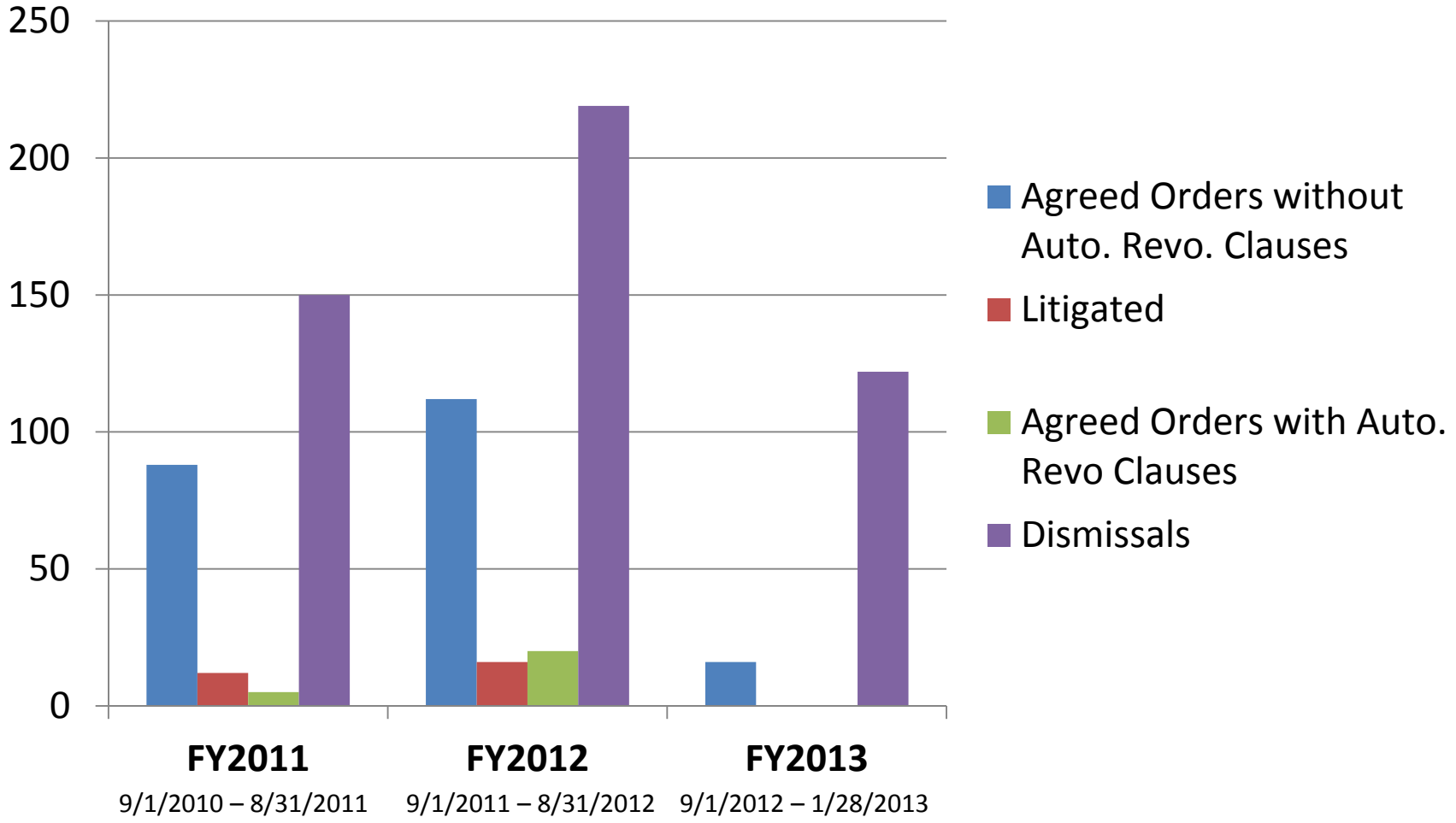


Average Number of Licensees
(September 2012 to January 2013)

6792

.1 % Recidivism Rate

Resolution Trends FY2011 – FY2013



AGENDA ITEM 17

Discussion and possible action to adopt new rule 22 TAC §155.2 concerning Work Relating to Property Tax Protests.

SUMMARY

The new rule was proposed at the November 9, 2012 meeting of the Board and published in the November 30, 2012 issue of the *Texas Register* (*37 TexReg 9428)* to clarify when the Uniform Standards of Professional Appraisal Practice (USPAP) apply to work prepared by TALCB licensees for the purposes of a property tax protest and require disclosure by TALCB licensees that are dually licensed or certified as property tax consultants, whenever they perform work for the purposes of a property tax protest under their authority as a property tax consultant.

COMMENTS

Staff received one comment from the Foundations Appraisers Coalition of Texas (FACT) in support of adoption of the rule as published.

STAFF RECOMMENDATION

Adopt rule as published.

RECOMMENDED MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit for adoption the new rule 22 TAC §155.2, concerning Work Relating to Property Tax Protests, without changes to text as previously published to the Texas Register, except for any technical or non-substantive changes required for adoption.

TITLE 22. Examining Boards
Part VIII. Texas Appraiser Licensing and Certification Board
Chapter 155 Rules Relating to Standards of Practice

§155.2 Work Relating to Property Tax Protests.

(a) The preparation of a report or other work performed as part of any property tax consulting services on behalf of another person used to protest an unequal appraisal under Subchapter C, Chapter 41, Tax Code, or Subchapter B, Chapter 42 of the Tax Code, is considered an appraisal or appraisal practice for the purposes of rule 155.1 (a) of this chapter and must conform with USPAP, if the person preparing the report or other work presents it as the product of a person licensed, certified, registered, or approved under the Texas Appraiser Licensing and Certification Act.

(b) A person licensed, certified, registered, or approved under the Texas Appraiser Licensing and Certification Act who is also certified as a property tax consultant under Chapter 1152 of the Tax Code, must include the USPAP disclaimer set out in subsection (c) of this section whenever that person prepares a report or other work used to protest unequal appraisal under Subchapter C, Chapter 41, Tax Code, or Subchapter B, Chapter 42 of the Tax Code, solely under the authority of a property tax consultant certification.

(c) The USPAP disclaimer required under this section must:

(1) be located directly above the preparer's signature;

(2) be in at least 10-point boldface type; and

(3) read as follows: USPAP DISCLAIMER: I AM LICENSED OR CERTIFIED AS A REAL PROPERTY APPRAISER AND A PROPERTY TAX CONSULTANT. THIS REPORT WAS PREPARED IN MY CAPACITY AS A PROPERTY TAX CONSULTANT AND MAY NOT COMPLY WITH THE REQUIREMENTS FOR DEVELOPMENT OF A REAL PROPERTY APPRAISAL CONTAINED IN THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP) OF THE APPRAISAL STANDARDS BOARD OF THE APPRAISAL FOUNDATION.

Foundation Appraisers Coalition of Texas

RECEIVED
TEXAS REAL ESTATE COMMISSION
JAN 22 2013
CASHIER'S SECTION
OPERATOR 15

January 9, 2013

Ms. Kerri T. Galvin
General Counsel & Deputy Commissioner
Texas Appraiser Licensing and Certification Board
1700 North Congress Avenue, 4th Floor
Austin, Texas 78701

Dear Ms. Galvin

This letter is provided to convey the position of the Foundation Appraisers Coalition of Texas (FACT) regarding the proposed rule 22 TAC 155.2 concerning work related to property tax protests provided by appraisers licensed or certified under the Texas Appraising Licensing and Certification Board (TALCB). We at FACT agree that those activities should be considered as appraisal services and should comply with the Uniform Standards of Professional Appraisal Practice (USPAP) when completed by an individual solely under a TALCB appraiser license or certification. We encourage adoption of the proposed rule.

Thank you for your consideration.

Respectfully Submitted,

JOSEPH N. WOLLER
Foundation Appraisers Coalition of Texas - President

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FACT
PO Box 202197
Austin, Tx 78720
512-828-7455 or admin@supportfact.org

AGENDA ITEM 18

Discussion and possible action regarding amendments to 22 TAC §153.24 concerning Complaint Processing.

SUMMARY

The amendments were proposed at the November 9, 2012 meeting of the Board and published in the November 30, 2012 issue of the Texas Register (*37 TexReg 9427*) to clarify that receipt of a complaint intake form by TALCB does not constitute the filing of a formal complaint against the individual named on the complaint intake form, to clearly set out all of the information that a respondent must provide to TALCB following notification of receipt of a complaint intake form, to establish a timeframe for completion of a preliminary review to determine if a violation occurred and to set out the criteria and procedure for a contingent dismissal.

COMMENTS

Staff received two comments regarding the rule as proposed. One comment was received from the Foundations Appraisers Coalition of Texas (FACT) in support of adoption of the rule as published. Staff also received a comment that wondered why the complaint intake process couldn't be like that of the State Bar grievance process. TALCB respectfully answers that TALCB did discuss the comparison with the attorney grievance process at a previous Enforcement Committee meeting and it did influence some of the revisions to the extent we could support it under TALCB's statutory provisions. The State Bar operates under a different statutory framework that sets out a distinction between an inquiry and a grievance and specifically allows it to keep grievance files confidential. The reasoned justification for the amendment is greater clarity and transparency about complaint processing at TALCB.

