

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-05-0141-REA REGARDING:

THE APPLICATION FOR LICENSURE) Case No. 2390-2005
OF NICOLA HUGHES.)
)

**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;
AND RECOMMENDED ORDER**

I. INTRODUCTION

Nicola Hughes appeals from the Montana Board of Real Estate Appraisers' denial of her request to be licensed as a residential appraiser. Hearing Examiner Gregory L. Hanchett convened a contested case hearing in this matter on January 10, 2006. Lon Mitchell, agency legal counsel, represented the Department of Labor and Industry (Department). Patrick Flaherty, attorney at law, represented Hughes. Hughes and Michael Morris, a Montana licensed appraiser, testified on Hughes' behalf. Billie Veerkamp, a Montana certified general appraiser and Board of Real Estate Appraisers investigator, testified on behalf of the Department. The parties stipulated to the admission of the Department's Exhibits 1, 2, and 3 and Applicant's Exhibits 1A, 2A, 3A, 4, 5, 6, and 7. Based on the evidence and argument adduced at hearing, the hearing examiner makes the following findings of fact, conclusions of law, and recommended order.

II. FINDINGS OF FACT

1. Hughes applied for licensure as a certified residential appraiser in Montana. Hughes obtained the requisite qualifying education requirements and passed the appropriate examination for residential certification as mandated by Admin. R. Mont. 24.207.506.

2. As part of the application process, the Board randomly selected three residential appraisals that Hughes had completed prior to her application. Those appraisals involved properties located at 2320 4th Street South (Exhibit 1A), 6 Foxtail Lane (Exhibit 2A), and 74 Fisher Road (Exhibit 3A) in and around the Great Falls, Montana, area.

3. Veerkamp functions as the Board's investigator and is a certified general appraiser in the state of Montana. The Board instructed Veerkamp to review the three appraisals to ascertain

whether the appraisals comported with the Uniform Standards of Professional Appraisal Practice (USPAP).¹

4. Veerkamp conducted a "Standard 3" review of each of the three appraisals. Standard 3 refers to the USPAP requirements placed upon appraisal reviewers and requires the reviewer to develop and report a "credible (properly completed and supported as outlined in Standard 3) opinion as to the quality of another appraiser's work." Standard 3, USPAP, p. 33, 1094-96.

5. In the review of the 2320 4th Street South appraisal, Veerkamp noted four areas - (1) valuation of the subject site, (2) collection, verification, analysis and reconciliation of comparables, (3) collection, verification, analysis and reconciliation of comparable data to determine the income method of valuing the property, and (4) consideration, analysis and reporting of prior sales of the subject property - where Hughes failed to meet USPAP standards. Veerkamp also reported that the appraisal failed to properly identify the class of certification of the appraiser signing off on the report as required by USPAP.

6. Hughes in fact deviated from the USPAP standards in each of these areas in completing the 4th Street South appraisal. With respect to the valuation of the site and the reconciliation of the comparables, Hughes utilized only one vacant land sale, a sale of a .43 acre tract of land, to value the land of the subject property, a single family residence located on 1.1 acres of land. The appraisal contains no rationale that would explain why the .43 acre site would be equal in value to the 1.1 acre site of the subject property. Hughes conceded at hearing that she did not know if she had sufficiently explained the valuation process that would lead to utilizing the .43 acre parcel as a comparable to value the subject 1.1 acre site.

7. Hughes utilized a value for the gross rent multiplier (GRM) (Exhibit 1A, Uniform Residential Appraisal Report, page 2) in order to arrive at an income value for the property. She did not, however, reference any sales or otherwise attempt in any fashion to support the GRM value that she utilized. In her testimony, Hughes agreed that she did not provide any support for the GRM that she utilized and failed to provide adequate support for the income valuation of the property.

8. With respect to the reporting of sales of the property within three years, Hughes noted that the property had transferred within the three years preceding the date of the appraisal. She did not report, however, the nature of the transaction (i.e., was it an arm's length transaction or some different type of conveyance). Simply stating that the property sold during the preceding 36 months does not meet the appraiser's burden of proof to explain the basis of the transfer within the "four corners" of the document as required by USPAP standards.

¹ These rules regulate the conduct of appraisers while conducting appraisals. They are promulgated by the Appraisal Standards Board of the Appraisal Foundation and govern the professional conduct of Montana appraisers by virtue of Mont. Code Ann. § 37-54-403.

9. In the appraisal of the 6 Foxtail Lane property (Exhibit 2A) and the appraisal of the 74 Fisher Road property (Exhibit 3A), Hughes failed to report an opinion of reasonable exposure time and, because she did not include that in her appraisal, she made no attempt to link the reasonable exposure time to her opinion of value of the property. Hughes, without explanation, simply reported a marketing time for the property.

10. In the appraisal of the 6 Foxtail Lane property, Hughes identified the subject site's neighborhood as having a predominant value of \$115,000.00 but then appraised the subject property at \$220,000.00. Hughes did not explain this discrepancy in her appraisal. In addition, she showed an upward adjustment of \$5,000.00 for sales comparison number 2 due to that comparable's relative distance from Great Falls, but failed to give any supporting analysis to support this adjustment.

