



3. That Respondent Dan W. Montague is a Certified Residential Appraiser in the State of Oklahoma, holding certificate number 10438CRA and was first licensed with the Oklahoma Real Estate Appraiser Board on January 29, 1992.

### **FINDINGS OF FACT**

The Board adopts in full the recommendation of the Panel that the findings of fact as set forth in the subsequent paragraphs were proved by clear and convincing evidence:

1. In approximately late 2005, Mike Galiga a real estate developer for more than twenty (20) years, acquired, as a principal of the As One Group (the “client”) and with at least one partner, Garland Bell, from what he described as “a conglomerat[e] of local business people” a right to purchase a parcel of property located at 13801 N. Eastern Avenue (at the corner of Eastern Avenue and Memorial Road), Oklahoma City, Oklahoma (the “subject property”) that the conglomerate had reportedly had under contract for a number of years. The subject property was formerly/also known as the “Lions Family Fun Park.” The subject property’s legal description is Lots Twenty-two (22), Twenty-four (24), Twenty-six (26), Twenty-eight (28), Thirty (30) and Thirty-two (32), of Leavitt’s North Park Addition to Oklahoma County, Oklahoma, as recorded in Book 26, Page 65 of the Oklahoma County Clerks Office, Oklahoma County, Oklahoma.

2. The contract that was assigned to Mr. Galiga and Mr. Bell listed the purchase price of the subject property as Three Million Eight Hundred Thousand and 00/100 Dollars (\$3,800,00.00). After Mr. Galiga’s partner, Garland Bell, entered into an assignment with the original purchaser(s) under the contract to acquire the right to purchase the subject property, but prior to closing on the subject property, Mr. Galiga retained Respondent to appraise the subject property. Mr. Galiga testified that he “got a name and number from somebody” called Respondent, and “said I had a piece of property, *we had a contract*, we wanted an appraisal and

he said he would be happy to do that and that was it.” Mr. Galiga did not recall Respondent asking for a sales contract, but Mr. Galiga testified he would have confirmed its existence and provided to Respondent, if asked. Mr. Galiga, on cross-examination, testified that he did not recall whether he mentioned the contract to Respondent.

3. Mr. Galiga testified that he had no other interest but to know the value of the subject property. Mr. Galiga testified that, despite his extensive experience as a developer, he did not have any experience with the appraisal process and offered Respondent no directions, restrictions or guidance in deriving an appraised value. Mr. Galiga also reported that the appraisal was not requested for loan purposes and never used for banking purposes.

4. On or about December 19, 2005, Respondent prepared and signed an appraisal report (the “report”) on the subject property and transmitted said report to the client. The appraisal’s date of appraised value was reported as December 16, 2005, and Respondent reported a final estimate of value as Thirteen Million Three Hundred Thousand and 00/100 Dollars (\$13,300,000.00). Mr. Galiga testified to being “surprised” at Respondent’s reported value. Respondent certified that the report was performed in conformity with the Uniform Standards of Professional Appraisal Practice (“USPAP”).

5. On the report, Respondent also listed Rose Rock Bank as an intended user. Mr. Galiga did not recall informing Respondent that anyone at Rose Rock Bank would review the report. Respondent testified that Mr. Galiga asked him to include Rose Rock Bank once the report was complete, despite the fact that Respondent stated that he reported to Mr. Galiga that if the appraisal report were to be used for lending purposes, another appraiser would have to be used. Mr. Galiga stated that the bank should not have been listed on the report, “in his opinion,” but later on cross-examination, admitted “it was possible” that he told Respondent Rose Rock Bank might look at the report. A representative of Rose Rock Bank testified that after searching

the bank's records, he could find no records relating to the subject property.

