

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

IN THE MATTER OF THE APPLICATION :
TO BECOME APPRAISER : FINAL DECISION
QUALIFICATIONS BOARD COMPLIANT : AND ORDER
OF : Case No. LS0702091APP
:
:
:
:
:
:
STEVEN H. LOEHRKE, :
APPLICANT. :

(Division of Enforcement Case File # 06 APP 131)

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Steven H. Loehrke
W1638 Aniwa Road
Weyauwega, WI 54983

Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing was held in the above-captioned matter on April 27, 2007. Mr. Loehrke appeared without legal counsel. The Division of Enforcement appeared on behalf of the State of Wisconsin. The Administrative Law Judge issued his proposed decision on June 4, 2007. Objections to the proposed decision were filed by June 22, 2007.

FINDINGS OF FACT

1. Steven H. Loehrke was born on October 1, 1952. Mr. Loehrke's latest address on file with the Department of Regulation and Licensing is W1638 Aniwa Road, Weyauwega, Wisconsin 54983.

2. Mr. Loehrke was granted a Licensed Appraiser credential (#829) on July 11, 1994. Of the 3 appraiser credentials granted by the Department, the Licensed Appraiser credential is the entry level credential (in terms of education, experience and examination), and has the most restricted scope of practice. Mr. Loehrke's appraisal practice is also limited in scope. He does not do many secondary market loan appraisals. In general, his appraisals are prepared for attorneys or other individuals for use in conjunction with divorce proceedings; estate matters; tax assessment contests and challenges involving "for-sale-of-property" by the Department of Transportation due to road widening projects. He is also a licensed real estate broker (he owns and manages a small real estate office), certified assessor, title insurance agent, registered auctioneer, and a certified real estate continuing education instructor. He also took classes to become a licensed home inspector and a mortgage broker.

3. At some point in time, Mr. Loehrke submitted a request to the Federal Housing Administration (FHA) for approval to be placed on its Appraiser Roster. Mr. Loehrke learned that in order for him to be placed on the FHA Appraiser Roster,

he had to show compliance with the Licensed Appraiser qualifications criteria established by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. In 1994, when the Department granted a Licensed Appraiser credential to Mr. Loehrke, the Department required Licensed Appraisers to obtain 500 hours of appraisal experience. In 1994, and at the time Mr. Loehrke applied to be placed on the FHA Appraiser Roster, the AQB required Licensed Appraisers to obtain 2000 hours of appraisal experience. The Department, as well as the AQB, requires appraisal experience to be performed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

4. In January 2006, Mr. Loehrke submitted a request to the Department to review an additional 1500 hours of his real estate appraisal experience to determine whether it complies with the USPAP for purposes of satisfying the criteria established by the AQB, and for purposes of being reported to the National Registry as "AQB conforming". As a public service, the Department agreed to review Mr. Loehrke's appraisal experience for those purposes. The Department selected 3 appraisal reports from Mr. Loehrke's Experience Roster and sent them to a member of the Real Estate Appraiser Application Advisory Committee to review for compliance with USPAP.

5. Karen Scott, who has been a member of the Advisory Committee since 2004, reviewed Mr. Loehrke's 3 appraisal reports for compliance with the USPAP. As a member of the Advisory Committee, Ms. Scott reviews appraisal experience of applicants and appraisers to determine if their appraisals comply with the USPAP. Prior to the formation of the Advisory Committee, between 1991 and 2004, Ms. Scott reviewed appraisal reports of applicants and appraisers for compliance with USPAP at the request of the Department. Ms. Scott is a Certified General Appraiser. The Certified General Appraiser credential is the highest level (in terms of education, experience and examination) of the 3 appraiser credentials granted by the Department, and has the broadest scope of practice. She performs approximately 200 appraisals per year and conducts approximately 200 appraisal reviews of other appraisers' work per year. That includes appraisal review work for the Department, lenders, private clients, and review of appraisal work of appraiser trainees in her own office. She received a Bachelor of Business Administration degree with majors in Finance, Real Estate and English Literature in 1974, and a Master of Business Administration (MBA) degree with a major in Finance, Investments and Banking in May 1985, from the University of Wisconsin-Madison. She has been a member of the Wisconsin Real Estate Appraisers Board since 2004. The Board is authorized under Wis. Stats., ch. 458, to discipline Licensed and Certified Appraisers.

6. Ms. Scott completed an Appraisal Review of Mr. Loehrke's 3 appraisal reports in accordance with USPAP Standards. Of the 3 appraisal reports that Mr. Loehrke submitted, Ms. Scott determined that one of the appraisal reports was acceptable; one report was deemed acceptable with suggestions provided on how to improve his appraisal work, and one report (which involved the appraisal of the property located at 7704 Peters Road, Fremont, WI) was not USPAP compliant. On March 30, 2006, the Department sent a Notice of Intent to Deny approval of Mr. Loehrke's experience hours for the appraisal of the 7704 Peters Road, Fremont, WI, property. Mr. Loehrke was asked to submit one additional work sample report demonstrating compliance with USPAP. At some point in time, Mr. Loehrke submitted an additional appraisal report to the Department which involved the appraisal of the property located at 418 West Main Street, Weyauwega, WI. On June 5, 2006, Ms. Scott completed a USPAP Standards 3 Appraisal Review of the appraisal report relating to the 418 West Main Street property. Ms. Scott determined that that appraisal report did not comply with the USPAP.

7. On June 7, 2006, the Department sent a Notice of Intent to Deny approval of Mr. Loehrke's appraisal experience for his appraisal of the 418 West Main Street property. Mr. Loehrke was asked to submit one additional work report which, at a minimum, was a summary report that utilized all three approaches to value. At some point in time, Mr. Loehrke submitted another appraisal report. The additional report was a form report on a single-family house and did not use all three approaches to value. Ms. Scott did not review that appraisal because it was not what she had requested. She restated, on her "Reviewers Re-Review Recommendation" report, dated July 6, 2006, that her request was for a narrative report or if a narrative was not available, then a form report which uses all three approaches to value. As of September 2006, Mr. Loehrke still had not submitted the additional appraisal report in the form requested by Ms. Scott. In September 2006, the Department sent a second request to Mr. Loehrke asking him again to submit another appraisal report in the form of a narrative report or, if not available, a form report with all three approaches to value or a demonstration report.

8. In October 2006, in response to the Department's request, Mr. Loehrke submitted a narrative appraisal report to the Department for review. The report related to his appraisal of the property located at 207 East Main Street, Weyauwega, WI. On October 31, 2006, Ms. Scott completed a USPAP Standards 3 Appraisal Review of the appraisal of the 207 East Main Street property. Ms. Scott determined that that appraisal report did not comply with USPAP.