11. Hughes' final reconciliation of the Foxtail property (Exhibit 2A, Uniform Residential Appraisal Report, p. 2) contained no discussion of the quality and quantity of the data that would support the conclusory statements contained in the final reconciliation. The final reconciliation does not indicate how the data obtained in the appraisal lead to the conclusions contained in the final reconciliation.

III. CONCLUSIONS OF LAW²

1. Hughes seeks to have the denial of her application for licensure overturned. As such, she bears the burden of proof to demonstrate that the Board's denial of her license was erroneous either in fact or law.

2. A professional licensing board may grant or deny a license. Mont. Code Ann. § 39-1-307(1)(e). Mont. Code Ann. § 39-54-105(5) authorizes the Board of Real Estate Appraisers to receive and review applications of persons requesting licensure as real estate appraisers. In addition, Mont. Code Ann. § 39-54-303(2) requires the Board of Real Estate Appraisers to adopt rules [for undertaking appraisals] that are at least as stringent as those required for compliance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA). Those standards are articulated in the USPAP requirements.

3. Grounds for disciplinary action against a licensee may also serve as a basis for denying a license to an applicant. Mont. Code Ann. § 39-1-137(1). Mont. Code Ann. § 39-54-403 requires licensed appraisers to "comply with generally accepted standards of professional appraisal practice" as evidenced by USPAP. In addition, Admin. R. Mont. 24.207.402 provides that the Board adopts by reference USPAP standards.

4. USPAP Standard 1-4(a) requires appraisers, when implementing a sales comparison approach, to analyze such comparable sales data as are available to indicate a value conclusion. USPAP Standard 2-2 provides that the content of a self-contained appraisal report must, at a minimum, describe the information analyzed, the appraisal procedures followed, and the reasoning that supports the analysis, opinions, and conclusions. USPAP 2-2(ix). This requirement is a binding requirement from which departure is not permitted, i.e., the Departure Rule cannot be invoked where this requirement is applicable.

5. Hughes failed to comport with USPAP standards in all three of her appraisals, including Standard Rule 1-4(a) and Standard Rule 2-2(b)(ix). Most striking is her failure to properly apply Standard Rule 2-2(b)(ix) in all three of her appraisals. Her 2320 4th Street South appraisal demonstrated this failure in the appraisal's lack of rationale to support the use of the .43 acre comparable to value the 1.1 acre subject site and this adversely affected the credibility of the value opinion contained in the appraisal. Her 6 Foxtail Lane and 74 Fisher Road appraisals demonstrated the 2-2(b)(ix) deficiency in the failure to report exposure time which likewise affected the credibility of the appraisal's value opinion. Reasonable exposure time is an "integral part of the analysis conducted during the appraisal assignment." USPAP (2004 Edition) Statement on Appraisal Standards No. 6 (SMT-6), p. 94. Reasonable exposure time is different than "marketing time." Reasonable exposure time *precedes* the effective date of the appraisal. Marketing time is an opinion of the amount of time it might take to sell a property

²**Statements of fact in the conclusions of laws are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.**

during a period of time immediately *following* the effective date of the appraisal. *See, e.g.*, USPAP Advisory Opinion 7.

6. The letter from broker Kim Kraus-Wermling does not assist in the determination of this matter. While it is very complimentary of Hughes' work, it does not assist this fact finder in ascertaining whether Hughes could, at the time of her application, comport with USPAP requirements in completing her real estate appraisals. There has been no showing that the writer of the letter is familiar with the USPAP standards.

7. Hughes also argues that, in reviewing Veerkamp's Standard 3 appraisal on a percentage basis, the applicant comported with most of the USPAP requirements (in excess of 90%). This argument misses the point by assuming that all criteria reviewed are of equal weight in a given appraisal assignment. It is true that, depending on the scope of any given appraisal, improper deviations from the USPAP standards can have differing impacts on the credibility of the appraisal. Hughes' deviations, in particular her deviations from Standard Rule 2-2(b)(ix), were by no means inconsequential. The 6 Foxtail Lane appraisal provides just one example. There, Hughes relied most heavily on the sales comparison approach to arrive at the opinion of value. In completing her sales comparisons, she made adjustments for comparables then provided little or no rationale within the appraisal for the adjustments. This seriously undermined the credibility of the appraisal, although on the appraisal review it would only represent one area of deviation from USPAP.³

8. In light of the Board's purpose of protecting the public, the statutory requirements of certified residential appraisers, and the USPAP deficiencies demonstrated in Hughes' three appraisals, the hearing examiner is not persuaded that the Board erred either in fact or law in denying Hughes' application for licensure at this time. Hughes has thus failed to meet her burden of proof in this matter.

IV. RECOMMENDED ORDER

Based upon the foregoing, the hearing examiner recommends that the Board affirm the denial of Nicola Hughes' application for licensure as a certified residential appraiser.

DATED this 22nd day of February, 2006.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

³ The applicant's argument is analogous to an argument that an automobile, which is made up of thousands of parts, is still useful because the manufacturer only forgot to install one part. While that might be true if the missing part is a tail lens, it is certainly not true if the missing part is the engine. Like the car without the engine, the failure to satisfy the 2-2(b)(ix) requirements in these appraisals significantly affected the utility of the appraisal when judged by USPAP standards.

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.