6. William M. Kilpatrick, an appraiser licensed by the State of Oklahoma as a Certified General Appraiser, also holding the MAI [Member, Appraisal Institute] designation, testified that he was a consultant, appraiser and investor in commercial properties with 20 years of experience and licensed by the state since licensure was instituted. He testified that he approached Roddy Bates of Raptor Properties, a potential and eventual investor in the development of the subject property, about investing in the development of the subject property. Mr. Kilpatrick testified that the contract price as reported to him seemed reasonable, he researched possible comparables to confirm its reasonableness, and he was initially interested. Mr. Kilpatrick testified that later Mr. Bates informed him that the cost to invest in the development of the subject property had risen because of an appraisal on the subject property, and asked Mr. Kilpatrick to look at the appraisal report. The appraisal report was the report prepared by Respondent. Mr. Kilpatrick testified that it required only a few minutes of looking at the report for Mr. Kilpatrick to pronounce it "junk." Although Mr. Kilpatrick had never filed a complaint before against a fellow appraiser, Mr. Kilpatrick filed the grievance giving rise to the instant matter.

7. The report contained numerous errors and inflated the value of the subject property. In his testimony, Mr. Kilpatrick pointed out the errors of which he became aware in looking at the report for Mr. Bates. Mr. Kilpatrick did not perform a review appraisal as defined by USPAP on Respondent's report, but he did conduct further investigation into the comparables. Mr. Terry Hinkle, a Certified General Appraiser, who had been appraising for 24 years, who professed to liking Respondent and consulting with Respondent when he had a project in Enid, Respondent's business address of record, also examined the report and investigated the comparables as a volunteer at the request of the Board.

8. Mr. Hinkle and Mr. Kilpatrick testified that Respondent's chosen comparables were not comparable to the subject property. The comparables selected by Respondent were significantly smaller than the subject. Respondent reported that the subject property was 46.76 acres. Respondent reported the sizes of the three comparables he chose as 3.45 acres, 6.7911 acres and 7.6548 acres in size, respectively. All of these comparables are significantly smaller in size. Mr. Hinkle and Mr. Kilpatrick testified and the Panel members recognize that it is common knowledge that property values per square foot and property sizes work inversely. That is, larger size properties tend to sell for lower per-unit value than do smaller size properties which sell for a higher unit value. Respondent used the approximate price per square foot average of the three comparables he chose and did not account for the size differences. This approach resulted in an artificially inflated value. Mr. Kilpatrick also pointed out that larger parcels are often better developed as mixed use development and often have to be subdivided to be developed to highest and best use and that the smaller parcels utilized as comparables by Respondent would more likely be single use.

9. Mr. Hinkle and Mr. Kilpatrick also pointed out that two of the comparables selected by Respondent had completely different economic influences. Two of the comparables selected by Respondent were undeveloped outparcels of Quail Springs Mall and Mr. Hinkle and Mr. Kilpatrick both pointed out that the economic activity in the area of the subject property was not comparable to the economic activity around the parcels Respondent selected as his first two comparables. Respondent did not have any data about the square footage of retail development within a quarter mile of the subject property or the comparables for any meaningful data on economic or locational influences.

10. Mr. Kilpatrick also pointed out Comparables One and Two were not one (1) mile from the subject property as reported by Respondent but between four (4) and five (5) miles west.

Mr. Kilpatrick also pointed out that Comparable Three was within a quarter mile (0.25) of the subject property not one (1) mile from the subject property as reported by Respondent and perhaps a suitable comparable, but the revenue stamps indicated that it had sold not for One Million Four Hundred Thousand and 00/00 Dollars (\$1,400,000.00) as reported by Respondent but Eight Hundred Thousand and 00/00 (\$800,000.00). Respondent testified that he had access to the same database used by Mr. Kilpatrick by visiting the office of Jim Hoyt, a commercial appraiser, and did not dispute Mr. Kilpatrick's computation of the sales price. Comparable One sold for \$7.95 per square foot, Comparable Two sold for \$8.45 per square foot, and Comparable Three sold for \$4.20 per square foot (though Mr. Kilpatrick indicated his data indicated that Comparable Three actually sold for approximately \$2.40 per square foot). The contract price of the subject property was less than \$2.00 per square foot.