9. On November 7, 2006, the Department issued a Notice of Denial in which it stated that Mr. Loehrke's appraisal work samples, which included the appraisal report relating to the property located at 207 East Main Street, Weyauwega, Wisconsin, failed to comply with the USPAP in effect at the time the appraisals were prepared.

10. Mr. Loehrke requested a hearing on the Department's Notice of Denial within 45 days of receiving the denial.

11. The appraisal reports that Mr. Loehrke submitted to the Department for experience review, relating to the properties located at 7704 Peters Road, Fremont, WI; 418 West Main Street, Weyauwega, WI, and 207 East Main Street, Weyauwega, Wisconsin, do not comply with the Uniform Standards of Professional Appraisal Practice (USPAP).

CONCLUSIONS OF LAW

1. The Wisconsin Department of Regulation and Licensing has jurisdiction of this matter pursuant to Wis. Stats. §458.03.

2. The real estate appraisal reports that Mr. Loehrke submitted to the Department for experience review, as described in Findings of Fact 4-9 and 11 herein, do not comply with the Uniform Standards of Professional Appraisal Practice (USPAP), as required in Wis. Adm. Code § RL 83.01 (3) (a).

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that the decision of the Department of Regulation and Licensing that the real estate appraisal reports submitted by Steven H. Loehrke for experience review do not comply with the Uniform Standards of Professional Appraisal Practice (USPAP) be, and hereby is, affirmed.

This order is effective on the day it is signed by the Secretary of the Department of Regulation and Licensing or her designee.

EXPLANATION OF VARIANCE

I. Background

At some point in time, Mr. Loehrke submitted a request to the Federal Housing Administration (FHA) for approval to be placed on its Appraiser Roster. Mr. Loehrke learned that in order for him to be placed on the FHA Appraiser Roster, he had to show compliance with the Licensed Appraiser qualifications criteria established by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. In 1994, when the Department granted a Licensed Appraiser credential to Mr. Loehrke, the Department required Licensed Appraisers to obtain 500 hours of appraisal experience. In 1994, and at the time Mr. Loehrke applied to be placed on the FHA Appraiser Roster, the AQB required Licensed Appraisers to obtain 2000 hours of appraisal experience. The Department, as well as the AQB, requires appraisal experience to be performed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). *Wis. Adm. Code § RL 83.01 (3) (a); Transcript p. 85-87.*

In January 2006, Mr. Loehrke submitted two forms (Real Estate Appraisal Experience Certification form and Real Estate Appraisal Experience Roster) to the Department, along with a request to the Department to review an additional 1500 hours of his appraisal experience, for purposes of satisfying the 2000 hours of appraisal experience required by the AQB for a Licensed Appraiser credential. The Department selected 3 appraisal reports listed on Mr. Loehrke's Experience Roster and forwarded them to a member of the Real Estate Appraiser Application Advisory Committee ("Advisory Committee") to review for compliance with USPAP. *Transcript p. 18-19; Exhibit 19.*

Karen Scott, who has been a member of the Advisory Committee since 2004, reviewed Mr. Loehrke's 3 appraisal reports for compliance with the USPAP. As a member of the Advisory Committee, Ms. Scott reviews appraisal experience of applicants and appraisers to determine if their appraisals comply with the USPAP. Prior to the formation of the Advisory Committee, between 1991 and 2004, Ms. Scott reviewed appraisal reports of applicants and appraisers for compliance with USPAP at the request of the Department. Ms. Scott is a Certified General Appraiser. The Certified General Appraiser credential is the highest level (in terms of education, experience and examination) of the 3 appraiser credentials granted by the Department, and has the broadest scope of practice. Ms. Scott performs approximately 200 appraisals per year. She also conducts approximately 200 appraisal reviews of other appraisers' work per year. That includes appraisal review work for the Department, lenders, private clients, and review of appraisal work of appraiser trainees in her own office. She received a Bachelor of Business Administration degree with majors in Finance, Real Estate and English Literature in 1974, and a Master of Business Administration (MBA) degree with a major in Finance, Investments and Banking in May 1985, from the University of Wisconsin-Madison. She has been the Certified General Appraiser member of the Wisconsin Real Estate Appraisers Board ("Board") since 2004. The Board is authorized under Wis. Stats., ch. 458, to discipline Licensed and Certified Appraisers. *Transcript p. 11-13; Exhibit 1.*

7704 Peters Road Property

Ms. Scott completed an Appraisal Review of Mr. Loehrke's 3 appraisal reports in accordance with USPAP Standards. Of the 3 appraisal reports that Mr. Loehrke submitted, Ms. Scott determined that one of the appraisal reports was acceptable; one report was deemed acceptable with suggestions provided on how to improve his appraisal work, and one report (which involved the appraisal of the property located at 7704 Peters Road, Fremont, WI) was not USPAP compliant. On March 30, 2006, the Department sent a Notice of Intent to Deny approval of Mr. Loehrke's experience hours for the appraisal of the 7704 Peters Road, Fremont, WI, property. Mr. Loehrke was asked to submit one additional work sample report demonstrating compliance with USPAP. The Department stated in its Notice of Intent to Deny that Mr. Loehrke's appraisal of the 7704 Peters Road property did not meet the following USPAP Standards for the following reasons [Exhibit 3]:

SR 1-2a Client and Intended User (s)

Does not identify the intended users (s). It is not acceptable to require the reader to infer that the intended user is the lender/client.

S.R. 1-2b Intended Use

Does not identify the intended use of the appraisal work.

S.R. 1-2f Scope of Work

No scope of work statement.

General comment:

There is very little original work contained in this appraisal. The bulk of the comments on pages 4 and 5 are questions about the DOT's report, or disagreements with state's appraisal.

418 West Main Street Property

At some point in time, Mr. Loehrke submitted an additional appraisal report to the Department which involved the appraisal of the property located at 418 West Main Street, Weyauwega, WI. On June 5, 2006, Ms. Scott completed a USPAP Standards 3 Appraisal Review of the appraisal report prepared by Mr. Loehrke relating to the 418 West Main Street

property. Ms. Scott stated in her review report that Mr. Loehrke's appraisal of the 418 West Main Street property did not meet the following USPAP Standards for the following reasons [Exhibit 4]:

S.R. 1-2c Purpose and Reasonable Market Exposure Time

Does not provide an opinion of reasonable exposure time linked to the value opinion (see the comment below S R 1 -2 (c) (iv).

