

BEFORE THE BOARD OF REAL ESTATE APPRAISERS  
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-08-0463-REA REGARDING:

THE PROPOSED DISCIPLINARY ) Case No. 91-2009  
TREATMENT OF THE LICENSE OF )  
ROBERT LETANG, )  
Certified Residential Appraiser No. 767. )  
)

IN THE MATTER OF DOCKET NO. CC-08-0669-REA REGARDING:

THE PROPOSED DISCIPLINARY ) Case No. 92-2009  
TREATMENT OF THE LICENSE OF )  
ROBERT LETANG, )  
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**PROPOSED FINDINGS OF FACT; CONCLUSIONS OF LAW;  
AND RECOMMENDED ORDER**

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**I. INTRODUCTION**

The Montana Department of Labor and Industry Business Standards Division (BSD) filed two complaints, Case Nos. 91-2009 and 92-2009, against the appraiser's license of Robert Letang alleging violations of Montana Code Annotated § 37-54-403(1) and Montana Code Annotated § 37-1-316(18) (which prohibits a licensee from engaging in unprofessional conduct). Hearing Examiner Gregory L. Hanchett held contested case hearings in each of these matters on November 24, 2008. Mike McCabe, agency legal counsel, appeared on behalf of the Department of Labor and Industry. Karl Knuchel, attorney at law, represented Letang.

Letang and Billie VeerKamp, a Montana certified general appraiser and board investigator, testified under oath in both cases. BSD's Exhibit A and Letang's Exhibits 1 through 10 were admitted into evidence in Case No. 91-2009. In Case No. 92-2009, BSD's Exhibit A and Letang's Exhibits 1 through 7 were admitted into evidence.

The parties were permitted to file post-hearing briefs, the last of which was submitted on March 30, 2009. Based on the evidence adduced at the hearing as well as the arguments of counsel contained in the briefs, the following findings of fact, conclusions of law, and recommended decision are made.

**II. FINDINGS OF FACT**

1. At all times material to these cases, Letang has held Montana certified residential appraiser's license number 767.

A. *Facts In Case No. 91-2009.*

2. In April 2006, Mountain West Bank retained Letang to appraise a residential property located at 6364 Toohey Road in Big Sky, Montana. The purpose of the appraisal was to obtain financing for a purchase transaction to permit Anderson Meherle to purchase the property from Dr. William Munro. The purchase transaction was a federally related transaction which made Letang's work subject to compliance with the standards of professional appraisal practice outlined in the Uniform Standards of Professional Appraisal Practice (USPAP).<sup>1</sup>

3. Letang completed the appraisal which provided a value for the property with an effective date of April 21, 2006. The appraisal indicated that the property was a custom home on 40 acres, consisting of two 20-acre tracts (denominated as lots 2 and 3). The appraisal concluded that the value of the property on the 40 acres was \$1,350,000.00.

4. As part of his research to complete the April 21, 2006 appraisal, Letang reviewed the purchase agreement between Munro and Meherle. He was acutely aware that Meherle was purchasing the property from Munroe.

5. On June 16, 2006, Mountain West Bank frantically called Letang again to ask him to alter the appraisal of the property. The parties and Mountain West Bank discovered at the time of closing that there was no financing available. Because of this, Mountain West Bank asked Letang to alter the appraisal to show that the transaction was a refinancing for Meherle and to show the value of the house on the 20 acres upon which it was built only and to not include the other 20 acres. Letang agreed to alter the appraisal as requested. He received no additional compensation for doing this.

6. The parties informed Letang that the scope of the work was for a refinancing for Meherle of the property. The parties also informed Letang that the property had already been transferred from Munro to Meherle.

7. Instead of exercising his own independent judgment about the propriety of the parties' request, Letang, acquiescing to Mountain West's request, altered the appraisal and produced a new appraisal with an effective valuation date of June 20, 2006. Letang identified the scope of the assignment as a mortgage refinance for Meherle. Nowhere in the appraisal did Letang note that the property had transferred to Meherle, even though Letang knew this to be so. Indeed, he specifically noted on page 2 of the URAR that the property had **not** transferred ownership within the preceding 36 months despite his knowledge that it had transferred.

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<sup>1</sup> The USPAP rules 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.