STAFF RECOMMENDATION

Staff recommends that the Board withdraw that rule and re-propose it for publication together with the new proposed amendments to the penalty matrix portion of the rule under Agenda Item 20. The new section regarding sanctions that the Enforcement Committee is recommending for proposal under agenda item 20 caused some revisions to be necessary to the section currently up for adoption for consistency. Further, the Texas Register will not allow agencies to

adopt amendments to one part of a rule and simultaneously propose amendments to another. Re-proposing the rule as a whole this meeting with both parts up for adoption at the Board's May meeting seems the most expedient way to proceed.

RECOMMENDED MOTION

MOVED, that staff is authorized, on behalf of this Board, to withdraw the proposed amendments to 22 TAC §153.24 concerning Complaint Processing as published in the November 30, 2012 issue of the Texas Register (*37 TexReg 9428*).

TITLE 22. Examining Boards
Part VIII. Texas Appraiser Licensing and Certification Board
Chapter 153 Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act

RULE §153.24
Complaint Processing

§153.24. Complaint Processing. ~~**A complaint must be in writing and must be signed by the complainant. Board staff may initiate a complaint.**~~

(a) Receipt of a Complaint Intake Form by the board does not constitute the filing of a formal complaint by the board against the individual named on the Complaint Intake Form. ~~**(1)**~~ Upon receipt of a **signed Complaint Intake Form** ~~**complaint**~~, staff shall:

(1)~~**(A)**~~ assign the complaint a case number in the complaint tracking system; and

(2)~~**(B)**~~ send written acknowledgement of receipt to the complainant.

(b)~~**(2)**~~ If the staff determines at any time that the complaint is not within the Board's jurisdiction or that no violation exists, the complaint shall ~~**then**~~ be dismissed with no further processing. The Board or the commissioner may delegate to ~~**Board**~~ staff the duty to dismiss complaints.

(c)~~**(3)**~~ A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

(1)~~**(A)**~~ may be investigated covertly; and

(2)~~**(B)**~~ shall be referred to the appropriate prosecutorial authorities.

(d)~~**(4)**~~ Staff may request additional information necessary to **determine how to** proceed with the complaint **from any person**.

(e) As part of a preliminary review, a ~~**(5)A**~~ copy of the **Complaint Intake Form** ~~**complaint**~~ and all supporting documentation shall be sent to the respondent unless the complaint qualifies for covert investigation and the Standards and Enforcement Services Division deems covert investigation appropriate.

(f)~~**(6)**~~ The respondent shall submit a response within 20 days of receiving a copy of the **Complaint Intake Form** ~~**complaint**~~. The 20-day period may be extended for good cause upon request in writing or by e-mail.

~~**(A)**~~ The response shall include the following:

(1) a copy of the appraisal report that is the subject of the complaint;

(2)~~**(i)**~~ a copy of the respondent's work file **associated with the appraisal(s) listed in the complaint, with the following signed statement attached to the work file(s): I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY APPRAISAL WORK FILE ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL WORK FILE, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS WORK FILE OR ALTERED AFTER PLACEMENT IN THE WORK FILE. [SIGNATURE OF RESPONDENT]**;

(3)~~**(ii)**~~ a narrative response to the complaint, addressing each and every item in the complaint ~~**element thereof**~~;

(4)~~**(iii)**~~ a list of any and all persons known to the respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the respondent's possession, contact information; ~~and~~

~~**(iv) the following statement in the letter transmitting the response: EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY APPRAISAL WORK FILE ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL WORK FILE, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS WORK FILE OR ALTERED AFTER PLACEMENT IN THE WORK FILE.**~~ **;**

(5) any ~~**(B) Any supporting**~~ documentation that **supports respondent's position that** was not in the work file, **as long as it is** ~~**must be**~~ conspicuously labeled as **non-work file documentation** ~~**such**~~ and kept separate from the work file.

~~**(C)**~~ The respondent may also address other matters not raised in the complaint that the respondent believes **need explanation** ~~**likely to be raised and may be supported by documentation contained in the work file.**~~ **; and**

(6) a signed, dated and completed copy of any questionnaire sent by board staff.

(g) Staff will evaluate the complaint within three months of receipt of the response from respondent to determine whether sufficient evidence of a potential violation of TALCB's statutes or rules, or the Uniform Standards of Professional Appraisal Practice (USPAP) exists to pursue investigation and possible formal disciplinary action. If the staff determines that no violation exists, or there is insufficient evidence to prove a violation, the complaint shall be dismissed with no further processing.

If one or more violations exist that staff determines are remediable and do not constitute evidence of a serous inability or unwillingness to comply with Board statutes, rules and USPAP and the respondent has had no prior warning letters, contingent dismissals or formal disciplinary action by the Board, staff may issue a non-disciplinary warning letter or offer a contingent dismissal agreement to the respondent depending on the nature of the violations.

(h)The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. If respondent completes all requirements (e.g. remedial education, mentorship, re-examination, etc.) set out in the agreement within a certain prescribed period of time, the complaint will be dismissed with a non-disciplinary warning letter.

(i)~~**(7)**~~ **If the** ~~**The**~~ complaint **is not dismissed, including contingent dismissal, a formal complaint will** ~~**shall**~~ be **opened and it will be** ~~**assigned to a staff investigator and shall be**~~ investigated by ~~the~~ a staff investigator or peer investigative committee, as appropriate. **Staff may also open a formal complaint on its own motion. A written notice that a formal complaint has been opened will be sent to the complainant and respondent.**

(j)~~**(8)**~~ The staff investigator or peer investigative committee assigned to investigate a formal complaint shall prepare a report detailing its findings on a form approved by the Board for that purpose. Reports prepared by a peer investigative committee shall be reviewed by the Standards and Enforcement Services Division, which shall determine the appropriate disposition of the complaint.

(k)~~**(9)**~~ In determining the proper disposition of a complaint, and subject to the maximum penalties authorized under Tex. Occ. Code §1103.552, staff shall consider the following penalty matrix:

TITLE 22. Examining Boards
Part VIII. Texas Appraiser Licensing and Certification Board
Chapter 153 Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act

Attached Graphic (matrix)

(A-B) No Chnage

(l)~~(10)~~ Agreed resolutions of complaint matters pursuant to Tex. Occ. Code §1103.458 or §1103.459 must be signed by the respondent, a representative of the Standards and Enforcement Services Division, and the commissioner.

Foundation Appraisers Coalition of Texas

January 9, 2013

Ms. Kerri T. Galvin
General Counsel & Deputy Commissioner
Texas Appraiser Licensing and Certification Board
1700 North Congress Avenue, 4th Floor
Austin, Texas 78701

Dear Ms. Galvin:

This letter is provided to convey the support of the Foundation Appraisers Coalition of Texas (FACT) for the proposed rule 22 TAC 153.24 concerning complaint processing. We at FACT appreciate being able to work with you and the Enforcement Committee on this matter and encourage the board to adopt the proposed rule.

Thank for your consideration.

Respectfully Submitted,

JOSEPH N. WOLLER
Foundation Appraisers Coalition of Texas - President

FACT
PO Box 202197
Austin, Tx 78720
512-828-7455 or admin@supportfact.org

To: Kerri Galvin
Subject: RE: Fwd: appraiser complaint process

Sent: Sat, 17 Nov 2012 09:51:17 -0600 (CST)
Subject: Fwd: appraiser complaint process Begin forwarded message:
> From: "Andy Arledge" <andy@arledgeappraisals.com>
> Date: November 17, 2012 9:36:56 AM CST
> To: <walker.beard@talcb.texas.gov>,
> <malachi.boyuls@talcb.texas.gov>, <luis.delagarza@talcb.texas.gov>,
> <laurie.fontana@talcb.texas.gov
> >, <mark.mcanally@talcb.texas.gov>,
> <shannon.mcclendon@talcb.texas.gov>, <sheryl.swift@talcb.texas.gov>,
> <donna.walz@talcb.texas.gov>, <jamie.wickliffe@talcb.texas.gov>
> Subject: appraiser complaint process
>
> Hi,
>
> As you know I testified before the board last week concerning the
> handling of TALCB complaints. In discussing this issue with an
> attorney friend of mine, he asked why the TALCB didn't handle
> complaints like the State Bar of Texas
>
> Their process is to call the consumer's complaint an "Inquiry",
> whereby the consumer asks the state to perform an inquiry to see if
> there's sufficient evidence to proceed with a formal complaint. If
> there's not sufficient evidence, then the inquiry is canceled and a
> letter is returned to the consumer stating these actions. I've
> attached the web page from the State Bar of Texas and you can read for
> yourself how they handle complaints. I've highlighted their complaint
> process on the lower portion of the page.
>
> This process would solve the issue I brought to your attention and
> would also alleviate the overload the enforcement division is
> experiencing pursuing every complaint as if it had enough merit to be
> a true enforcement issue.
>
> Just to illustrate how ridiculous my complaints were, one of them the
> consumer complained that I used a foreclosure comp. This comp sold for
> the 2nd highest sales price I used in the report. Not only that, if
> the state had done an inquiry they would have immediately determined
> this sale was the 2nd highest sale in the neighborhood. I include the
> comp search results in my workfile for every report. A 5 minute
> inquiry would have resolved this complaint as not having any merit and
> kept me from spending $2,500 to defend it, alleviated the overload on
> the enforcement division and kept me from having to declare it as a
> complaint to my E&O provider.
>
> I'm not trying to beat a dead horse, but if this solution works for