S.R. 1-2f Scope of Work

Scope of work statement is incomplete. Please refer to the definition of "scope" in USPAP for the required elements to be included in a scope of work statement. The reader cannot tell from the scope of work statement included in the report if the subject was inspected, if the comparable sales were inspected, if the rent comparables were inspected, what source was used for the reproduction cost, what government publications or individuals were consulted, etc. The paragraph at the bottom of page 6 should be included as part of the Scope of Work statement.

S.R. 2-2 Reporting Options

Identifies the report as "self contained," when, in fact, it is a restricted report. Examples of where the report fails to meet the standard for a self contained report are in the Cost and Income Approaches to Value. The standards rule for a self contained report (S.R. 2-2 (a) (ix) requires the appraiser to "describe the information analyzed...." There are no land sales, no rent comparables, and essentially no analysis contained in this report. Another example of why this is a restricted, not self contained report is that there is no no explanation for the adjustments in the Sales Comparison Approach. The applicant has still not demonstrated the ability to complete an appraisal report. Therefore, please provide a report which is, at a minimum, a summary report and which utilizes all three approaches to value.

On June 7, 2006, the Department sent a Notice of Intent to Deny approval of Mr. Loehrke's appraisal experience for the appraisal of the 418 West Main Street property. Mr. Loehrke was asked to submit one additional work report which, at a minimum, was a summary report that utilized all three approaches to value. At some point in time, Mr. Loehrke submitted another appraisal report. The additional report was a form report on a single-family house and did not use all three approaches to value. Ms. Scott did not review that appraisal because it was not what she had requested. She restated, on her "Reviewers Re-Review Recommendation" report, dated July 6, 2006, that her request was for a narrative report or if a narrative was not available, then a form report which uses all three approaches to value. As of September 2006, Mr. Loehrke still had not submitted the additional appraisal report in the form requested by Ms. Scott. In September 2006, the

Department sent a second request to Mr. Loehrke asking him again to submit another appraisal report in the form of a narrative report or, if not available, a form report with all three approaches to value or a demonstration report. *Exhibits 4, 5, 6 and 7.*

207 East Main Street Property

In October 2006, in response to the Department's request, Mr. Loehrke submitted a narrative appraisal report to the Department for review. The report related to his appraisal of the property located at 207 East Main Street, Weyauwega, WI.

On October 31, 2006, Ms. Scott completed a USPAP Standards 3 Review of Mr. Loehrke's appraisal of the 207 West East Main Street property. Ms. Scott found the following USPAP violations [Exhibits 8, 10 and 20]:

S.R. 1-2d Effective Date

On page 10, provides his opinion that the property is worth \$95,000, but does not indicate any effective date.

S.R. 1-4d Interest Valued

Mis-states the property interest being valued. It is labeled "fee simple" and is actually "leased fee" or "fee simple, subject to lease." On pages 7 and 8, the Appraiser provides an accurate definition of "fee simple." Given that the subject property is a duplex which is tenant occupied, the tenants have rights to use the building. Some of the owner's rights have been conveyed to tenants, and the rights being appraised are "leased fee."

S.R. 1-4g Personal Property, etc.

I did not find any reference to whether or not personal property is included in the value opinion. For residential income properties, appliances are often included in the rental of the premises.

S.R. 1-5 Subject Listing and Sale Information

The Standards Rule requires the appraiser to ANALYZE all sales of the subject property that occurred with the three years prior to the effective date of the appraisal. The sales history of the subject is in the last paragraph on page 17, but there is no analysis. Was the property listed for sale? How long was it exposed to the market? Was it an arms length transfer? Were there any sales concession? These are examples of information which should be provided as part of the analysis.

S.R. 1-6 Reconciliation

Provides no reconciliation. States on the bottom of page 10, that "reconciling all three approaches to value," but does not provide any of the thoughts related to the

reconciliation. Which approach is given the most weight, and for what reason?

S.R. 2-2 Reporting Options

Mid-identifies the report as a summary report when it is actually a restricted report. Examples of why this report does not meet the standards of a summary report are:

- Provides no information to support the land value. On page 16, indicates "The estimated site value is \$10,000 based on actual research, assessed values, and appraiser's knowledge of the local marketplace." Standards Rule 1-4 (b) (i) requires an appraiser to value the site "by an appropriate appraisal method or technique." This is usually Sales Comparison. No land sales are provided, and there is no rationale nor reasoning provided.
- Provides no support for the functional deduction. Is this based on rent loss, cost to cure; excess construction costs, or some other method?
- Paragraph 3 on page 17 of the appraiser's report references paired sales, but there is limited support for the level of adjustments.
- Provides no reasoning related to reconciling the final end value.

Notice of Denial and Request for Hearing

On November 7, 2006, the Department sent a Notice of Denial to Mr. Loehrke stating that the appraisal reports which he submitted, including the appraisal of the 207 East Main Street, Weyauwega, WI, property, did not comply with USPAP. The Department denied Mr. Loehrke's request for approval of his appraisal experience as being USPAP compliant. Mr. Loehrke requested a hearing on the Department's Notice of Denial within 45 days of receiving the denial. *Exhibits 10, 20.*

II. Variance

The Department accepts the determinations, Findings of Fact, Conclusions of Law and Order of the Administrative Law Judge, with the following exceptions:

Determination of Parties for Purposes of Review

The proposed decision of the Administrative Law Judge is being modified to include the Department of Regulation and Licensing as a party for purposes of review under Wis. Stats., § 227.53. [See Wis. Stats., § 227.47 (1).]

Findings of Fact:

Findings of Fact 1

The Department accepts the proposed Findings of Fact 1 and 2 and combines the two Findings.

Findings of Fact 2

The Department creates a new Findings of Fact 2 to add a finding that Mr. Loehrke was granted a Licensed Appraiser credential (#829) on July 11, 1994 and to include facts relating to Mr. Loehrke's appraisal and real estate related practices.

Findings of Fact 3

The Administrative Law Judge found in Findings of Fact 3 of his proposed decision that Mr. Loehrke submitted an application by letter to become Appraiser Qualifications Board Compliant on or about January 5, 2006.

At some point in time, Mr. Loehrke submitted a request to the Federal Housing Administration (FHA) for approval to be placed on its Appraiser Roster. Mr. Loehrke learned that in order for him to be placed on the FHA Appraiser Roster, he had to show compliance with the Licensed Appraiser qualifications criteria established by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Finding of Fact 3 is being modified to clarify that Mr. Loehrke submitted a request to the Department to review his appraisal experience for purposes of establishing that his appraisal reports complied with the USPAP and for the purpose of satisfying the 2000 hours of appraisal experience required by the AQB for a Licensed Appraisal credential. Mr. Loehrke did not submit, and does not have an "application" pending before the Department, to become Appraiser Qualifications Board compliant.

