

1 **BEFORE THE ARIZONA STATE BOARD OF APPRAISAL**

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ARIZONA BOARD OF APPRAISAL

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4 In the Matter of:

5 **THOMAS M. KITTELMANN**  
6 Certified Residential Appraiser  
Certificate No. 20662

Case Nos. 2545, 2546, 2547 and 2548

**CONSENT AGREEMENT AND ORDER  
FOR THIRTY-DAY SUSPENSION**

7  
8 In the interest of a prompt and judicious settlement of the above-captioned matters  
9 before the Arizona Board of Appraisal ("Board") and consistent with public interest,  
10 statutory requirements and responsibilities of the Board, and pursuant to A.R.S. § 32-3601  
11 *et seq.* and A.R.S. §41-1092.07(F)(5), Thomas M. Kittelmann, ("Respondent"), holder of  
12 certificate no. 20662 and the Board enter into this Consent Agreement, Findings of Fact,  
13 Conclusions of Law and Order For Thirty-Day Suspension ("Consent Agreement") as the  
14 final disposition of this matter.

15 On November 20, 2008, the Board held an Informal Hearing to discuss the above-  
16 captioned matters. Respondent appeared personally and on his own behalf. At the  
17 conclusion of the Informal Hearing, the Board voted the matters to formal hearing for the  
18 possible suspension of Respondent's certificate. In lieu of further administrative  
19 proceedings, the parties enter into Consent Agreement and Order For Thirty-Day  
20 Suspension.

21 **JURISDICTION**

22 1. The Arizona State Board of Appraisal ("Board") is the state agency  
23 authorized pursuant to A.R.S. § 32-3601 *et seq.*, and the rules promulgated thereunder,  
24 found in the Arizona Administrative Code ("A.A.C." or "rules") at R4-46-101 *et seq.*, to  
25 regulate and control the licensing and certification of real property appraisers in the State  
26 of Arizona.

✓





1           3.     No neighborhood-level market analysis was in the workfile, and there was  
2 no record of where the analysis might be found if it were kept elsewhere.

3           4.     All of the sales used in the report sold considerable higher than the subject  
4 had sold for less than two months earlier. Lower priced sales were available but were not  
5 used in the report.  
6

7           5.     All of the sales were larger in living area than the subject by several  
8 hundred square feet or more. Sales more similar in living area were available but were  
9 not used in the report.  
10

11           6.     Sales 1 and 2 were both Joesler homes built in the early 1930's. Joesler  
12 was a well-known local architect whose buildings command a significant premium in the  
13 local market. These sales were significantly superior to the subject in design and market  
14 appeal. This fact was neither mentioned nor adjusted for.

15           7.     Sale 3 had been gutted and fully reconstructed inside less then five years  
16 earlier. It was over 1,000 square feet larger than the subject in gross living area. The  
17 \$25/square foot living area adjustment was completely unsupported by data in the  
18 workfile.  
19

20           8.     The Respondent performed as an advocate for the purported contract price.

21           9.     Sale 3 occurred eight months prior to the effective date of the report. The  
22 report indicates that the market was increasing at the time. No time/market condition  
23 adjustments were made. No support for the lack of time/market condition adjustments  
24 was in the repot or the workfile.  
25  
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1           10.    The subject was located on an east-west arterial street. None of the three  
2 sales had any traffic influence. There was no support for the traffic adjustments that were  
3 made on all three sales, which amounted to less than 1% of the Respondent's opinion of  
4 value.

5  
6           11.    The subject is located in an area of central, urban Tucson that has been fully  
7 developed for several decades. The report indicates the neighborhood is "suburban,"  
8 "25-75%" built up, and undergoing "rapid" growth. These neighborhood descriptors are  
9 erroneous and misleading.

10           12.    The neighborhood market description indicates that property values were  
11 increasing, with shortages of inventory. The addendum states that values in the Tucson  
12 metropolitan area had increased from 10-40% in the past year. Yet the Respondent made  
13 no adjustments for sales that were over six months old, and stated in the same addendum:  
14 "Supply & demand are relatively stable in the subject neighborhood, with values  
15 generally increasing, although there is not enough data to support a time adjustment at  
16 present." This is conflicting information, and generally misleading. There is no data in  
17 the workfile to support any of the neighborhood market comments.

18  
19           13.    In his response to the complaint, the Respondent states "In hind site (sic), I  
20 may have made technical errors, or relied too heavily on the experience of a trainee  
21 assisting with the report." There is no mention of a trainee in the report. The report  
22 makes no mention of assistance by anyone.