> the State Bar of Texas, it should work for the TALCB.
>
> Thanks
>
> Andy
>
> www.arledgeappraisals.com
>
>
>
> Jeremiah 29:11
> "For I know the plans I have for you," declares the LORD. "Plans to
> prosper you and not to harm you. Plans to give you hope and a future"
> This e-mail and any files attached thereto is or may be proprietary of
> Arledge Appraisals and it may be legally privileged and confidential.
> It is intended solely for the addressee and may not be disclosed to or
> used by anyone other than the addressee. If you have received this
> e-mail by error, please advise the sender immediately. This email and
> any attached files are NOT ENCRYPTED.
> If you wish to communicate with Arledge Appraisals via encrypted email
> or would like for Arledge Appraisals to use another form of secure
> communication, please advise the sender. Thank you.
>

AGENDA ITEM 19

Discussion and possible action to propose amendments to 22 TAC §157.10 concerning Right to Counsel, Right to Participate.

SUMMARY

The amendments were proposed at the November 9, 2012 meeting of the Board and published in the November 30, 2012 issue of the Texas Register (*37 TexReg 9429),* to clarify who is responsible for the cost of hearing transcripts when ordered by a party or an Administrative Law Judge. The Texas Appraiser Licensing and Certification Act and the State Office of Administrative Hearing rules currently provide that the party who orders a transcript bears the cost of that transcript but is silent about what happens when a SOAH judge orders a transcript. This amendment will alleviate confusion and additional negotiations over who is the responsible party and/or possible duplication of costs.

COMMENTS

No comments were received on the amendments to the rule as proposed.

STAFF RECOMMENDATION

Adopt rule as published.

RECOMMENDED MOTION

MOVED, that staff is authorized, on behalf of this Board, to submit for adoption the amendments to 22 TAC §157.10 concerning Right to Counsel; Right to Participate, without changes to text as previously published in the Texas Register except for any technical or non-substantive changes required for adoption.

TITLE 22. Examining Boards
Part VIII. Texas Appraiser Licensing and Certification Board
Chapter 157 Rules Relating to Practice and Procedure

§157.10
Right to Counsel; Right to Participate

§157.10. Right to Counsel; Right to Participate. (a) All parties, at their own expense, may be represented by counsel, which right may be expressly waived. Parties are entitled to respond and present evidence and argument on all issues involved, and to conduct cross examinations for full and true disclosure of the facts.

(b) Costs of a transcript of a SOAH proceeding ordered by a party shall be paid by that party. Costs of a transcript of a SOAH proceeding ordered by the judge shall be split equally between the parties.

AGENDA ITEM 20

Discussion and possible action to propose amendments to 22 TAC §153.24 concerning Complaint Processing

SUMMARY

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.24, Complaint Processing. The amendments are proposed to clarify that receipt of a complaint intake form by TALCB does not constitute the filing of a formal complaint against the individual named on the complaint intake form, to clarify all of the information that a respondent must provide to TALCB following notification of receipt of a complaint intake form, to establish a timeframe for completion of a preliminary review to determine if a violation occurred, setting out the criteria and procedure for filing of a formal complaint by TALCB, to more clearly set out levels of discipline and the mitigating and aggravating factors to be considered when assessing sanctions and more clearly define penalty parameters at each level.

STAFF RECOMMENDATION

Propose the amendments as presented.

RECOMMENDED MOTION

MOVED, that staff is authorized, on behalf of this Board, to submit amendments to 22 TAC §153.24, concerning Complaint Processing, as presented for publication and public comment to the *Texas Register*, along with any additional technical or non-substantive changes required for proposal.

TITLE 22. Examining Boards
Part VIII. Texas Appraiser Licensing and Certification Board
Chapter 153 Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act

22 TAC §153.24 concerning Complaint Processing

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.24, Complaint Processing. The amendments are proposed to clarify that receipt of a complaint intake form by TALCB does not constitute the filing of a formal complaint against the individual named on the complaint intake form, to clarify all of the information that a respondent must provide to TALCB following notification of receipt of a complaint intake form, to establish a timeframe for completion of a preliminary review to determine if a violation occurred, setting out the criteria and procedure for filing of a formal complaint by TALCB, to more clearly set out levels of discipline and the mitigating and aggravating factors to be considered when assessing sanctions and more clearly defining penalty parameters at each level.

Kerri T. Galvin, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated significant impact on small businesses, micro- businesses or local or state employment as a result of implementing the sections. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Galvin also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be greater clarity and transparency about complaint processing and sanctions at TALCB.

Comments on the proposal may be submitted to Kerri T. Galvin, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses and §1103.154, which authorizes TALCB to adopt rules relating to the professional conduct of a licensed or certified appraiser.

The statute affected by this amendment is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the proposed amendments.

RULE §153.24
Complaint Processing

§153.24. Complaint Processing. ~~**A complaint must be in writing and must be signed by the complainant. Board staff may initiate a complaint.**~~

TITLE 22. Examining Boards
Part VIII. Texas Appraiser Licensing and Certification Board
Chapter 153 Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act

(a) Receipt of a Complaint Intake Form by the board does not constitute the filing of a formal complaint by the board against the individual named on the Complaint Intake Form. ~~(1)~~ Upon receipt of a **signed Complaint Intake Form** ~~**complaint**~~, staff shall:

(1)~~**(A)**~~ assign the complaint a case number in the complaint tracking system; and

(2)~~**(B)**~~ send written acknowledgement of receipt to the complainant.

(b)~~**(2)**~~ If the staff determines at any time that the complaint is not within the Board's jurisdiction or that no violation exists, the complaint shall ~~**then**~~ be dismissed with no further processing. The Board or the commissioner may delegate to ~~**Board**~~ staff the duty to dismiss complaints.

(c)~~**(3)**~~ A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

(1)~~**(A)**~~ may be investigated covertly; and

(2)~~**(B)**~~ shall be referred to the appropriate prosecutorial authorities.

(d)~~**(4)**~~ Staff may request additional information necessary to **determine how to** proceed with the complaint **from any person**.

(e) As part of a preliminary review, a ~~**(5)A**~~ copy of the **Complaint Intake Form** ~~**complaint**~~ and all supporting documentation shall be sent to the respondent unless the complaint qualifies for covert investigation and the Standards and Enforcement Services Division deems covert investigation appropriate.

(f)~~**(6)**~~ The respondent shall submit a response within 20 days of receiving a copy of the **Complaint Intake Form** ~~**complaint**~~. The 20-day period may be extended for good cause upon request in writing or by e-mail.

~~**(A)**~~ The response shall include the following:

(1) a copy of the appraisal report that is the subject of the complaint;

(2)~~**(i)**~~ a copy of the respondent's work file **associated with the appraisal(s) listed in the complaint, with the following signed statement attached to the work file(s): I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY APPRAISAL WORK FILE ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL WORK FILE, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS WORK FILE OR ALTERED AFTER PLACEMENT IN THE WORK FILE. [SIGNATURE OF RESPONDENT]**;

(3)~~**(ii)**~~ a narrative response to the complaint, addressing each and every item in the complaint ~~**element thereof**~~;

(4)~~**(iii)**~~ a list of any and all persons known to the respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the respondent's possession, contact information; ~~and~~

~~**(iv) the following statement in the letter transmitting the response: EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY APPRAISAL WORK FILE ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL WORK FILE, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS WORK FILE OR ALTERED AFTER PLACEMENT IN THE WORK FILE. ;**~~

(5) any ~~**(B) Any supporting**~~ documentation that **supports respondent's position that** was not in the work file, **as long as it is** ~~**must be**~~ conspicuously labeled as **non-work file documentation** ~~**such**~~ and kept separate from the work file.

~~**(C)**~~ The respondent may also address other matters not raised in the complaint that the respondent believes **need explanation** ~~**likely to be raised and may be supported by documentation contained in the work file.**~~ **; and**

(6) a signed, dated and completed copy of any questionnaire sent by board staff.

(g) Staff will evaluate the complaint within three months of receipt of the response from respondent to determine whether sufficient evidence of a potential violation of TALCB's statutes or rules, or the Uniform Standards of Professional Appraisal Practice (USPAP) exists to pursue investigation and possible formal disciplinary action. If the staff determines that no violation exists, or there is insufficient evidence to prove a violation, the complaint shall be dismissed with no further processing.