Findings of Fact 4

In Findings of Fact 4 of his proposed decision, the Administrative Law Judge found the following:

The Department of Regulation and Licensing has not adopted by rule an *application process* to become Appraiser Qualifications Board compliant. In practice, the *application process* to become Appraiser Qualifications Board Compliant requires that the applicant submit real estate appraisals for review [Emphasis added.]

The Administrative Law Judge's proposed Findings of Fact 4 is being modified to clarify that Mr. Loehrke is not applying for a credential. Mr. Loehrke testified to that fact at the hearing. He already holds a Licensed Appraiser credential granted by the Department. He submitted a "request", not an application, to the Department to review his appraisal experience to determine whether it complies with the USPAP for purposes of satisfying the criteria established by the AQB, and for purposes of being reported to the National Registry as "AQB conforming". As a public service, the Department agreed to review Mr. Loehrke's appraisal experience for those purposes. *Transcript p. 85-87; p. 89, lines 2-9.*

In order to fully understand the Department's role in reviewing appraisal experience, the following information should be noted.

First, the Department reviews real estate appraisal experience for purposes of granting licenses and certifications under Wis. Stats., ch. 458. The "application requirements" and "application process" are set forth in Wis. Stats., §§ 458.06 and 458.07, and Wis. Adm. Code ch. RL 81. In reference to appraisal experience, the Department is required under Wis. Stats., § 458.085 (2), to promulgate rules establishing the experience requirements for licensed and certified appraisers. Those rules are set forth in Wis. Adm. Code, ch. RL 83.

Second, the Department reviews real estate appraisal experience for purposes of reporting data to the National Registry regarding whether Licensed and Certified Appraisers satisfy the appraiser qualifications criteria established by the AQB. In this process, the

Department functions as a reporting agency. The Department is not required to adopt a rule to carry out this function.

In reference to reporting data to the National Registry, under state and federal law, the Department is required to transmit, no less than annually, a roster listing individuals who have received a State certification or licensed appraiser credential, to the Appraisal Subcommittee (Appraisal Subcommittee) of the Federal Financial Institutions Examination Council. The National Registry is maintained by the Appraisal Subcommittee. *Wis. Stats., § 458.03 (3) (b); 12 USC 3331, 3332, 3338, 3350.*

In reference to reporting data to the National Registry regarding whether Licensed Appraisers conform to the AQB Qualifications Criteria, as indicated in the November 2003, Notice to Licensed Appraisers, which is attached as Exhibit 1 to the Administrative Law Judge's proposed decision, the Department is required to report that information to the National Registry.

Also, as indicated in the Notice, on September 30, 2003, the Department submitted data to the National Registry stating that all Wisconsin Licensed Appraisers had met the Wisconsin experience requirement of 500 hours for licensure, but that they had not satisfied the AQB requirement of 2000 hours of experience. The Department's action in reporting that information to the National Registry did not affect the validity of the appraiser licenses in Wisconsin. Licensed Appraisers were informed that they could continue to renew their licenses once granted without getting additional hours of experience. However, lenders and other users of appraisal services are expected to use the National Registry to make employment and assignment decisions, making it desirable for Licensed Appraisers to attain the additional hours of experience to improve their employability. The Notice further stated that Licensed Appraisers could request that the Department report their status on the National Registry as AQB-conforming by submitting a supplementary experience roster showing completion of 1500 additional hours of appraisals complying with the USPAP. In addition, the Licensed Appraisers were told that once their experience was reviewed and approved, the Department would update the National Registry to reflect their status as being AQB-conforming.

Findings of Fact 5

The Administrative Law Judge found that Karen Scott, a Wisconsin Certified General Appraiser and member of the Department's Real Estate Appraisers Application Advisory Committee, reviewed the work samples Mr. Loehrke submitted with his application and provided written comments relating to the appraisal for the property at 207 East Main Street, Weyauwega, Wisconsin 54938. Ms. Scott concluded that the report did not meet the Uniform Standards of Professional Appraiser Practice (USPAP) standards in 6 areas. This finding is being modified to include additional facts relating to Ms. Scott's qualifications and practice as an appraiser.

Findings of Fact 6 and 7

The Administrative Law Judge found that the Department determined that the appraisal Mr. Loehrke submitted, for the property located at 207 East Main Street, Weyauwega, Wisconsin 54983, did not meet USPAP standards, and that the Department denied his application on November 7, 2006. With minor changes, the Department accepts these findings and combines them into the new Findings of Fact 9. In addition, the Department creates new Findings of Fact 6 and 7 to provide more specific facts about the Department's review of Mr. Loehrke's appraisal experience.

Findings of Fact 8

The Administrative Law Judge found that Mr. Loehrke timely requested a hearing on the denial of his application within 45 days of receiving the denial. This finding is being renumbered Findings of Fact 10. In addition, the Department creates a new Finding of Fact 8 to provide more specific facts about the Department's review of Mr. Loehrke's appraisal experience.

Findings of Fact 9

As stated in the explanation for the variance to Findings of Fact 6 and 7, the Department accepts those findings and combines them into the new Findings of Fact 9.

Findings of Fact 10

As stated in the explanation for the variance to Findings of Fact 8, the Department renumbered that finding to Findings of Fact 10.

Findings of Fact 11

The Department creates Findings of Fact 11 to state that the appraisal reports which Mr. Loehrke submitted to the Department for experience review, relating to the properties located at 7704 Peters Road, Fremont, WI; **418 West Main Street, Weyauwega, WI**, and 207 East Main Street, Weyauwega, Wisconsin, do not comply with the Uniform Standards of Professional Appraisal Practice (USPAP).

In his proposed decision, the Administrative Law Judge stated in his Opinion, but did not include a specific finding in his proposed Findings of Fact, that the appraisal report prepared by Mr. Loehrke relating to the property located at 207 East Main Street, Weyauwega, WI, is USPAP compliant. The Administrative Law Judge opined that the USPAP violations alleged by Ms. Scott do not rise to the level sufficient to be considered a violation of S.R 1-1; that the record is devoid of evidence that the Weyauwega appraisal was not credible and that equally absent is any indication that any of the errors proven to have been committed by the applicant resulted in a significant impact on the appraisal. The Administrative Law Judge did not offer an opinion or make any findings relating to whether Mr. Loehrke's appraisal of the properties located at 7704 Peters Road, Fremont, WI, and **418 West Main Street, Weyauwega, WI**, comply with USPAP. *Proposed Decision, p. 10-16.*

The Department does not accept the Administrative Law Judge's determination that the appraisal report for the property located at 207 East Main Street, Weyauwega, WI complies with USPAP. In addition, the Department finds that Mr. Loehrke's appraisal of the properties located at 7704 Peters Road, Fremont, WI, and **418 West Main Street, Weyauwega, WI**, do not comply with USPAP.