23  
24           14.    The Respondent signed a certification stating "I personally prepared all  
25 conclusions and opinions about the real estate that were set forth in this appraisal report.  
26

1 If I relied on significant real property assistance from any individual or individuals in the  
2 performance of this appraisal or the preparation of this appraisal report, I have named  
3 such individual(s) and disclosed the specific tasks performed in this appraisal report.”  
4 (Item 19 of Appraiser’s Certification). This certification is false and misleading because  
5 the Respondent, by his own subsequent admission, relied on the assistance of a trainee in  
6 developing the appraisal.  
7

8 15. The report was signed on January 18, 2006. The report contains a  
9 comparable sale that did not close until February 2006 (Sale 1).  
10

11 16. The report states that the borrower is Horner. Around the effective date of  
12 the report, the borrower was actually McGowan according to the appraisal request. The  
13 information about Horner being the buyer was not faxed to the Respondent until after the  
14 report was signed.

15 17. The report states the Respondent’s certificate expires on 06/30/2009. That  
16 certificate was not even issued until 06/26/2007, almost a year and a half after the  
17 signature date on the report.  
18

19 18. The report was modified after it was signed. There was no disclosure of  
20 any of these modifications in the report.

21 19. The Respondent did not keep true copies of the report in the workfile.  
22

23 **2546**

24 This matter deals with an appraisal conducted and report written by Respondent of  
25 a single family residence located at 1240 N. Norris Avenue, Tucson, AZ 85719 with a  
26

1 date of value of May 25, 2006. On or about September 25, 2008, the Board's  
2 investigation revealed the following:

3 1. The subject is relatively new custom house with a guest house, located in  
4 an area of older homes, many of which have some level of historic status.  
5

6 2. The report states that the subject was listed for sale on the effective date of  
7 the appraisal, but the dates and list prices are not reported and there is no analysis of the  
8 listing history.

9 3. Market research was severely limited by price. There were no market data  
10 searches in the file that showed relevant property characteristics as search parameters.  
11

12 All of the market searches were by price.

13 4. According to the Tucson MLS, there were 28 sales of houses built in 1990  
14 or after, from 1,500 to 3,000 square feet in living area, that sold in the 12 months prior to  
15 the effective date of the appraisal within a two mile radius of the subject. These sales  
16 ranged from \$215,000 to \$595,000, with a median of \$370,750 and an average sales price  
17 of \$396,234. None of these sales was considered in the appraisal.  
18

19 5. By limiting the market searches to properties over \$650,000 the  
20 Respondent introduced bias into the appraisal process and failed to discover relevant  
21 sales that were potentially more comparable to the subject than the sales used in the  
22 report.  
23

24 6. No neighborhood-level market analysis was in the workfile, and there was  
25 no record of where the analysis might be found if it were kept elsewhere.  
26

1           7.     In his reply to the complaint the Respondent states: "The order first placed  
2 in my workfile indicated that the Appraisal was initially requested on April 25, 2006, and  
3 the contract purchase price was \$950,000. After my inspection and appraisal, I  
4 determined the estimated value of the property was \$783,000. It was after my initial  
5 estimate, that the contract price was amended and the contract value was changed to  
6 \$780,000." There is nothing in the workfile to substantiate this claim. If the Respondent  
7 did inspect and appraise the property in the time frame, the Respondent failed to keep any  
8 record of it in the workfile. With the exception of one listing that was generated in  
9 January 2006, there is no market research in the workfile generated before 5/25/2006,  
10 which was the effective dated of the appraisal. The amendment lowering the contract  
11 price had been faxed to the appraiser six days before, on 05/19/2006. Nothing in the  
12 workfile explains why there was no apparent work done on the appraisal between  
13 4/25/2006 and 5/19/2006.

14           8.     All of the sales in the report were at least 49 years older than the subject.  
15 Most were 60-70 years older than the subject. The subject was built in 2001. There were  
16 no sales of recently constructed houses in the report, and the across-the-board age  
17 difference adjustments were unsupported. Sales of recently constructed houses were  
18 available, but were not used.

19           9.     Sale 2 was designed by Joesler. Joesler was a well-known local architect  
20 whose buildings command a significant premium in the local market. This fact was  
21 neither mentioned nor adjusted for in the report.  
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1           10.    The Sales Comparison Approach comments state “All sales were given  
2 relatively equal weight in the market analysis and have closed escrow.” Sale 4 was under  
3 contract at the time, and did not close escrow until 06/22/2006, nearly a month after the  
4 effective date of the report. The statement was misleading.

5  
6           11.    Sale 4 closed escrow at \$750,000, not the \$785,000 listed price in the  
7 report. Sale 4 was under contract at the time of the appraisal. Nothing in the report  
8 indicated the price reported for Sale 4 was the listed price and not the contract price. The  
9 use of the listed price rather than the contracted price resulted in overstating the adjusted  
10 value of the sale by at least \$35,000.