(h)~~**(7)**~~ **If the** ~~**The**~~ complaint **is not dismissed under subsection (g), a formal complaint will** ~~**shall**~~ be **opened and it will be** ~~**assigned to a staff investigator and shall be**~~ investigated by ~~the~~ a staff investigator or peer investigative committee, as appropriate. **Staff may also open a formal complaint on its own motion. A written notice that a formal complaint has been opened will be sent to the complainant and respondent.**

(i)~~**(8)**~~ The staff investigator or peer investigative committee assigned to investigate a formal complaint shall prepare a report detailing its findings on a form approved by the Board for that purpose. Reports prepared by a peer investigative committee shall be reviewed by the Standards and Enforcement Services Division, which shall determine the appropriate disposition of the complaint.

(j)~~**(9)**~~ In determining the proper disposition of a **formal** complaint **pending as of or filed after the effective date of this subsection,** and subject to the maximum penalties authorized under Tex. Occ. Code §1103.552, staff**, the administrative law judge in a contested case hearing and the Board** shall consider the following ~~penalty matrix~~ **sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding**:

~~[Attached Graphic]~~
~~(1) For the purposes of the above matrix, a person will not be considered to have had a prior occurrence unless the board had taken final action against the person before the date of the appraisal that led to the subsequent disciplinary action.~~
~~(2) In addition to the guidelines outlined in the matrix, staff may recommend any or all of the following:~~
~~(A) reducing or increasing the recommended penalty based on documented factors that support the deviation, including but not limited to the number or seriousness of the violation(s) and degree of harm to the public;~~
~~(B) probating all or a portion of a sanction or administrative penalty for a period not to exceed five years;~~
~~(C) requiring additional reporting requirements; and~~

~~(D) such other recommendations, with documented support, as will achieve the purposes of the Act, the Rules, and/or USPAP.~~

(1) For the purposes of these sanctions guidelines:

(A) a person will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline occurred more than seven (7) years ago;

(B) a prior warning letter, contingent dismissal or discipline given less than seven years ago will not be considered unless the Board had taken final action against the person before the date of the appraisal that led to the subsequent disciplinary action;

(C) prior discipline is defined as any sanction (including administrative penalty) received under a Board final or agreed order;

(D) a violation refers to a violation of any provision of the Act, Board Rules or USPAP;

(E) "minor deficiencies" is defined as violations of the Act, Board Rules or USPAP which do not impact the credibility of the appraisal assignment results, the assignment results themselves and do not impact the appraiser's honesty, trustworthiness or integrity to the Board, the appraiser's clients or intended users of the appraisal service provided

(F) "serious deficiencies" is defined as violations of the Act, Board Rules or USPAP which do impact the credibility of the appraisal assignment results, the assignment results themselves or do impact the appraiser's honesty, trustworthiness or integrity to the Board, the appraiser's clients or intended users of the appraisal service provided;

(G) "remedial measures" include, but are not limited to, training, mentorship, education, or any combination thereof; and

(H)The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. If respondent completes all remedial measures required in the agreement within a certain prescribed period of time, the complaint will be dismissed with a non-disciplinary warning letter.

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal, and if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the discipline, including:

a. Whether it concerned the same or similar violations or facts;

b. The nature of the disciplinary sanctions imposed;

c. The length of time since the previous discipline;

(D) The difficulty or complexity of the appraisal assignment(s) at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal / instance of conduct or multiple appraisals / instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac;

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The level of experience Respondent had in the appraisal profession at the time of the violations, including:

(i) The level of appraisal credential Respondent held;

(ii) The length of time Respondent had been an appraiser;

(iii) The nature and extent of any education Respondent had received related to the areas in which violations were found; and,

(iv) Any other real estate or appraisal related background or experience Respondent had;

(K) Whether Respondent can improve appraisal skills and reports through the use of remedial measures;

(3) The sanctions guidelines contained herein shall be employed in conjunction with the factors listed in subsection (j) (2) to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1 – violations of the Act, Board Rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures;

(B) 1st Time Discipline Level 2 – violations of the Act, Board Rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:

(i) Contingent dismissal with remedial measures;

(ii) A final order which imposes one or more of the following:

a. Remedial measures;

b. Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

c. A probationary period with provisions for monitoring the appraiser's practice;

d. Restrictions on a certified appraiser's ability to sponsor any appraiser trainees;

e. Restrictions on the scope of practice the appraiser is allowed to engage in for a specified time period or until specified conditions are satisfied;

f. Up to $250.00 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, not to exceed $3,000.00 in the aggregate;

(C) 1st Time Discipline Level 3 – violations of the Act, Board Rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) **Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;**

(v) **A probationary period with provisions for monitoring the appraiser's practice;**

(vi) **Restrictions on a certified appraiser's ability to sponsor any appraiser trainees;**

(vii) **Restrictions on the scope of practice the appraiser is allowed to engage in for a specified time period or until specified conditions are satisfied;**

(viii) **Up to $1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $5,000 statutory limit per complaint matter.**

(D) **2nd Time Discipline Level 1 – violations of the Act, Board Rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:**

(i) **Dismissal**

(ii) **Dismissal with non-disciplinary warning letter;**

(iii) **Contingent dismissal with remedial measures;**

(iv) **A final order which imposes one or more of the following:**

a. **Remedial measures;**

b. **Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;**

c. **A probationary period with provisions for monitoring the appraiser's practice;**

d. Restrictions on a certified appraiser's ability to sponsor any appraiser trainees;

e. Restrictions on the scope of practice the appraiser is allowed to engage in for a specified time period or until specified conditions are satisfied;

f. Up to $250.00 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $1,000 statutory limit per complaint matter;

(E) 2nd Time Discipline Level 2 -- violations of the Act, Board Rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the appraiser's practice;

(vi) Restrictions on a certified appraiser's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the appraiser is allowed to engage in for a specified time period or until specified conditions are satisfied;

(viii) Up to $1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $5,000 statutory limit per complaint matter.

(F) 2nd Time Discipline Level 3 – violations of the Act, Board Rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the appraiser's practice;

(vi) Restrictions on a certified appraiser's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the appraiser is allowed to engage in for a specified time period or until specified conditions are satisfied;

(viii) Up to $1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $5,000 statutory limit per complaint matter.

(G) 3rd Time Discipline Level 1 -- violations of the Act, Board Rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) **Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;**

(v) **A probationary period with provisions for monitoring the appraiser's practice;**

(vi) **Restrictions on a certified appraiser's ability to sponsor any appraiser trainees;**

(vii) **Restrictions on the scope of practice the appraiser is allowed to engage in for a specified time period or until specified conditions are satisfied;**

(viii) **$1,000 to $1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $5,000 statutory limit per complaint matter.**

(H) **3rd Time Discipline Level 2 -- violations of the Act, Board Rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:**

(i) **A period of suspension;**

(ii) **A revocation;**

(iii) **Remedial measures;**

(iv) **Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;**

(v) **A probationary period with provisions for monitoring the appraiser's practice;**

(vi) **Restrictions on a certified appraiser's ability to sponsor any appraiser trainees;**

(vii) Restrictions on the scope of practice the appraiser is allowed to engage in for a specified time period or until specified conditions are satisfied;

(viii) $1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $5,000 statutory limit per complaint matter.

(I) 3rd Time Discipline Level 3 – violations of the Act, Board Rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A revocation; and

(ii) $1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $5,000 statutory limit per complaint matter.

(J) 4th Time Discipline – violations of the Act, Board Rules or USPAP will result in a final order which imposes the following:

(i) A revocation; and

(ii) $1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $5,000 statutory limit per complaint matter.

(K) Unlicensed appraisal activity will result in a final order which imposes the following:

(i) $1,500 in administrative penalties per unlicensed appraisal activity, up to the maximum $5,000 statutory limit per complaint matter.

(4) In addition, staff may recommend any or all of the following:

(i) **reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under subsection (2);**

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

(iii) **requiring additional reporting requirements; and**

(iv) **such other recommendations, with documented support, as will achieve the purposes of the Act, the Rules, and/or USPAP.**

(k)~~**(10)**~~ Agreed resolutions of complaint matters pursuant to Tex. Occ. Code §1103.458 or §1103.459 must be signed by the respondent, a representative of the Standards and Enforcement Services Division, and the commissioner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2013.