First, in reference to the 207 East Main Street property, the Department concludes that the Administrative Law Judge's determination is based upon an incorrect application of USPAP Standards Rule 1-1. The Administrative Judge described his application of the Rule as follows [Proposed Decision, page 11-12]:

A review of USPAP regulations can provide some guidance. The USPAP rules contain a jumble of rules, standards, standards rules, statements on appraisal standards and advisory opinions. The USPAP rules have been modified and revised over time and represent a fluid process rather than a fixed target. This fluidity is exemplified by Standard 1 and Standards Rule 1-1.

STANDARD 1; REAL PROPERTY APPRAISAL, DEVELOPMENT

In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete the research and analyses necessary to produce a credible appraisal.

Standard 1 sets the goal at appropriate work and a credible result. This standard or goal is supplemented by Standards Rule 1-1.

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; and
- (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 affects the credibility of those results.

Thus, we can draw out that the error or series of errors must be substantial and significantly affect the appraisal to the degree that that the result lacks credibility. Stated another way, we can ignore an individual error that is not substantial, we can ignore a substantial error that does not significantly affect the appraisal and we can ignore either an individual error or series of minor errors as long as the result remains credible.

We therefore are invited to examine the alleged errors in the Weyauwega appraisal to determine whether there is a substantial error that significantly affects the appraisal and renders the result less than credible or whether there is a series of individually insubstantial errors that when combined render the result less than credible. *Assuming this is the appropriate professional standard applicable to the situation*, then this results in a finding favorable to the applicant. This result is mandated by the absence of any testimony that the end result of the Weyauwega appraisal was not a credible determination of value. [*Emphasis added.*]

I will proceed however with further analysis as to whether the errors alleged were substantial or not.

It is clear after reading the Administrative Law Judge's opinion that he made an assumption that Standards Rule 1-1 is the applicable appraisal standard in this case. That assumption is incorrect. There is no evidence in the record upon which the Administrative Law Judge can rely in making his assumption that Standards Rule 1-1 is the applicable appraisal standard in this case. Neither Ms. Scott nor Mr. Loehrke opined that Standards Rule 1-1 was the applicable appraisal standard in this case. In her Appraisal Review report of Mr. Loehrke's appraisal of the 207 East Main Street property, Ms. Scott opined that the appraisal report failed to comply with USPAP Standards Rule 1-2d, 1-4d, 1-4g, 1-5, 1-6 and 2-2. Ms. Scott did not conclude that Mr. Loehrke violated Standards Rule 1-1. In addition, Mr. Loehrke elected not to call an expert witness and the Administrative Law Judge is not qualified to offer an opinion as to the applicable appraisal standard in this case.

Second, in reference to the specific violations found by Ms. Scott in her review of Mr. Loehrke's appraisal of the 207 East Main Street property, except for the violation of Standards Rule 1-2 (relating to effective date), the Department finds that the evidence presented establishes that the violations occurred. **1**

Ms. Scott opined in her Appraisal Review that the appraisal report failed to comply with USPAP in the following manner [Exhibits 8, 10, 20]:

S.R. 1-2d Effective Date

On page 10, provides his opinion that the property is worth \$95,000, but does not indicate any effective date.

S.R. 1-4d Interest Valued

Mis-states the property interest being valued. It is labeled "fee simple" and is actually "leased fee" or "fee simple, subject to lease." On pages 7 and 8, the Appraiser provides an accurate definition of "fee simple." Given that the subject property is a duplex which is tenant occupied, the tenants have rights to use the building. Some of the owner's rights have been conveyed to tenants, and the rights being appraised are "leased fee."

1. In reference to the specific violation found by Ms. Scott in her review of Mr. Loehrke's appraisal of the 207 East Main Street property relating to lack of an effective date, Ms. Scott opined in her Appraisal Review that the appraisal report failed to comply with USPAP S.R. 1-2d because Mr. Loehrke provided his opinion that the property was worth \$95,000, but did not indicate an effective date. During her testimony, Ms. Scott conceded that Mr. Loehrke's appraisal did not violate USPAP in reference to the effective date. Ms. Scott said that she could see that there was an effective date on the cover page and one other page in the report. However, at the point where the value opinion is provided, there is no date attached to the value opinion. She said that that was the first time out of probably a thousand appraisals that she had reviewed that she has ever seen a value opinion stated without the date being tied to the number. Ms. Scott conceded that USPAP does not require the effective date in a report be attached to the value opinion and that her opinion on this issue reflects "best practices". *Transcript, p. 40, 69-70, 97-98; Exhibits 8, 10, 20.*

S.R. 1-4g Personal Property, etc.

I did not find any reference to whether or not personal property is included in the value opinion. For residential income properties, appliances are often included in the rental of the premises.

S.R. 1-5 Subject Listing and Sale Information

The Standards Rule requires the appraiser to ANALYZE all sales of the subject property that occurred with the three years prior to the effective date of the appraisal. The sales history of the subject is in the last paragraph on page 17, but there is no analysis. Was the property listed for sale? How long was it exposed to the market? Was it an arms length transfer? Were there any sales concession? These are examples of information which

should be provided as part of the analysis.

S.R. 1-6 Reconciliation

Provides no reconciliation. States on the bottom of page 10, that "reconciling all three approaches to value, but does not provide any of the thoughts related to the reconciliation. Which approach is given the most weight, and for what reason?"

S.R. 2-2 Reporting Options

Mis-identifies the report as a summary report when it is actually a restricted report. Examples of why this report does not meet the standards of a summary report are:

- Provides no information to support the land value. On page 16, indicates "The estimated site value is \$10,000 based on actual research, assessed values, and appraiser's knowledge of the local marketplace." Standards Rule 1-4 (b) (i) requires an appraiser to value the site "by an appropriate appraisal method or technique." This is usually Direct Sales Comparison. No land sales are provided, and there is no rationale nor reasoning provided.
- Provides no support for the functional deduction. Is this based on rent loss, cost to cure; excess construction costs, or some other method?
- Paragraph 3 on page 17 of the appraiser's report references paired sales, but there is limited support for the level of adjustments.
- Provides no reasoning related to reconciling the final end value.