11. Respondent describes the report as a "summary appraisal report." The Panel notes that not only does the report not meet the standards of a summary report, but it does not even appear to meet the standards for a "restricted" report per USPAP. USPAP requires for a restricted report that an appraiser "state the extent of the process of collecting, confirming, and reporting data or refer to an assignment agreement retained in the appraiser's workfile that describes the scope of work to be performed" and to "state the appraisal procedure followed" and "reference the workfile." Respondent's report and his workfile does not state, confirm, detail or summarize any analysis, his method of collecting, confirming, or reporting data or the source, selection, and analysis of the comparable properties. (The Panel also notes that the workfile also does not reflect the consideration of any other comparables but the ones selected, despite Respondent's testimony that he went to Jim Hoyt's office and researched and comparables). The only items in the workfile submitted to the Board pursuant to subpoena are a business card for Mike Galiga, an inspection checklist with items checked and showing "As One Group, LLC" as a buyer of the

subject property, e-mails, and the appraisal report. The appraisal report included an addendum containing data from land records with the legal description of the subject property, a county assessor's website pages for the subject property, photos and satellite maps, and Oklahoma Department of Commerce data for Oklahoma City.

12. Respondent does not report that a portion of the subject property is in Edmond and that said portion is zoned residential and does not analyze the impact of that data on his valuation or, in the alternative, does not state any extraordinary assumptions or hypothetical conditions to account for the omissions. Respondent testified that he called the Edmond city offices and was assured that there would be "no objection" to change the zoning and it could "readily be changed." Respondent states that the highest and best use of the subject property is retail development without addressing the size and mixed zoning of the subject property contributing to its suitability for mixed use development.

13. Significantly, Respondent does not report or analyze data indicating that the subject property sold for Two Million One Hundred Twenty-Five Thousand and 00/100 Dollar (\$2,125,000.00) two years before the effective date of the appraisal. Respondent pointed out that he included a county assessor's page in the report that listed the sale, but still offers no explanation of or justification for a 600% increase in value in two years (or a value 350% of the contract price).

14. Subsequent to the report, on or about January 5, 2006, the subject property sold for Three Million Eight Hundred Thousand and 00/100 Dollars (\$3,800,000.00). Respondent testified that he was not aware of the contract and was not provided with it. Respondent testified that a handwritten notation in his workfile on an e-mail with the purchase price stating it was "per Garland Bell" was written after he was subpoenaed for his workfile and called Garland Bell to ask about the purchase price. Even if the Panel credited this highly dubious testimony,

Respondent should have been well aware of his duty to inquire into the existence of any contract and to research any past sales and listings of the subject property. Respondent even pointed out that in his response to the grievance giving rise to the complaint that the property “had been on the market for quite awhile and was basically available for a considerable amount less than what it was worth.” Accordingly, Respondent had some idea that the property was being marketed at some price and that somehow it was “available” for a “considerable amount” less than what Respondent considered to be its true value. Respondent testified that he knew that the subject property had been listed off on over the years but admitted he did not pursue further information to determine the price(s) at which it had been listed or mention this in his report.

15. Respondent’s only explanation for his use of completely inappropriate comparables is that he only considered properties along the Memorial Road corridor and that any other comparables would not have the “traffic count” that Memorial Road properties have despite not collecting any data regarding traffic count at various commercial points in the Oklahoma City metropolitan area or along Memorial Road. Respondent also testified that he did not think it was appropriate to consider any sales of larger properties a greater distance away from the subject property, or sales more than a year old, even if the properties were more comparable in economic influence and size. Respondent even argued that a 28-acre parcel sold within six months of his report at I-35 and S.E. 15th Street purchased by the Wal-Mart Real Estate Business Trust was not a suitable comparable because it had *less* traffic than properties fronting Memorial Road. Respondent’s only justification for his lack of analysis was that the report was not to be submitted to a bank, despite the fact that he listed Rose Rock Bank as an intended user.

16. Respondent remarkably continued to stand by his grossly inflated opinion of value despite all the data and testimony undermining the value. Respondent did not acknowledge that, given his testimony that 75% of experience was residential and 25% of his experience was a mix



of commercial, agriculture, special use properties (with 2 to 3% of his current practice being commercial), with most of his experience in Northwest Oklahoma (with only about 15 commercial appraisals in Oklahoma City in his 26 years of experience appraising, by his count, over 13,000 properties), and given the deficiencies in the report that he may have lacked competence for the assignment. Respondent's justifications for his comparable selection, overinflated value, the other errors, and his attitude reflect an appraiser not amenable to remedial education or other corrective sanction.