_____

Kerri T. Galvin
General Counsel
Texas Appraiser Licensing and Certification Board

Proposed Amendments to 22 TAC 153.24(j) with Footnoted Explanations

(j) In determining the proper disposition of a **formal** complaint **pending as of or filed after the effective date of this subsection,** and subject to the maximum penalties authorized under Tex. Occ. Code §1103.552, staff**, the administrative law judge in a contested case hearing and the Board** shall consider the following ~~penalty matrix~~ **sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding**:

~~[Attached Graphic]~~
~~(1) For the purposes of the above matrix, a person will not be considered to have had a prior occurrence unless the board had taken final action against the person before the date of the appraisal that led to the subsequent disciplinary action.~~
~~(2) In addition to the guidelines outlined in the matrix, staff may recommend any or all of the following:~~
~~(A) reducing or increasing the recommended penalty based on documented factors that support the deviation, including but not limited to the number or seriousness of the violation(s) and degree of harm to the public;~~
~~(B) probating all or a portion of a sanction or administrative penalty for a period not to exceed five years;~~
~~(C) requiring additional reporting requirements; and~~
~~(D) such other recommendations, with documented support, as will achieve the purposes of the Act, the Rules, and/or USPAP.~~

(1) For the purposes of these sanctions guidelines[1]:

(A) a person will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline occurred more than seven (7) years ago;

(B) a prior warning letter, contingent dismissal or discipline given less than seven years ago will not be considered unless the Board had taken final action against the person before the date of the appraisal that led to the subsequent disciplinary action;

(C) prior discipline is defined as any sanction (including administrative penalty) received under a Board final or agreed order;

(D) a violation refers to a violation of any provision of the Act, Board Rules or USPAP;

(E) "minor deficiencies" is defined as violations of the Act, Board Rules or USPAP which do not impact the credibility of the appraisal assignment results, the assignment results themselves and do not impact the appraiser's honesty, trustworthiness or integrity to the Board, the appraiser's clients or intended users of the appraisal service provided

(F) "serious deficiencies" is defined as violations of the Act, Board Rules or USPAP which do impact the credibility of the appraisal assignment results, the assignment results themselves or do impact the appraiser's honesty, trustworthiness or integrity to the Board, the appraiser's clients or intended users of the appraisal service provided;

(G) "remedial measures" include, but are not limited to, training, mentorship, education, or any combination thereof; and

(H)The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. If respondent completes all remedial measures required in the agreement within

[1] The drafters suggest changing the format for better clarity and the nomenclature to more accurately reflect the nature of the rule. Sanctions is a broader, more inclusive term than penalty and these rules are presented as guide to follow. This section sets out definitions to be used throughout the remainder of the guidelines.

a certain prescribed period of time, the complaint will be dismissed with a non-disciplinary warning letter.

(2) List of factors to consider in determining proper disposition of a formal complaint:[2]

(A) Whether the Respondent has previously received a warning letter or contingent dismissal, and if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the discipline, including:

a. Whether it concerned the same or similar violations or facts;

b. The nature of the disciplinary sanctions imposed;

c. The length of time since the previous discipline;

(D) The difficulty or complexity of the appraisal assignment(s) at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal / instance of conduct or multiple appraisals / instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac;

[2] Subjection (2) is a suggested addition to the rule. It addresses those aggravating and mitigating factors which staff already considers in its present complaint resolutions and which lawyers, judges and even laypersons, in general, frequently consider when evaluating the need for and level of discipline.

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The level of experience Respondent had in the appraisal profession at the time of the violations, including:[3]

(i) The level of appraisal credential Respondent held;

(ii) The length of time Respondent had been an appraiser;

(iii) The nature and extent of any education Respondent had received related to the areas in which violations were found; and,

(iv) Any other real estate or appraisal related background or experience Respondent had;

(K) Whether Respondent can improve appraisal skills and reports through the use of remedial measures;

(3) [4]The sanctions guidelines contained herein shall be employed in conjunction with the factors listed in subsection (j) (2) to assist in reaching the proper disposition of a formal complaint:

(A) [5]1st Time Discipline Level 1 – violations of the Act, Board Rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures;

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[3] A person's knowledge level (and hence their level of culpability) is informed to a large extent by their level of experience, education and general background in the profession (or related areas). This factor helps bring the totality of the respondent's personal history in the profession into focus for purposes of considering the appropriate level of sanctions.

[4] Proposed subsection (3) has been redrafted with an eye towards clarifying, simplifying and delineating differing categories of sanctionable conduct. Much of the language and structure of the current rule language has been included with emphasis placed on clarification and ease of use for staff, judges, attorneys, appraisers, and board members. The range of recommended sanction narrow as you progress through the levels because with subsequent violations remedial efforts would appear to have failed.

[5] This subsection loosely corresponds to the first box in the current sanctions guidelines. Due to the more minor nature of the infractions at this level, administrative penalties were removed in favor of sanctions aimed at educating and remediating deficiencies.

(B) **[6]1st Time Discipline Level 2 – violations of the Act, Board Rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:**

(i) **Contingent dismissal with remedial measures;**

(ii) **A final order which imposes one or more of the following:**

a. **Remedial measures;**

b. **Required[7] promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;**

c. **A probationary period with provisions for monitoring the appraiser's practice;**

d. **Restrictions on a certified appraiser's ability to sponsor any appraiser trainees;**

e. **Restrictions on the scope of practice the appraiser is allowed to engage in for a specified time period or until specified conditions are satisfied;**

f. **Up to $250.00[8] in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, not to exceed $3,000.00 in the aggregate;**

(C) **1st Time Discipline Level 3[9] – violations of the Act, Board Rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:**

(i) **A period of suspension;**

(ii) **A revocation;**

(iii) **Remedial measures;**

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[6] This subsection loosely corresponds to the second box in the current sanctions guidelines. A contingent dismissal option or the option of a final order allows flexibility to consider and apply those mitigating and aggravating factors outlined in proposed subsection (j)(2).

[7] This provision is carried over from the current version of the rule with some proposed changes in wording to clarify the purpose of this remedial tool.

[8] This is a change to the penalties in the current matrix which allows $250-$1,000 per violation with no cap other than the statutory limit of $5,000 per case (Tex. Occ. Code § 1103.552).

[9] This subsection loosely corresponds to the third box in the current sanctions guidelines. The same principals apply here as set out in footnote 7. Suspension or revocation are options in the current matrix. The drafters recommend keeping this option available for those serious cases.

(iv) **Required[10] promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;**

(v) **A probationary[11] period with provisions for monitoring the appraiser's practice;**

(vi) **Restrictions on a certified appraiser's ability to sponsor any appraiser trainees;**

(vii) **Restrictions on the scope of practice the appraiser is allowed to engage in for a specified time period or until specified conditions are satisfied;**

(viii) **Up to $1,500[12] in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $5,000 statutory limit per complaint matter.**

(D) 2nd Time Discipline Level 1[13] – violations of the Act, Board Rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) **Dismissal**

(ii) **Dismissal with non-disciplinary warning letter;**

(iii) **Contingent dismissal with remedial measures;**

(iv) **A final order which imposes one or more of the following:**

a. **Remedial measures;**

[10] This remedial tool is already provided for in other areas of the current matrix (i.e. boxes 2, 4 and 5). Adding this tool to this particular category helps address situations involving gross negligence where more structure and attention to policies and procedures are likely to help remedy the deficiencies.

[11] Probationary periods (i.e. probated suspension or probated revocation) are useful in cases of gross neglect, where remediation is feasible, to ensure sufficient monitoring to adequately protect the public.

[12] The suggested administrative penalty is very similar to the current provision in that it sets an upper limit of $1,500 per violation, but does not contain the $500 floor the current rule provides for. This recommended change should provide flexibility to craft an appropriate sanction based on the unique circumstances in each case. Both the current version of the rule and the proposed provision are bounded by the statute's upper end cap of $5,000 per case which is now set out in the rule text with clarification for the users of the sanction guidelines that the Board interprets "case" in the statutory provision to mean each separate complaint matter.

[13] This subsection loosely corresponds to the fourth box in the current sanctions guidelines. Suggested changes have been made to increase the range of sanctions available.

b. **Required[14] promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;**

c. **A probationary period with provisions for monitoring the appraiser's practice;**

d. **Restrictions on a certified appraiser's ability to sponsor any appraiser trainees;**

e. **Restrictions on the scope of practice the appraiser is allowed to engage in for a specified time period or until specified conditions are satisfied;**

f. **Up to $250.00[15] in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $1,000 statutory limit per complaint matter;**

(E) 2nd Time Discipline Level 2[16] -- violations of the Act, Board Rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary[17] period with provisions for monitoring the appraiser's practice;

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[14] This provision is carried over from the current version of the rule with some proposed changes in wording to clarify the purpose of this remedial tool.

[15] The suggested administrative penalty range has been modified but is similar to the current provision (i.e. the 4th box). Because this level involves more minor violations, the drafters recommend lowering the penalty floor from $500 per violation to $250 per violation and placing a ceiling of $1,000 in the aggregate, which is lower than the current ceiling of $1,500 per violation. This recommended change provides more emphasis on education and remedial tools and frees up more of the violator's funds to be put towards coursework or mentorship.

[16] This subsection loosely corresponds to the fifth box in the current sanctions guidelines – second occurrence with serious deficiencies. The drafters recommend adding a suspension option to account for those cases where a period of down time to incorporate remedial education, mentorship or office policy changes may be warranted to ensure the conduct at issue does not continue.