Testimony of Karen Scott

A. Background

Karen Scott testified at the request of the Division of Enforcement. Ms. Scott is a Wisconsin Certified General Appraiser. She has been the Certified General Appraiser member of the Wisconsin Real Estate Appraisers Board and a member of the Department's Real Estate Appraisers Application Advisory Committee ("Advisory Committee") since 2004. As a member of the Advisory Committee, Ms. Scott reviews appraisal experience of individuals to determine if their appraisals comply with USPAP. Prior to the formation of the Advisory Committee, between 1991 and 2004, Ms. Scott reviewed appraisal reports of individuals for compliance with USPAP at the request of the Department. *Transcript, p. 11-12; Exhibit 1.*

As a Certified General Appraiser, Ms. Scott performs approximately 200 appraisals per year. She also conducts approximately 200 appraisal reviews of other appraisers' work per year. That includes appraisal review work for the Department, lenders, private clients, and review of work of appraisers who are trainees in her own office. *Transcript p. 12*

B. Uniform Standards of Professional Appraisal Practice (USPAP)

Ms. Scott testified that the Uniform Standards of Professional Appraisal Practice (USPAP) is the set of appraisal

standards under which Licensed Appraisers must operate and must comply with when performing appraisals. According to Ms. Scott, USPAP establishes the minimum requirements that an appraisal must meet. USPAP has ten rules. Standards Rule 1 and 2 are the ones that most appraisals fall under. Standards Rule 1 deals with the methodology and the work that an appraiser must go through in forming a value opinion. Standards Rule 2 relates to the report that's involved and provided to the client. Standards Rule 3 deals with review appraisals. There are additional Rules which apply to assessor work (mass appraisals), personal property evaluation, consulting and other types of appraisal work. Ms. Scott testified that part of the goal of the USPAP standards is to ensure that appraisals are completed in a way that is not misleading. *Transcript p. 14-17; Exhibits 9, 17, 18.*

C. Appraisal Review of Mr. Loehrke's Appraisal Work Under USPAP Standards Rule 3

In reference to Mr. Loehrke's appraisal work, Ms. Scott testified that in her capacity as a member of the Department's Real Estate Appraisers Application Advisory Committee, she was assigned to review Mr. Loehrke's three initial work samples that were randomly selected by the Department for review. Based upon her review of the three appraisal reports, Ms. Scott found that one appraisal was considered acceptable; one report was considered acceptable with what she called "coaching comments" (meaning that she provided some suggestions for how to improve his work), and one report was not USPAP compliant. The appraisal report that Ms. Scott found was not in compliance with USPAP relates to Mr. Loehrke's appraisal of the property located at 7704 Peters Road, Fremont, WI. Ms. Scott's comments relating to violations in that report are contained on page 3 of Exhibit 3. Ms. Scott recommended to the Department that Mr. Loehrke submit an additional report for review, which would consist of a narrative report that used all three approaches to value, and that did not incorporate another appraiser's work. If a narrative report was not available, then she recommended that Mr. Loehrke be required to provide a form report using all three approaches to value. *Transcript p. 21, 23, 26; Exhibit 3.*

According to Ms. Scott, Mr. Loehrke submitted an additional report involving his appraisal of the property located at 418 Main Street, Weyauwega, WI. Ms. Scott completed a review of that report on June 5, 2006. She said that the report was relatively limited in content. It was labeled as a self-contained report when, in fact, it met the definition of a restricted report. In addition, there was an omission and a deficiency. Standards Rule 1-2 (c) requires that an appraiser provide a reasonable exposure time (how long the subject be on the market at the appraised value before the sale at the appraised value would be achieved). She said that she did not find any exposure time in the report. Also, the scope of work statement was incomplete and very abbreviated. It didn't even tell her whether or not the property was inspected; if comparable sales were inspected or if he drove by the comparable sales; if the rent comparables were inspected, what source was used for the reproduction cost of the building or if there were any government publications that were consulted or any conversations with government officials such as a zoning administrator. So the scope of work statement was exceptionally weak; and as a result, Ms. Scott concluded that Mr. Loehrke still had not demonstrated the ability to complete an appraisal report with all three approaches to value. So, again, she asked for, at a minimum, a summary report which utilizes all three approaches to value. *Transcript p. 27-30; Exhibit 4.*

Ms. Scott said that a second letter, dated June 7, 2006, was sent to Mr. Loehrke giving him an additional opportunity to submit yet another work report that met the request. Ms. Scott testified that Mr. Loehrke did in fact submit another appraisal report. She said that the additional report was a form report on a single-family house and did not use all three approaches to value, so it didn't really meet what she had requested. She said that she did not even review that appraisal because it wasn't what had been requested, so she went back and tried to restate again more clearly what it was that she was looking for. She was concerned that maybe her comments were not filtering through to Mr. Loehrke, so she restated, on her "Reviewers Re-Review Recommendation, dated July 6, 2006, that her request was for a narrative report or if a narrative was not available, then a form report which uses all three approaches to value. She said that Mr. Loehrke still had not provided work samples demonstrating his ability to complete all three approaches to value. A letter, dated September 15, 2006, was sent to Mr. Loehrke requesting that he submit a report as previously requested by Ms. Scott. *Transcript p. 30-33; Exhibits 5, 6 and 7.*

Ms. Scott further testified that Exhibit 8 contains a copy of the last appraisal that she reviewed of Mr. Loehrke's appraisal reports. She said that the appraisal, which related to the property located at 207 East Main Street, Weyauwega, WI, was intended to be a narrative report meeting the criterion that she had requested. Upon the completion of her professional review of Mr. Loehrke's appraisal for the property at 207 East Main Street in Weyauwega, Ms. Scott prepared an appraisal review report summarizing her findings. *Transcript p. 36-39; Exhibit 10.*

In her appraisal review report, dated October 31, 2006, Ms. Scott recommended to the Department that the report be rejected as not meeting USPAP. She testified as follows regarding the specific USPAP violations [Transcript p. 40-43]:

- Q. And could you please explain what the specific USPAP violations were with this particular report that led to the denial recommendation.
- A. Yes. They're contained on the last page of the exhibit, and in each instance I referred to the specific standards rule.

Under effective date I can see that there was ² an effective date on the cover page and one other page in the report. However, at the point where the value opinion is provided, there's no date attached to the value opinion, and that's the first time out of probably a thousand appraisals that I've reviewed that I've ever seen a value opinion stated without the date being tied to the number.