8. The altered appraisal appraised the house on 20 acres instead of 40 acres. It made no mention of the other 20 acres. In doing this, the appraisal failed to accurately identify the subject site. And, despite the deletion of the other 20-acre tract from the updated appraisal, the altered appraisal “coincidentally” valued the property at \$1,350,000.00, the exact same value as the April 21, 2006 appraisal which appraised the house on 40 acres.

9. The June 20, 2006 appraisal also failed to summarize support for the appraiser’s opinion of the highest and best use of the property.

10. The appraisal also failed to properly compare and reconcile both the land valuation and the sales comparison approach for the land with the house. With respect to determining the value of the land, Letang simply averaged 16 comparable sales of 20 and 40 acre tracts. With respect to the sales comparison approach of the land and the house, he offered no supporting analysis whatsoever as to how he arrived at the adjustments between the subject property and the sales comparable.

11. The June 20, 2006 appraisal also failed to mention and to analyze the buy/sell agreement, even though Letang had seen the agreement and was aware of it long before he completed his June 20, 2006 appraisal.

12. All of the shortcomings noted above rendered the altered appraisal incredible and misleading.

B. *Facts In Case No. 92-2009.*

13. On March 6, 2007, the Montana Board of Real Estate Appraisers entered a final order which, among other things, required Letang to provide his appraisal log to the Board for review upon request of the Board. In response to the Board's December 6, 2007 request, Letang submitted three appraisals for review.

14. One of the appraisals that Letang produced was his appraisal of Moonlight Mountain Homes #9 located in Big Sky, Montana, which had an effective date of October 11, 2007.

15. As noted in reviewing appraiser Billie Veerkamp's appraisal review of the Moonlight Mountain Homes appraisal, and as the hearing examiner finds as a matter of fact, there were substantial violations of the USPAP standards. Each one of the deficiencies noted in Veerkamp's review exists in Letang's appraisal. The appraisal contained substantial conflicting statements on the scope of work that rendered the appraisal incredible. See, e.g., Exhibit A, pages 4, 5, and 6 of Veerkamp's review.

16. The appraisal contained a glaring lack of analysis as to how Letang arrived at the site value for the subject property in the cost approach valuation. The appraisal's sole attempt to reconcile comparable site values is contained in the statement on page 3 of 18 of the URAR which indicates "lots approximately twice the size of the subject lot are selling for \$750,000.00-\$1,200,000.00. Appraiser estimates the subject site at \$650,000.00." Letang's report does not articulate a basis for and includes no analysis of how he arrived at a value of \$650,000.00 for the subject lot, a value that is \$100,00.00 **lower** than the lowest end of the range for what Letang deemed to be comparable sites. There is no supporting data in his work file for his conclusion nor is there any summary in the appraisal that would in any way explain how he arrived at the site value he used for the subject property. In addition, the adjustment of \$100,000.00 in the cost approach was not carried through to the sales comparison approach. The sites noted in the sales comparables contained much larger sites than the subject property but there was no reduction in the value used.

17. Letang's cost approach of valuation in the appraisal indicates that replacement costs for the subject site's improvements were based on "local contractors/appraisers estimates for Mountainous [sic] building site for very good quality construction." URAR, page 3. Letang, however, had no supporting data either in the appraisal or in his work file to support the values utilized. There is no indication on how the cost per square foot which he utilized, \$275.00 per square foot, was derived or how that figure ties into the data he claimed to have culled from "local contractors/appraisers estimates." Because of the lack of supporting data and the lack of any indication as to how the data was used to arrive at the cost per square foot value, there is no way that anyone could replicate Letang's cost approach valuation.

18. The appraisal also fails to adequately analyze and reconcile the sales comparables. For example, Sales Comparable #1 did not have the same access to site amenities that the subject site had (access to the Moonlight Lodge and ski trails). Sales Comparable #1 shows a

\$75,000.00 adjustment for this difference, but the difference is not supported by any analysis or any supporting data in or from any source. It merely contains the conclusory assertion “as estimated by the appraiser.” Sales Comparable #1 was reported and adjusted differently than the other comparable but there is no reason or supporting data given for doing this. Specifically, the gross living area (GLA) of Sales Comparable #1 does not include the lower level of the house in the GLA whereas the other sales do. The multiple listing service data for Sales Comparable #1 shows the lower level of that comparable as having two bedrooms, two bathrooms, and an extra room. No explanation or basis for excluding this level from the GLA is given or discernable from the appraisal.