(vi) **Restrictions on a certified appraiser's ability to sponsor any appraiser trainees;**

(vii) **Restrictions on the scope of practice the appraiser is allowed to engage in for a specified time period or until specified conditions are satisfied;**

(viii) **Up to $1,500[18] in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $5,000 statutory limit per complaint matter.**

(F) **2nd Time Discipline Level 3[19] – violations of the Act, Board Rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:**

(i) **A period of suspension;**

(ii) **A revocation;**

(iii) **Remedial measures;**

(iv) **Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;**

(v) **A probationary period with provisions for monitoring the appraiser's practice;**

(vi) **Restrictions on a certified appraiser's ability to sponsor any appraiser trainees;**

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[17] The drafter recommends the additional language contained in items (v), (vi) and (vii) to provide some guidance and parameters for those cases involving probationary periods. Keep in mind that probationary conditions are already provided for in the current version of the rule under subsection (9)(B)(ii).

[18] The suggested administrative penalty is different from the current provision. The current provision makes no distinction in penalty between boxes 4 and 5. However, the nature of the conduct is significantly different, thus the drafters suggest that a difference in the penalty is appropriate and recommend up to a $1,500 per violation limit in conjunction with the $5,000 statutory cap.

[19] This subsection loosely corresponds to the sixth box in the current sanctions guidelines – second occurrence with intent or gross negligence. The drafters added an option for suspension not in the current rule since there may be situations (particularly in the area of gross negligence) where having the option of suspension available could prove to be a positive alternative to revocation when coupled with remedial measures, which are also added to this subsection.

(vii) **Restrictions on the scope of practice the appraiser is allowed to engage in for a specified time period or until specified conditions are satisfied;**

(viii) **Up to $1,500[20] in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $5,000 statutory limit per complaint matter.**

(G) 3rd Time Discipline Level 1[21] -- violations of the Act, Board Rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

(i) **A period of suspension;**

(ii) **A revocation;**

(iii) **Remedial measures;**

(iv) **Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;**

(v) **A probationary period with provisions for monitoring the appraiser's practice;**

(vi) **Restrictions on a certified appraiser's ability to sponsor any appraiser trainees;**

(vii) **Restrictions on the scope of practice the appraiser is allowed to engage in for a specified time period or until specified conditions are satisfied;**

(viii) **$1,000 to $1,500[22] in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $5,000 statutory limit per complaint matter.**

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[20] The penalty from the current version of the rule (box 6) is expanded to allow a range up to $1,500 per violation to allow more flexibility based on mitigating and aggravating factors.

[21] This subsection loosely corresponds to the seventh box in the current sanctions guidelines – third occurrence with minor deficiencies. Although not serious in nature, by the 3rd time, a person's inability or unwillingness to remedy even minor violations should cause concern and the drafters propose a range of options in a final attempt to help remedy situations where a violator has continued to fall short of meeting the minimum professional standards despite two prior instances of remediation.

[22] The suggested administrative penalty is the same as the current provision for this level.

(H) 3rd Time Discipline Level 2[23] -- violations of the Act, Board Rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the appraiser's practice;

(vi) Restrictions on a certified appraiser's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the appraiser is allowed to engage in for a specified time period or until specified conditions are satisfied;

(viii) $1,500[24] in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $5,000 statutory limit per complaint matter.

(I) 3rd Time Discipline Level 3[25] – violations of the Act, Board Rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A revocation; and

(ii) $1,500[26] in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $5,000 statutory limit per complaint matter.

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[23] This subsection loosely corresponds to the eighth box in the current sanctions guidelines – third occurrence with serious deficiencies. Again, by the 3rd time, a person's inability or unwillingness to remedy significant violations should cause great concern for protection of the public. However, since the facts of each case are unique, allowing more flexibility to combine periods of suspension with remedial measures even at this level could be useful for all parties. Revocation remains an option for those cases that warrant that discipline.

[24] The suggested administrative penalty is the same as the current provision for this level.

[25] The present version does not address 3rd time violators where the cases involve gross neglect or deliberate / willful conduct). Presumably it was drafted this way with the expectation that after the 2nd occurrence, the violator would be revoked.

[26] The suggested administrative penalty is the same as the current provision for 3rd occurrence level 2.

(J) 4th Time Discipline[27] – violations of the Act, Board Rules or USPAP will result in a final order which imposes the following:

(i) A revocation; and

(ii) $1,500[28] in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board Rules or the Act, up to the maximum $5,000 statutory limit per complaint matter.

(K) [29]Unlicensed appraisal activity will result in a final order which imposes the following:

(i) $1,500[30] in administrative penalties per unlicensed appraisal activity, up to the maximum $5,000 statutory limit per complaint matter.

(4)[31] In addition, staff may recommend any or all of the following:

(i) reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under subsection (2)[32];

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

(iii) requiring additional reporting requirements; and

(iv) such other recommendations, with documented support, as will achieve the purposes of the Act, the Rules, and/or USPAP.

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[27] The present version of the rule does not contain a 4th time violator section, but the drafters recommend adding a 4th time violator category given that there are options for suspension and remedial measures for third occurrences under this proposal. If the violator has not figured out how to conform their conduct by the 4th time, they're either unable to learn or unwilling to do so. In either case, the public is not protected by allowing them to continue in the profession.

[28] The suggested administrative penalty is the same as the current provision for 3rd occurrence level 2.

[29] This subsection corresponds to the ninth box in the current matrix.

[30] The suggested administrative penalty is the same as the current provision for unlicensed activity but clarifies the $1,500 as a per unlicensed activity penalty with the cap at the statutory maximum.

[31] This subsection (4) is largely the same as of (9)(B) of the current version of the rule.

[32] This one substantive change being suggested under (4)(i) removes the lone reference to "seriousness of the violation(s) and degree of harm to the public" which appears somewhat out of place. Those factors have been added to the list of factors contained in proposed subsection (2). This change is suggested so that a reader of the rule will be able to locate those factors mitigating or aggravating the disciplinary action more easily, in one, aggregate location, instead of having to hunt for them throughout the rule.

AGENDA ITEM 21

Discussion and possible action to propose amendments to 22 TAC §153.21 concerning Appraiser Trainees and Sponsors

SUMMARY

Amendments to 22 TAC §153.21, Appraiser Trainees and Sponsors, are proposed to require disclosure by sponsors of any disciplinary action taken against them in the past three years and to bring the rules into compliance with the *Real Property Appraiser Qualification Criteria (Criteria)* set out by The Appraiser Qualifications Board of The Appraisal Foundation. The *Criteria* states that Supervisory Appraisers shall be in "good standing" for a period of at least three years.

STAFF RECOMMENDATION

Propose amendments as presented.

RECOMMENDED MOTION

MOVED, that staff is authorized, on behalf of this Board, to submit amendments to 22 TAC §153.21, concerning Appraiser Trainees and Sponsors, to the *Texas Register* for publication and public comment, along with any additional technical or non-substantive changes required for proposal.

TITLE 22. Examining Boards
Part VIII. Texas Appraiser Licensing and Certification Board
Chapter 153 Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act

22 TAC §153.21 concerning Appraiser Trainees and Sponsors

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.21, Appraiser Trainees and Sponsors. The amendments are proposed to require disclosure by sponsors of any disciplinary action taken against them in the past three years and to bring the rules into compliance with the *Real Property Appraiser Qualification Criteria (Criteria)* set out by The Appraiser Qualifications Board of The Appraisal Foundation. The *Criteria* states that Supervisory Appraisers shall be in "good standing" for a period of at least three years.

Kerri T. Galvin, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated significant impact on small businesses, micro- businesses or local or state employment as a result of implementing the sections. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Galvin also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be compliance with federal requirements for Supervisory Appraisers.

Comments on the proposal may be submitted to Kerri T. Galvin, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or to general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualification Board.

The statute affected by this amendment is Texas Occupations Code, Chapter 1103. No other statute, code or article is affected by the proposed amendments.

RULE §153.21 Appraiser Trainees and Sponsors

(a)-(j) No change

(k) Certified appraisers who sponsor appraiser trainees or serve as an authorized supervisor must be in good standing and not subject to any disciplinary action within the last ~~two~~ three years that affect~~s~~ed the sponsor's or supervisor's legal eligibility to engage in appraisal practice. Disciplinary action taken against the sponsor or supervisor within the last three years that did not affect the sponsor's or supervisor's legal eligibility to engage in appraisal practice must be disclosed to the trainee prior to sponsorship.

TITLE 22. Examining Boards
Part VIII. Texas Appraiser Licensing and Certification Board
Chapter 153 Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February , 2013.

_____

Kerri T. Galvin
General Counsel
Texas Appraiser Licensing and Certification Board

AGENDA ITEM 22

Discussion and possible action on recommendations from the Enforcement Committee

SUMMARY

The Enforcement Committee recommends the adoption of the attached policy guidelines for agreed orders.

STAFF RECOMMENDATION

Adopt the Enforcement Committee's recommendations.

RECOMMENDED MOTION

MOVED, that the Board directs staff to implement the policy guidelines recommended by the Enforcement Committee, regarding Agreed Orders, as presented.