So my concern was on page 10 there was no effective date tied to the value opinion. The next concern dealt with interest valued, and this was something that had appeared in a prior report that Mr. Loehrke had been alerted to this concern.

He stated that he was appraising the fee simple interest in the property. He has an appropriate definition of fee simple in his appraiser report on pages 7 and 8; but, in fact, there are leases on the property, so it is not fee simple estate. It would either be fee simple subject to lease or also called leased fee.

It's my understanding that within the state of Wisconsin there isn't really a definition of leased fee in terms of interest in real property; however, it's clearly defined within appraisal literature.

And the difference is that with the fee simple estate, the owner has all rights to the property subject only to the four government powers. He or she has the right to walk in at midnight and make a sandwich in the kitchen, use the bathroom at any time.

When there's a lease on the property, the rights to use and enjoyment of the property have been conveyed to a tenant so that the owner can no longer walk into the house at midnight, make a sandwich or use the bathroom. So they're clearly distinctly different interests.

2. Ms. Scott conceded that this is not a USPAP violation, but reflects "best practices".

And in this instance there was -- it's my understanding from reading the report that there was a lease on the property; therefore, the interest was leased fee or more appropriately called fee simple subject to lease.

The next concern is that personal property, USPAP requires that it can be made clear if there's any personal property included in a value opinion. This was a residential income property, and typically the landlord provides the appliances, stove and refrigerator, which would be considered personal property because in some instances a washer and dryer are also provided, which would be considered personal property.

It wasn't clear from reading the report if personal property was included in the lease or it was included in the value opinion. Standards Rule 15 requires that the appraiser analyze all sales of the property which have occurred within the three years prior to the effective date of value and analyze any current listings for the property.

On page 17, Exhibit 8, the next to the last paragraph shows that the subject was purchased on May 11th of 2004, so that falls within the three-year window. The purchase price was reported as \$90,000, but that's the extent of information related to that sale.

It doesn't report whether the property had been listed at that time; if so, how many days on the market; what was the list price. There's no analysis related to that -- was it purchased from a relative; was it offered on the open market. There's just plain no analysis of that sale. Standards Rule 1-6 requires reconciliation.

Q Can you explain what reconciliation is before you get into the specifics?

A Sure, sure. It's a review and analysis of the information that's been presented; and as an example, when you have -- when you've used all approaches to value, typically one approach will be more reliable than the other approaches to value or one will be least reliable.

So what I would have expected to see is this was an older building, so I would have expected something along the lines of that the cost

approach is considered least reliable because of the age of the building; there's substantial subjective depreciation that must be estimated.

The cost approach doesn't reflect market bargaining between a buyer and a seller, so I would have expected, for example, for him to say that the cost approach is considered least applicable.

Ms. Scott further testified regarding the violations she found in Mr. Loehrke's appraisal report relating to the 207 E. Main Street, Weyauwega, WI property [Transcript 47-54]:

Q Thank you. If you could turn back now -- I interrupted you. You were talking about Standards Rule 1-6 and the reconciliation and the problem with the reconciliation in Mr. Loehrke's report. If you want to go back and explain what the USPAP violation was.

A Sure. Typically reconciliation would be a paragraph or a couple of paragraphs saying we have these three value opinions based on the three approaches to value.

Cost approach is considered in this case the least reliable because the building is old. It involves a lot of estimation. There are -- it doesn't reflect the bargaining power of the buyer and the seller. It might say that the sales comparison approach is considered the most reliable because the three properties -- two properties next door and the building right across the street which are identical to the subject just sold for this amount; therefore, we have excellent market evidence that this property should sell for this amount or it might say the income approach is considered the most applicable because these properties are always purchased for their income stream, and here is what that income -- here's what that buyer would expect the income stream to be.

So the appraiser discusses the strengths or weaknesses of each of those approaches. Typically one approach or two approaches are considered better than one of the other approaches, and you arrive at a value opinion. There's always going to be a little bit of a range of value, but you arrive at it based on the information you present in the report when it's a summary report.

Q So what was the problem with the way Mr. Loehrke did that?

A His reconciliation is one sentence at the bottom of the report or maybe two sentences just saying all three standard approaches yield a similar result. None is weighed more heavily than the others reconciling all three approaches to value. The final value opinion is \$95,000. But he didn't really do what he said he did because his three approaches to value were a little bit over \$94,000, a little over \$95,000 and \$96,000. So if he said that all three were equal, presumably he would have averaged and the value opinion would have \$95,100 or whatever the -- I don't have my calculator -- whatever the average of these three value opinions by the three approaches was. You know, instead he just said, "I reconciled them, and it's \$95,000." He didn't explain to us --

Q How he arrived at that \$95,000, that's the problem?

A Yes.

Q He needs to explain how he's going to arrive at that final market value?

A Right, because he didn't do what he said he did. He said he gave them equal weight, which would imply that he averaged, but he didn't do that.

Q Okay. Then you also had some concerns under Standards Rule 2-2 with Mr. Loehrke's report. Could you please explain the violations of 2-2 that you found.

A Yes. Standards Rule 2 deals with how the report is prepared and what the report is called, and in this instance he called it a summary report, which, according to USPAP, means that he has to show his analysis. Turning to the USPAP document, in the middle it says content of a summary report must be consistent with the intended use of the report and at a minimum state the identity of the client and intended users, but several of the subsequent standards -- or, excuse me, reporting requirements here summarize sufficient information to disclose to their client and any intended users the scope of work, summarize the information that was analyzed --

THE ALJ: Excuse me, when you read you speed up.

THE WITNESS: I'm sorry.

THE ALJ: If you're going to read, try to slow down a little bit. It's hard on the court reporter to keep up. It's natural. Everybody does it.

- A In essence, there has to be enough information contained in the report for the reader to follow the thought process of the appraiser and see how he or she arrived at that value opinion.

I provided examples where that was not done. First of all, on page 16 of Mr. Loehrke's report, he says the estimated site value is \$10,000 based on actual research, assessed values and the appraised knowledge of the local marketplace. But that doesn't tell me what sales were considered, what assessed values of what other properties with land assessments, you know, where did that come from.

There's no information to support the \$10,000 figure. That particular sentence rises to the level of a restricted report not a summary report.

Doesn't provide any support for the functional obsolescence deduction.

On the same page he says that functional depreciation is \$5,094 based on a nontypical floor plan. How was that \$5,094 arrived at? Is it based on rent loss? Is it based on a cost to cure, to remodel and make the floor plan traditional? There's nothing to support \$5,094.

Why isn't it \$5,050? Why isn't it \$6,100? There's just nothing that shows how that number was arrived at.