11  
12           12.    Sale 4 had a 1,072 square foot guest house, according to the MLS listing.  
13 The subject’s guest house was 364 square feet. No adjustment was made for the large  
14 difference in guest house size.

15           13.    The report contains numerous errors, such as checking “suburban” even  
16 though the property is located in central, urban Tucson, and stating the zoning as “CR-4”  
17 (a Pima County zoning designation) when it is actually “R-1”, a City of Tucson zoning  
18 designation. In the Cost Approach the estimated remaining economic life is stated as 58  
19 years in one place, and 65 years in another.

20  
21           14.    By his own admission in his reply to the complaint, the Respondent relied  
22 upon a trainee for assistance with the appraisal. No assistance was disclosed in the  
23 report. The Respondent signed a certification stating “I personally prepared all  
24 conclusions and opinions about the real estate that were set forth in this appraisal report.  
25  
26 If I relied on significant real property assistance from any individual or individuals in the

1 performance of this appraisal or the preparation of this appraisal report, I have named  
2 such individual(s) and disclosed the specific tasks performed in this appraisal report.”  
3 (Item 19 of Appraiser’s Certification). This certification is false and misleading because  
4 the Respondent, by his own subsequent admission, did rely on the assistance of someone  
5 else in developing the appraisal.  
6

7 2547

8 This matter deals with an appraisal conducted and report written by Respondent of  
9 a single family residence located at 3114 N. Spirit Dancer Trail, Tucson, AZ 85749 with  
10 an effective date of value of January 15, 2006. On or about September 25, 2008, the  
11 Board’s investigation revealed the following:  
12

13 1. The effective date of the appraisal was 1/15/2006. The report was signed  
14 on 2/01/2006. The report cites a certified residential appraisal certificate that expires on  
15 6/30/2009. The referenced certificate was issued on 6/26/2007, approximately a year and  
16 a half AFTER the signature date on the report. The report has been modified since the  
17 signature date, and is not a true copy of the original report submitted to the client. There  
18 is no disclosure in the report about what was modified.  
19

20 2. The appraisal request stated that the property was selling for \$950,000. The  
21 escrow instructions were the only documentation regarding the sale terms in the workfile.  
22 The escrow instructions refer to a different buyer than the borrower name in the appraisal  
23 request. The escrow instructions contained a type sales price of \$925,000, with that  
24 number crossed out and \$950,000 written in by hand. There are no initials or other  
25 indication of who made the change, or when it was made.  
26

1           3.       The buyer on the escrow instructions is Horner, who is not the borrower  
2 indicated on the appraisal request. The borrower on the appraisal request is McGowan. It  
3 is unusual that the borrower on the appraisal request does not match the buyer's name on  
4 the escrow instructions, when the appraisal was ordered for a purchase transaction.

5  
6           4.       The subject previously transferred at \$825,000 in a private transaction that  
7 recorded on 7/29/2005. The subject had been exposed to the market for approximately  
8 43 days and was withdrawn from the MLS approximately 17 days prior to the recordation  
9 of the private sale.

10  
11           5.       There was no discussion in the appraisal or the workfile about the subject's  
12 prior sale being a private transaction despite its having been listed in the MLS. The  
13 Respondent reported the prior sale but did not analyze it.

14           6.       All of the comparable searches and market analyses were price limited in  
15 ways that introduced significant bias into the appraisal process. There were no searches  
16 in the workfile that included properties under \$800,000.

17  
18           7.       MLS sales in the subject's township and range similar to the subject in age,  
19 living area, and lot size ranged from \$554,000 to \$776,000 in the year preceding the  
20 effective date of the report. The median sales price of those properties was \$632,000.  
21 None of these sales was considered in the appraisal due to the search criteria that  
22 excluded all sales below \$800,000.

23  
24           8.       All of the sales in the report are over 5 months old. They were all prior to  
25 or contemporaneous with the subject's prior sale nearly six months earlier. More recent  
26 sales were available, but were not used in the report.

1           9.       All of the sales in the report sold well above the subject's prior sales price,  
2 even through they occurred prior to or contemporaneous with that prior sale. There were  
3 several recent, lower price sales that were not used in the report.

4           10.       All of the sales used were larger than the subject in living area. Sales that  
5 were similar or smaller in living area did exist, but were not used in the report.  
6

7           11.       There were two MLS sales on the subject's street, with similar lots and  
8 locational features. Only one of these sales was used in the report. The sale that was  
9 approximately six months old was used in the report as Sale 1.