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

TALCB Board Members
Luis F. De La Garza, Jr
Chair

Walker Beard
Vice Chair

Sheryl R. Swift
Secretary

Keith Kidd

Laurie C. Fontana

Mark A. McAnally

Shannon K. McClendon

Donna J. Walz

Jamie S. Wickliffe

Douglas E. Oldmixon
Commissioner

POLICY MEMORANDUM

Date: February 15, 2013

RE: Agreed Order Guidelines Part 2

This memorandum is to confirm that the Texas Appraiser Licensing and Certification Board (Board) approved the implementation of the following guidelines for Agreed Orders with probated suspension or revocation provisions and for notices regarding failure to comply with an Agreed Order:

- If a respondent is placed on probated suspension or probated revocation, the Agreed Order will state that failure to comply with the terms and conditions of the Agreed Order will result in automatic revocation of the probation and the full term of the suspension or the revocation will take effect;
- If a respondent fails to comply with any of the terms or conditions of an Agreed Order that will result in automatic suspension or revocation, at least three (3) days prior to the effective date of the suspension or revocation, Board staff will send a written notice to the respondent via e-mail stating that respondent is in violation of the Agreed Order and respondent will be suspended or revoked as of the effective date set out in the notice unless, respondent can provide evidence of having previously submitted evidence of timely compliance with the Agreed Order. This policy is being put in place as a safeguard against mistakenly suspending or revoking a respondent who was actually in compliance and not as a method for a respondent to comply with terms or conditions after being notified of the violation.

This policy is effective as of February 15, 2013 and remains in effect until and unless changed or revoked by the Board.

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

_____
Chairperson
Texas Appraiser Licensing and Certification Board

P.O. Box 12188 Austin, Texas 78711-2188 ● 512-936-3001 ● www.talcb.texas.gov

AGENDA ITEM 23

Discussion and possible action to approve revised Certification of License History Form LHR3

SUMMARY

To be presented at the meeting

STAFF RECOMMENDATION

Approve Certification of License History Form LHR3 as submitted.

RECOMMENDED MOTION

MOVED, that the Commission approve the revised Certification of License History Form LHR-3 as presented by staff.

Texas Real Estate Commission
www.trec.texas.gov 512-936-3000
Texas Appraiser Licensing and Certification Board
www.talcb.texas.gov 512-936-3001
P.O. Box 12188
Austin, Texas 78711-2188

REQUEST FOR:

Certification of License History

"License" includes Registration and Certification

FEE FOR LICENSE HISTORY	RECEIPT NUMBER	AMOUNT	MONEY TYPE	App#	File#
				Entity #	License #

DO NOT WRITE ABOVE THIS LINE

USE THIS FORM TO OBTAIN A CERTIFICATION OF CURRENT LICENSE STATUS, DATES OF LICENSURE, EDUCATION AND DISCIPLINARY ACTION HISTORY

NOTE: ALL INFORMATION MUST BE TYPED OR PRINTED IN INK

1. Name of Requestor

Last _____ First _____ Middle _____

2. Signature of Requestor

_____ Phone Number _____

3. I hereby request a history for the person named below.

Name:

Last _____ First _____ Middle _____

4. Applicable license type: check all applicable boxes, fill in applicable license number and submit fee of $40.00 for **EACH** type requested (Checks should be made payable to TALCB for Appraiser/AMC licenses. All other licenses and registrations are issued by TREC and CHECKS should be made payable to TREC).

$40.00 ☐ Real Estate - Salesperson/Broker..... License Number _____

$40.00 ☐ Real Estate Appraiser-Certified General/Certified Residential/ Licensed/Provisional/Trainee (TALCB)..... License Number _____

$40.00 ☐ Real Estate Home Inspector - Professional/ Real Estate/ Apprentice..... License Number _____

$40.00 ☐ Easement or Right-of-Way - Individual or Business..... License Number _____

$40.00 ☐ Residential Service Company..... License Number _____

$40.00 ☐ Timeshare..... License Number _____

$40.00 ☐ Real Estate Appraisal Management Company (TALCB)..... License Number _____

A license history will be issued for each license type requested. **A separate fee is required for each license type requested.**

5. Mail, Fax or Email History To (indicate preference): ☐ Mail to

Last _____ First _____ Middle _____

Number, Street and Apt. No _____

City _____ State _____ Zip Code _____

☐ Fax to _____

☐ Email to _____

LHR-3 (License History Request) 2/2013

This document is available on the TREC website at www.trec.texas.gov

AGENDA ITEM 24

Discussion and possible action regarding Investment Policy

SUMMARY

See attached.

STAFF RECOMMENDATION

Approve investment policy as presented.

RECOMMENDED MOTION

MOVED, that the Board approve the investment policy as presented by staff.

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD
RESERVE FUNDS INVESTMENT POLICY

OBJECTIVE

The investment objective of the TALCB Reserve Funds is to invest available cash in securities, which provide both safety and liquidity to meet the ongoing needs of the fund and to demonstrate compliance with appropriate governing laws.

INVESTMENT STRATEGIES

The investment strategy for the funds is to maintain a 'Laddered' approach to portfolio management. By having a relatively even distribution of securities maturing each year, this helps to eliminate extreme interest rate exposure. The maximum allowable stated maturity of investments is ten years.

Cash held in the Texas Treasury Safekeeping Trust Company (Trust Company) is fully invested at all times and reinvested by the Trust in authorized investments for state funds. Interest is compounded daily with earnings being credited daily.

PERMISSIBLE INVESTMENTS

Permissible investments include primarily, but are not limited to, Direct Obligations of the United States Treasury (i.e., Treasury Bills, Notes, and bonds). From time to time, Indirect Obligations of the Treasury or Agency Securities may be considered to be an appropriate investment (example, Federal National Mortgage Association - FNMA). This will be considered on a case by case basis. All investment transactions must be settled on a delivery versus payment basis. The securities are held by the Texas Treasury Safekeeping Trust Company as trustee. The Trust Company monitors the market price of investments and updates them daily. The Trust Company invests cash as described in Texas Govt. Code, Sections 404.024 and 404.106 using prudent investment standards.

draft

AGENDA ITEM 25

Discussion and possible action regarding Budget Policy

SUMMARY

See attached.

STAFF RECOMMENDATION

Approve the agency's SDSI Budget Policy as presented.

RECOMMENDED MOTION

MOVED, that the Board approve the agency's SDSI Budget Policy as presented by staff.

Memo on Budget Development Policies for TALCB (Second DRAFT) as of 1 Feb 13

Like all state agencies, TALCB's fiscal year is from 1 Sep to 31 Aug. The Commissioner and agency staff are responsible for preparing a draft budget for the Board's consideration each year, and after approval by the Board, to administer the budget within the parameters set by the Board.

The Board meets for regular quarterly sessions in February, May, August and November each year. The budget must be finalized each year at the Board's August meeting in order to be in effect for each new fiscal year commencing Sep 1. To ensure adequate preparation, appropriate Budget Committee and Board review, and timely final approval, the Board adopts the following policy guidance for staff:

PROCESS - TIMELINES & DUTIES:

The Board's Budget Committee and its Chair are appointed by the Board Chair in February of each year and will consist of not more than 3 members of the Board. By interpreting and detailing the Board's policies, the Budget Committee is responsible to provide necessary direction to agency staff to enable them to meet these responsibilities. This memo provides the procedures that will guide this process.

The Budget Committee will meet prior to the regularly scheduled Board meetings in May and August to review the current draft budget, receive explanations for any staff recommendations, and provide any needed direction for additional details, emphasis or presentation issues. This first draft budget prepared by staff will also contain the last year's budget for comparison, with notes for any recommended variances or historical anomalies. The staff will also provide the most current year to date financial statement for both revenues and expenditures as a resource document with each draft budget. The Budget Committee will review the first draft budget and provide any comments or direction to the staff prior to April 30th, allowing sufficient time for revisions prior to the May Board meeting. The Budget Committee Chair will present the Committee's report on its activities to the Board meeting In May. Staff will be available as needed to answer any questions posed by Board members.

Staff will take the direction and guidance of the Budget Committee and any revisions requested by the Board at its May meeting and incorporate these consensus recommendations into the second draft budget. By June 1st, a second draft will be sent to the Budget Committee members for review and comment not later than June 30th. Staff will take the direction and guidance of the Budget Committee members prior to July 31st and incorporate additional recommendations into the third and final draft budget. At the discretion of its Chair, the Budget Committee may be called into a special meeting to address any major issues which arise during this draft budget development and review process.

The Budget Committee will meet again immediately prior to the Board meeting in August to complete its final review of the third draft and make any final recommendations for the Board budget. The Committee Chair will present the Committee's report to the Board at its regular August meeting. Staff will be available as needed to answer any questions posed by Board members.

POLICIES:

In compiling each draft budget, the staff will adhere to these specific policy guidelines:

1. Each budget will be compiled with a 5 year data set of revenues and expenses to support it – two full completed prior years, the current fiscal year "to date" and "projected" through fiscal year end, and the upcoming fiscal year as proposed, plus the next fiscal year to follow. The proposed budget and next fiscal year following will also show a monthly 'cash-flow" projection. Because of the 2 year license period and the seasonal cycle of renewals, it is prudent to see the expected cycle of revenue fluctuations over this extended 2 year period.