On page 17, paragraph 3, he indicates that he used paired sales analysis in the last paragraph, the number used for adjustments were developed previously by the appraiser using techniques such as paired sales analysis.

So what were the pairs that were selected, and how did they show that at adjustment for gross living area should be \$15,000 per square foot or

that the marketplace would pay \$10,000 more for a one-story -- or side-by-side duplex versus an upper and lower duplex?

It says that market analysis or paired sales was done, but there's nothing in the report to support those numbers. And it doesn't show that pairing and no reasoning related to that final value conclusion, the reconciliation. There's no reasoning in the report. It simply states, "I reconcile and came up with this number."

Q So based on those things you just described, the problem is he's identifying this as a summary report, but then he's not doing what USPAP says you need to do in order for it to be considered a summary report?

A Yes, that's true.

Q If I could go back one step to the reconciliation. Just wanted to make sure this was clear. You talked about the failure to provide the reconciliation on the bottom of page 10 of Mr. Loehrke's report.

I just want to make sure I understand that the problem is he says he's reconciling all three approaches to value and weighting them equally in the last two sentences of page 10, but the problem is we don't know why he's saying that all three yield a similar result, and we also don't know how he got to the \$95,000 because it doesn't add up.

When you just take those three values he comes up with for each of the approaches and average them, you don't get the \$95,000; is that correct?

A Yes, that is correct.

Q In this type of property that this appraisal was completed for, what would you in your experience expect to find as the approach to value that would be best suited for determining the value?

A Either sales comparison or income approach if the property had owner occupancy appeal, sales comparison would pretty clearly, be more heavily weighted. If it's in a neighborhood where

virtually every similar buildings represented, then it might be the income approach to value. So he needs to tell us, the reader, which approach and why.

Of the two appraisers who testified at the hearing, the Department finds that Ms. Scott is more qualified, by education and experience, than Mr. Loehrke to render an opinion regarding the applicable standards and the specific violations of USPAP. *Exhibits 1 and 11.*

First, the Administrative Law Judge accepted Ms. Scott's qualifications as an expert witness. There is no evidence in the record that refutes Ms. Scott's testimony regarding the applicable appraisal standards or her opinion relating to the USPAP violations. The Administrative Law Judge did not accept Mr. Loehrke's qualifications as an expert witness, and Mr. Loehrke elected not to call an expert witness to testify regarding the applicable appraisal standards, or to refute Ms. Scott's opinion relating to the USPAP violations. *Transcript p. 13-14.*

Second, Ms. Scott has been a Certified General Appraiser since 1991. The Certified General Appraiser credential is the highest level of appraiser credential (by education, experience and examination) granted by the Department and has the broadest scope of practice. Mr. Loehrke has been a Licensed Appraiser since 1994. The Licensed Appraiser credential is the entry level credential granted by the Department, and has a limited scope of practice. *Wis. Adm. Code § RL 81.05, 83.01 (1), 84.02 (1) and 84.04 (1); Transcript p. 11-12; Exhibit 1.*

Finally, Ms. Scott has been the co-owner and independent fee appraiser at Scott Appraisal Company since 1984. She performs approximately 200 appraisals per year. She also conducts approximately 200 appraisal reviews of other appraisers' work per year. That includes appraisal review work for the Department, lenders, private clients, and review of work of appraisers who are trainees in her own office. She received a Bachelor of Business Administration degree with majors in Finance, Real Estate and English Literature in 1974, and a Master of Business Administration (MBA) degree with a major in Finance, Investments and Banking in May 1985, from the University of Wisconsin-Madison. *Transcript p. 11-13; Exhibit 1.*

In contrast, Mr. Loehrke's appraisal practice is very limited in scope. He does not do many secondary market loan appraisals. His appraisals are prepared for attorneys or other individuals for use in conjunction with divorce proceedings; estate matters; tax assessment contests, and contests involving "for-sale-of-property" by the Wisconsin Department of Transportation due to road widening projects. In addition, Mr. Loehrke spends time performing a variety of other real estate related tasks. He testified that in order to be successful in a small community, a real estate professional has to wear many hats. He said that he has many different real estate-related licenses. He is a licensed real estate broker (he owns and manages a small real estate office); a certified assessor; a title insurance agent; a registered auctioneer, and a certified real estate continuing education instructor. He also took classes to become a licensed home inspector and a mortgage broker. *Transcript p. 12, 91-93; Exhibit 11.*

Conclusions of Law:

Conclusions of Law 2 and 3

The Administrative Law Judge concluded that the Department of Regulation and Licensing has not exercised rule-making

authority under Wis. Stats. § 458.03, § 458.085 and § 458.08 establishing jurisdiction over federal Appraisers Qualifications Board compliance certification or to set standards to be employed in evaluating the applicant's request to be determined to be Appraiser Qualifications Board Compliant.

As stated previously under the explanation of variance relating to Findings of Fact 4, Mr. Loehrke is not applying for a credential or any type of "certification". He already holds a Licensed Appraiser credential granted by the Department. He submitted a request, not an application, to the Department to review an additional 1500 hours of his appraisal experience to determine whether it complies with the USPAP for purposes of satisfying the criteria established by the AQB, and for purposes of being reported to the National Registry as "AQB conforming". As a public service, the Department agreed to review Mr. Loehrke's appraisal experience for those purposes. The Department reviews real estate appraisal experience for purposes of reporting data to the National Registry regarding whether Licensed and Certified Appraisers satisfy the appraiser qualifications criteria established by the AQB. In this process, the Department functions as a reporting agency. The Department is not required to adopt a rule to carry out this function.

Order:

The Administrative Law Judge ordered that the applicant, be denied his application to be determined to be Appraiser Qualification Board Compliant. As noted previously, Mr. Loehrke does not have an "application" pending before the Department. However, the Department does review appraisal experience for individuals to determine whether their appraisals comply with the USPAP for purposes of satisfying the experience criteria established by the AQB. In this case, the Department reviewed Mr. Loehrke's appraisal experience to determine compliance with USPAP for purposes of assisting him with satisfying the AQB experience criteria for a Licensed Appraiser credential. Based upon the evidence presented in this case, the real estate appraisal reports submitted by Mr. Loehrke to the Department for experience review do not comply with the Uniform Standards of Professional Appraisal Practice (USPAP), as required in Wis. Adm. Code § RL 83.01 (3) (a). The Department modifies the Order to affirm its initial determination reflecting that finding.

Dated this 15th day of November, 2007

Department of Regulation and Licensing

By: Celia M. Jackson, Secretary