### **CONCLUSIONS OF LAW**

That the Board adopts in full the Panel's conclusion that it was proven by clear and convincing evidence that Respondent's conduct was in violation of the following:

1. That Respondent has violated 59 O.S. § 858-723(A)(6) through 59 O.S. §858-726, in that Respondent violated:

A) The Conduct Section of the Uniform Standards of Professional Appraisal Practice Ethics Rule;

B) The Competency Rule of the Uniform Standards of Professional Appraisal Practice;

C) Standards Rule 1 of the Uniform Standards of Professional Appraisal Practice;

D) Standards Rule 1-1 of the Uniform Standards of Professional Appraisal Practice;

E) Standards Rule 1-2 of the Uniform Standards of Professional Appraisal Practice;

F) Standards Rule 1-3 of the Uniform Standards of Professional Appraisal Practice;

G) Standards Rule 1-4 of the Uniform Standards of Professional Appraisal Practice;

Practice;

H) Standards Rule 2 of the Uniform Standards of Professional Appraisal Practice;

I) Standards Rule 2-1 of the Uniform Standards of Professional Appraisal Practice; and

J) Standards Rule 2-2 of the Uniform Standards of Professional Appraisal Practice.

2. That Respondent has violated 59 O.S. § 858-723(A)(6): "Violation of any of the standards for the development or communication of real estate appraisals as provided in the Oklahoma Real Estate Appraisers Act."

3. That Respondent has violated 59 O.S. § 858-723(A)(7): "Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal."

4. That Respondent has violated 59 O.S. § 858-723(A)(8): "Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal."

5. That Respondent has violated 59 O.S. § 858-723(A)(9): "Willfully disregarding or violating any of the provisions of the Oklahoma Certified Real Estate Appraisers Act or the regulations of the Board for the administration and enforcement of the provisions of the Oklahoma Certified Real Estate Appraisers Act."

6. That Respondent has violated 59 O.S. § 858-723(A)(13), in that Respondent violated 59 O.S. § 858-732(A)(1): "An appraiser must perform ethically and competently and not engage in conduct that is unlawful, unethical or improper. An appraiser who could reasonably be perceived to act as a disinterested third party in rendering an unbiased real property valuation must perform assignments with impartiality, objectivity and independence and without accommodation

of personal interests."

**FINAL ORDER**

The Board, having adopted the Findings of Fact and Conclusions of Law, as set forth above, sets forth the following final order, adopting in full the recommendation of the Panel:

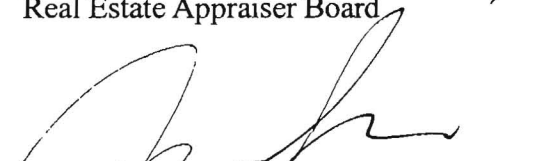
That Respondent's appraisal credential be **REVOKED**.

**THE BOARD WISHES TO ADVISE THE RESPONDENT THAT HE HAS THIRTY (30) DAYS TO APPEAL THIS ORDER WITH THE APPROPRIATE DISTRICT COURT.**

**IT IS SO ORDERED** this 1st day of February, 2008.



  
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**KIM HOLLAND**, Chairperson  
Real Estate Appraiser Board

  
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**JOANN STEVENSON**  
Assistant Attorney General  
Counsel to the Board

**CERTIFICATE OF MAILING**

I, Christine McEntire, hereby certify that a true and correct copy of the above and foregoing Board's Decision on Disciplinary Hearing Panel Recommendations was mailed postage prepaid by certified mail with return receipt requested on this 6 day of February, 2008 to:

Dan W. Montague  
Post Office Box 88  
Enid, Oklahoma 73702

**VIA CERTIFIED MAIL**  
7002 2410 0001 7593 4616

Michael D. Roberts  
P.O. Box 5672  
Enid, OK 73702

**VIA CERTIFIED MAIL**  
7002 2410 0001 7593 4630

and that copies were mailed to:

**OFFICE OF THE ATTORNEY GENERAL**

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313 N.E. 21<sup>st</sup> Street  
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Christine McEntire