2. In addition to covering anticipated expenses for each year, including capital expenses for any needed technology maintenance and/or necessary upgrade, and excluding any amount carried over from the prior year to account for predictable revenue spikes (e.g. AMC registration fees), the Board aims to accumulate and maintain an Operating Reserve totaling not less than 3 months average operating expenses, excluding all "pass through" expense items, as a tool to manage unexpected cash flow fluctuations and for any unanticipated contingencies.

3. Once the target Operating Reserve is achieved, if a specific revenue surplus (amount to be determined) is prudently accumulated, it is the Board's policy to prepare a proposed plan for the possibility of a fee reduction for licensees. Staff will make conservative recommendations for the specific conditions that would allow for any such fee reduction, the proposed category and amount, the appropriate time frame for its commencement and termination, and a forecast for the overall effect on the Board's revenue. The Board will specifically approve each proposed fee reduction by the normal rule process.

4. The final decisions on all budget matters rest clearly with the Board. The Commissioner will carry out the directions and policies of the Board in administering the approved budget. At each quarterly meeting, the Commissioner will provide a report on the current state of the budget with a detailed report of the budget vs. actual revenues and expenditures and answer the questions of the Board. Any variance of significance will also have a written note of explanation.

AGENDA ITEM 26

Discussion and possible action regarding the agency's Compact with Texans

SUMMARY

See attached.

STAFF RECOMMENDATION

Approve the agency's Compact with Texans.

RECOMMENDED MOTION

MOVED, that the Board approve the agency's Compact with Texans and authorize staff on behalf of this Board to submit it to the Governor's Office of Budget and Planning and the Legislative Budget Board for approval.

TREC & TALCB COMPACT WITH TEXANS

The Texas Real Estate Commission (TREC) and Texas Appraiser Licensing & Certification Board (TALCB) function as a single state agency, with distinct, independent policy and enforcement functions.

OUR MISSION

The agency exists to safeguard the public interest and protect consumers of real estate services. In accord with state and federal laws the agency oversees real estate brokerage, appraisal, inspection, home warranty, right-of-way services and timeshare interest providers. Through education, licensing and regulation, the agency ensures the availability of qualified and ethical service providers, thereby facilitating economic growth and opportunity across Texas.

OUR CUSTOMER SERVICE PRINCIPLES

Our agency is committed to providing excellent service to all. You can expect the agency to:

- recognize that we serve the people of the state of Texas first;
- advance policy initiatives that demand accountability of both staff and licensees by insisting they act with integrity and perform to the highest of standards;
- conduct agency business fairly, ethically, and with the utmost transparency;
- respond to consumers in a timely, efficient and professional manner, in accordance with all state and federal statutes and regulations;
- maintain a well-trained staff that is up-to-date on the many relevant issues affecting both Texas consumers and our licensees; and
- provide information to the public in concise, easy-to-read language.

OUR PLEDGE

To achieve our mission in conjunction with our customer service principles, the agency makes the following pledge:

- We will be courteous, professional, and honest in dealing with all persons who contact the agency.
- We will make every attempt to have callers and visitors greeted by an agency employee.
- We will provide clear, concise, easy to understand, timely and accurate information.
- We will answer telephone calls promptly and will return calls within one business day.
- We will make every effort to answer questions immediately, or correctly refer the inquiry to someone who can answer the questions, or provide a timetable for responding.
- We will maintain our web site with timely, relevant, accurate, and accessible information.

- We will make every effort to respond to written inquiries (mail or email) within five working days or less and process most license applications in ten working days or less.
- We will send renewal notices and related information to licensees three months in advance of the expiration date (and plan to send more frequent periodic reminders).
- We will investigate and resolve consumer complaints in a timely manner.
- We will enforce the law, rules and standards in a fair, honest, professional and competent manner, with appropriate due process.
- We will undertake periodic surveys to elicit feedback from our licensees and the public.
- We will cooperate with other Texas state agencies, other state and federal regulatory agencies, industry professional and trade associations, and other relevant entities.
- We will not discriminate on the basis of race, color, religion, sex, national origin, age, or disability in education, licensing, enforcement, or employment.
- We will admit to our mistakes and promptly act to correct them.
- We will do the best job possible in an efficient and economical manner by streamlining agency operations, updating and modernizing agency procedures, and eliminating costs and overhead where appropriate.

FILING A COMPLAINT

Anyone may file a complaint with the agency concerning the activities of its licensees. Texas law requires that complaints filed with us be written and signed by the party filing the complaint. The agency will not process a complaint if it is unsigned. The agency does not accept anonymous complaints or complaints via email - unless a signed complaint form is attached.

The agency's authority is limited to taking disciplinary action against entities or individuals regulated by the agency. Texas law prohibits the agency from giving private legal advice or opinions or acting as your attorney. If you need legal advice, please contact a private attorney.

The complaint procedures differ slightly for TREC and TALCB.

TREC COMPLAINTS: TREC complaints can be filed with the agency in any written form. TREC has a suggested complaint form available for your convenience. For additional information about filing complaints with TREC, or to download a complaint form, please click here.

TALCB COMPLAINTS: TALCB complaints must be filed with the agency on a prescribed TALCB complaint form. For additional information about filing complaints with the TALCB, or to download a complaint form, please click here.

FILING A PUBLIC INFORMATION REQUEST (OPEN RECORDS)

Texas Government Code, Chapter 552, gives you the right to access government records. While all government information is presumed to be available to the public, certain exceptions may apply to the disclosure of some information. We are required by law to promptly release any requested information that is not confidential by law or otherwise subject to a disclosure exception. There may be a cost to provide some materials. For more information about the agency's public information policy, please click here.

To request information from the agency, you must send your request to the agency's Public Information Officer. There are several ways to submit your request:

By Mail:
Public Information Officer
P. O. Box 12188
Austin, Texas 78711-2188

In Person:
Stephen F. Austin Building
1700 N. Congress Ave., Suite 400
Austin, TX 78701
(Link to Map)

By Email:
open.records@trec.texas.gov

By Fax:
512-936-3788

YOUR INPUT IS IMPORTANT TO US

We value your opinion pertaining to our performance. We measure customer service satisfaction via our Customer Service Survey. We distribute this form to you in the following manner:

- with every license renewal;
- when you visit us in person at the agency's office;
- when we receive telephone requests from you;
- after a complaint file is closed; and
- at our web sites at www.trec.texas.gov and www.talcb.texas.gov.

When you return this form, we tally your evaluation and respond to questions and/or complaints. The feedback you provide is used to continually improve our service.

We make every effort to provide 100% customer satisfaction; however, it is possible that some customers may experience less than perfect service from time to time. If you find yourself in this position, please contact our Reception & Communications Services Division. We will respond to your request within 48 hours.

HOW TO CONTACT US

By Mail:
P. O. Box 12188
Austin, Texas 78711-2188

In Person:
Stephen F. Austin Building
1700 N. Congress Ave., Suite 400
Austin, TX 78701

By Email:
information@trec.texas.gov

By Phone:
(512) 936-3000

By Fax:
(512) 936-3864

AGENDA ITEM 27

Discussion regarding legislative matters

AGENDA ITEM 28

Discussion and possible action regarding the use of electronic minutes with a bookmarked video recording of Board meetings as the official record of meetings

SUMMARY

To be presented at the meeting.

STAFF RECOMMENDATION

Approve the use of electronic minutes with a bookmarked video recording of Board meetings as the official record of meetings and delegate authority to the Board Secretary to approve this official record prior to posting it on the agency website.

RECOMMENDED MOTION

MOVED, that Board approve the electronic minutes with a bookmarked video recording of Board meetings as the official record of the meeting and delegate authority to the Board Secretary to approve this official record prior to posting it on the agency website.

AGENDA ITEM 29

Discussion and possible action regarding development of a tracking system for staff implementation of Board directives

AGENDA ITEM 30

Request for new business agenda items.

AGENDA ITEM 31

Discussion and possible action to schedule future meeting dates.

AGENDA ITEM 32

Adjourn.

Texas Appraiser Licensing &Certification Board

February 15, 2013

May 13

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

June 13

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16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

July 13

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28	29	30	31			

August 13

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25	26	27	28	29	30	31

September 13

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22	23	24	25	26	27	28
29	30					

October 13

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13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

May

12 Mother's Day

17 ***Board Meetings***

27 Memorial Day (Observed)-State Holiday

June

16 Father's Day

July

4 Independence Day-State Holiday

August

16 ***Board Meetings***

September

2 Labor Day-State Holiday

October

27 Daylight Savings--set back 1 hour

November

5 Election Day

11 Veterans Day

15 ***Board Meetings***

December

25 Christmas Holidays

31 New Year's Eve

January

1 New Year's Day

20 Martin Luther King, Jr.-State Holiday

February

17 President's Day-State Holiday

April

6 Daylight Savings--set ahead 1 hour

18 Good Friday

20 Easter

November 13

S	M	T	W	T	F	S
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December 13

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22	23	24	25	26	27	28
29	30	31				

January 14

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February 14

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March 14

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30	31					

April 14

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