19. In addition, the Moonlight Mountain Homes appraisal indicates a reconciled value for the subject property of \$1,750,000.00. The listed comparables range from a low of \$1,478,100.00 to a high of \$1,907,300.00. The appraisal contains no reconciliation of the comparable sales prices with the subject sales price.

20. Letang’s failure to comport with USPAP requirements in the Moonlight Mountain Homes appraisal created a report that was misleading and not credible.

### C. *Aggravating Factors.*

21. As noted in paragraph 13 above, Letang’s license was previously sanctioned by the Board’s final order on March 6, 2007. That sanction came about as a result of his failure to comport with USPAP requirements in an appraisal that he conducted on a house in 2005. In that appraisal, he stated that he had completed exterior inspections on comparables that he used for the subject of the appraisal when in fact he had never done exterior inspections of those comparables. This is the same type of misleading conduct that he undertook in the Toohy Road appraisal in failing to include the fact of the property transfer in the updated appraisal. He failed to utilize proper comparables (by using pending sales, not closed sales, as comparables). He also failed to provide any analysis for his site value in that appraisal, just like he did in the Moonlight Mountain Homes appraisal. The Moonlight Mountain Homes appraisal was undertaken some seven months *after* his license had previously been sanctioned.

22. As a result of the 2007 license sanction, Letang was ordered to attend additional training in professional appraisal principles and procedures. This additional training has apparently not cured the earlier deficits as he committed the very same mistake in the Moonlight Mountain Homes appraisal as he did in the case which resulted in his license being sanctioned in March 2007.

## III. CONCLUSIONS OF LAW<sup>2</sup>

### A. *Letang Violated Professional Standards.*

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

1. The Board of Real Estate Appraisers has jurisdiction over these matters. Mont. Code Ann. § 37-54-105.

2. The Department bears the burden of proof to show by a preponderance of the evidence that the licensee committed an act of unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126. The Department must also show that any sanction which it seeks is appropriate under the circumstances of the case.

3. Montana licensed appraisers must “comply with generally accepted standards of professional appraisal practice” as evidenced by USPAP. Mont. Code Ann. § 39-54-403(1). In addition, Admin. R. Mont. 24.207.402 provides that the Board adopts by reference USPAP standards.

4. Montana licensed appraisers, like all Montana licensed professionals, must not engage in conduct that fails to meet generally accepted standards of practice. Mont. Code Ann. § 37-1-316(18). By failing to comport with USPAP standards, a licensed appraiser violated the requirement of this statute.

5. The USPAP Ethics Rule, Conduct section, requires an appraiser to perform assignments ethically and competently, in accordance with USPAP. The rule specifically forbids an appraiser from communicating assignment results in a misleading manner. Under the Management section of the Ethics rule, an appraiser is prohibited from accepting an assignment which is contingent on the reporting of a predetermined result or the attainment of a stipulated result.

6. USPAP Standard Rule 1-1(a) requires an appraiser to “be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.” Standard Rule 1-1(b) prohibits a licensee from committing a substantial error of commission or omission that significantly affects an appraisal.

7. Standard Rule 1-2(e)(i) and (iv) require an appraiser in developing a real property appraisal to identify the characteristics of the property which are relevant to the type and definition of value and the intended use of the appraisal including its location, physical attributes, any known easements and/or restrictions. Standard Rule 1-2(h) requires an appraiser to identify any hypothetical conditions necessary to the assignment. Standard Rule 1-3(a) requires an appraiser employing a market value approach to valuation to identify and analyze the effect on the use and value of existing land use regulations, probable modifications of any land use regulations, economic supply and demand, and the physical adaptability of the real estate.

8. USPAP Standard Rule 1-4 requires that an appraiser, in developing a real property appraisal, collect, verify, and analyze all information applicable to the appraisal problem, given the scope of work identified. USPAP Standard Rule 1-4(a) requires that when a sales comparison approach is to be employed, an appraiser must analyze such comparable data as are

available to indicate a value conclusion. USPAP Standard Rule 1-4(b)(i) notes that when a cost approach is developed (as it was in these cases), an appraiser must develop an opinion of site value by an appropriate appraisal method or technique. USPAP Standard Rule 1-4(b)(ii) also requires an appraiser in developing a cost method of valuation to analyze such comparable cost data as are available to estimate the cost new of the improvements.

9. USPAP Standard Rule 1-5(a) and (b) require an appraiser when developing a market value opinion to analyze all agreements of sale or listings of the property as of the effective date of the appraisal if such information is available to the appraiser in the normal course of business. USPAP Standard Rule 1-5(b) requires an appraiser who is developing a market value opinion to analyze all sales of the subject property during the three years preceding the effective date of the appraisal if such information is available to the appraiser in the normal course of business.

10. USPAP Standard 1-6(a) and (b) require an appraiser to reconcile the quality and quantity of data available and analyzed within the approaches used and to reconcile the applicability of the approaches used to arrive at the value conclusions.

11. USPAP Standard Rule 2-1(a) and (b) requires that a written real property appraisal clearly and accurately set forth the appraisal in a manner that is not misleading and contains enough information to allow the intended users of the appraisal to understand the report properly. USPAP Standard Rule 2-2(b)(iii), (vii), and (viii) require that the content of a summary appraisal summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment, summarize sufficient information to disclose to the client and any intended users the scope of work used to develop the appraisal, and clearly and conspicuously state all extraordinary assumptions and state that their use might have affected the assignment results.

12. USPAP Standard Rule 2-2(b)(ix) requires that a summary appraisal summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analysis opinions and conclusions contained in the reports. USPAP Standard Rule 2-2(b)(x) and the comment to that rule require that the content of a summary report, when reporting an opinion of market value, summarize the support and rationale for the appraiser's highest and best use of the real estate.

13. Letang's 6364 Toohey Road appraisal violated USPAP requirements in several significant aspects that affected its credibility. Of greatest concern is Letang's obvious violation of the ethics rule in altering the appraisal by knowingly omitting from the latter appraisal the fact that the property had been transferred from Munroe to Meherle since the earlier appraisal and deleting from the updated appraisal the additional 20 acres that had been reported in the original appraisal. Miraculously, he arrived at the same opinion of value, \$1,350,000.00, that he had when he had just two months earlier valued the property on 40 acres. Without an explanation in the updated appraisal as to why he deleted the additional 20 acres and still arrived at the same opinion of value, the inescapable conclusion is that Letang intentionally rendered the updated appraisal misleading in order to accomplish the ends of the

parties. Letang's conduct violated Standard Rules 1-1(a), 1-1(b), 1-5(a), 1-5(b), 2-1(a), 2-1(b), and 2-2(b)(ix). By failing to accurately identify the site, Letang also violated Standard Rule 1-3(a) and 2-2(b)(x). Letang's failure to make any reference to or any attempt to analyze the buy/sell agreement that he had in his possession compounds the Ethics rule violation.

14. In addition, in preparing and altering his appraisal of the Toohey Road property, Letang also violated USPAP Standard Rules 1-3(a), 2-1(b), and 2-2(b)(x) by failing to properly analyze and summarize his support for the highest and best use analysis of the property. Letang's sales comparison adjustments also violated Standard Rule 1-1(a), 1-1(b), 1-4(a), 2-1(b), and 2-2(b)(ix) by making adjustments for the comparables that were not supported.

15. Letang's averaging of 16 land sales ranging in size from 20 to 40 acres was inappropriate under the USPAP requirements, violating Standard rules 1-1(a), 1-1(b), 1-4(b)(i), and 2-2(b)(ix). Averaging is inadequate to determine value. Analysis as to why the comparables chosen support the value conclusion is necessary in order to comport with the USPAP requirements.

16. The Moonlight Mountain Homes appraisal also violated USPAP standards in several respects which affected the credibility of the appraisal. The appraisal failed to clearly identify the appraisal problem as required by Standard Rule 1-1(a) and the scope of work rule. In violation of Standard Rule 1-4(b)(i), the appraisal failed to properly value the subject site or explain how the appraiser arrived at a site value. Letang also failed to collect, verify, analyze and reconcile the cost of the improvements when completing the cost approach to valuation. This conduct violated Standard Rule 1-4(b)(ii), 2-2b(vii), and 2-2b(viii). Letang also failed to collect, verify, analyze and reconcile comparable sales, a violation of Standard Rule 1-4(a), 2-2b(vii), and 2-2b(viii).

17. Because Letang has violated USPAP standards, he has failed to comport with his duty under Mont. Code Ann. § 37-54-403(1) and Mont. Code Ann. § 37-1-316(18) and therefore has violated each of those statutes.

18. Letang argues strenuously that no cognizable transfer of the property occurred in the transfer of the 6364 Toohey Road property from Munroe to Meherle that would have required him to disclose that transfer on the altered appraisal. This argument misses the point. The altered appraisal was exactly that: an update of the April 21, 2006 appraisal which clearly stated that the appraisal was being undertaken to provide new financing to enable Meherle to purchase the property from Munroe. Any update of that appraisal would necessarily have to at least mention the recent transfer of the property in order to comport with the policies behind the USPAP so as not to mislead a person relying on the updated appraisal (such as an underwriter). The omission of this information was the very type of conduct USPAP Standard Rules 1-5(a) and (b) try to prevent.

19. Letang also argues that the other violations are essentially "nit-picky" violations which do not show substantial violations. Nothing could be further from the truth. Letang has demonstrated through not only these cases but the earlier sanctioning of his license that he

does not grasp such essential concepts as site valuation. In both pending cases he simply asserted a value for the site valuation under the cost approach with no analysis of how those values could be extrapolated from other comparables. In both cases, he made adjustments between comparables and the subject property without analysis and with no discernable basis for the adjustments. The errors go to the very heart of rendering credible appraisals. In light of the policies behind the USPAP, these repeated errors are very serious and show a repeated inability to comport with USPAP standards.

*B. The Appropriate Sanction In This Matter Is Revocation.*

20. A regulatory board may impose any sanction provided for by Montana Code Annotated Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(f). Among other things, a regulatory board may revoke or restrict a license, may impose probation, may require remedial education, and may require monitoring of the practice by a supervisor approved by the regulating authority. Mont. Code Ann. § 37-1-312.

21. To determine which sanctions are appropriate, a regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can a board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2).

22. With the priority of the public's safety in mind, the hearing examiner, after much deliberation, concludes that revocation is necessary. This is so for two reasons.

First, Letang's conduct in the Toohey Road appraisal, like his conduct in the 2007 sanction proceeding, evidences a willingness to mislead in completing appraisals in order to reach an opinion of value. In the 2007 proceeding, Letang stated in his appraisal that he had conducted exterior inspections of the comparable properties when in fact he had not. In the Toohey Road appraisal, he willfully omitted the fact that the property had transferred very recently and omitted mentioning the fact that the property came with two 20-acre lots in order to bend his appraisal to meet the needs of the client. In doing so, he omitted a crucial factor—the transfer of which an underwriter would need to know in order to make a fully informed decision on a loan. He did so with no consideration of the implications that the omissions would have on the integrity of the lending process. And he did this at the behest of the user. Letang's now unmistakable willingness to mislead means that he cannot at this point be entrusted to create the impartial, objective appraisals necessary to ensure the integrity of the federal lending processes which are protected by meeting the requirements of USPAP.

Second, Letang has demonstrated repeated inability to properly analyze and reconcile sales comparables in determining market value and site value to determine replacement cost value. This problem has persisted despite the fact that he has already been sanctioned for the very same conduct. It is plain that despite receiving education to deal with this deficiency, Letang cannot overcome it at this point. Until such time as he proves that he can, the protection of the public cannot be put at risk by permitting him to continue to practice. The hearing examiner must conclude on the basis of the facts before him that nothing short of

revocation can protect the public while at the same time permitting Letang to engage in the practice of appraising.

#### IV. RECOMMENDED ORDER

Based on the foregoing, the hearing examiner recommends that the Board of Real Estate Appraisers enter its order revoking the license of Robert Letang until such time as he can demonstrate to the satisfaction of the Board of Real Estate Appraisers that he is minimally competent to safely engage in professional appraisal practice.

DATED this 11th day of June, 2009.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

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.