10           12.       Sale 1 had a main house that was over 700 square feet larger than the  
11 subject with superior features such as a media room with a high definition home theater  
12 system. It also had a 1,001 square foot guest house, seven garage bays including an RV  
13 garage (the report only mentions five garage bays), and a pebbletec pool and spa with  
14 flagstone terracing, a built in BBQ and built in seating in the patio area. The subject was  
15 much smaller in living area with no home theater or comparable features. The subject  
16 had a three car garage, no guest house, and a plain rectangular pool (see aerial photos,  
17 and pool photo in report). Sale 1 had features significantly superior to the subject. These  
18 features were either falsely reported as similar, or only minimal adjustments were made.  
19

20           13.       Sale 3 was 674 square feet larger than the subject, on a much larger lot  
21 (4.1 acres) that was completely enclosed with a perimeter wall. The report mentioned the  
22 pool but failed to mention or adjust for Sale 3's outdoor kitchen, waterfall, private well  
23 (in addition to City water), RV garage, workshop with ½ bath, or its masonry stucco  
24  
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1 perimeter wall, all of which were superior to the subject's relatively plain pool and patio  
2 wall.

3           14. By searching for and selecting sales based on sales price and not on  
4 physical characteristics of the subject property the Respondent performed as an advocate  
5 in the direction of the purported sales price, even through the Respondent's opinion of  
6 value did not quite reach the sales price indicted on the appraisal request. The analysis  
7 excluded sales that were more recent and more comparable to the subject than the sales  
8 used in the report. There was no indication in the workfile that the Respondent ever  
9 considered those properties with similar physical characteristics.  
10

11           15. The Respondent did search for comparable land sales to support the site  
12 value.  
13

14           16. The report cites Marshall & Swift Residential Cost Handbook as the source  
15 of the cost data for the Cost Approach. It cites the quality rating form the cost service as  
16 "Custom." Marshall & Swift Residential Cost Handbook does not have a "Custom"  
17 quality rating. Quality ratings from Marshall & Swift are Fair, Average, Good, Very  
18 Good, and Excellent.  
19

20           17. The report cites the effective date of the cost data as "12/2001." Marshall  
21 & Swift updates its Residential Cost Handbook quarterly. The appraisal was done in  
22 January, 2006. The Respondent's cost data had not been updated in five years.  
23

24           18. The Respondent failed to adequately support the improvements analysis in  
25 the Cost Approach.  
26



1 2006. The report was amended after the signature date, without disclosure of what was  
2 changed or how it might have affected value.

3 7. The appraisal report says "The contract was analyzed by the appraiser."  
4 There was no description or explanation of the analysis results.

5 8. The report states there was no known financial assistance being paid by any  
6 party for the buyer. The escrow instructions state that the seller was to pay up to 6%  
7 toward the buyer's closing costs. The report is in error.

8 9. The neighborhood section of the Uniform Residential Appraisal Report  
9 (URAR) indicates a stable market with demand and supply in balance, and 3-6 month  
10 marketing times. This is in direct contradiction to the addendum comments which state  
11 "Within the last year, and especially the last 6 months, values in the Tucson metropolitan  
12 area have increased from 10-40%" and "There has been a shortage of homes for sale."  
13 This conflicting information is confusing and misleading.

14 10. The report erroneously indicates the site size as +/- 17,859 square feet,  
15 which is approximately 0.4 acre. In reality the site is approximately 9,327 square feet, or  
16 approximately 0.21 acre. The dimensions on the plat, which is in the appraisal report, are  
17 85' x 108.65' x 70' x 127.15'. It is clear from the plat dimensions that the property  
18 cannot be anywhere near as large as was stated in the report. The Respondent failed to  
19 verify the site size.

20 11. Sale 1 was a territorial style custom house built in the same year as the  
21 subject, and located in the subject's subdivision. That is where the similarities end. Sale  
22 1 was truly on a much larger lot of approximately 0.4 acre, nearly double the subject's  
23  
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1 actual lot size. Sale 1 was a registered historic property which is usually accompanied by  
2 significant tax breaks. Sale 1 had custom Pella windows, a fully remodeled kitchen,  
3 pergo floors, and generally superior features and appeal. No mention was made of these  
4 significant differences, and no adjustments were made.  
5

6 12. Sale 2 was custom home designed by Joesler, an architect whose houses  
7 typically command a significant premium in the local market. According to the listing it  
8 had been the architect's own house. There is no mention of the architect or the typical  
9 market reaction to the architect's property in the report, which referred to the property as  
10 a "ranch" style design.  
11

12 13. Sale 3 is superior to the subject in construction quality and curb appeal. It is  
13 also on a significantly larger lot than the subject. Sale 3 closed nearly a year before the  
14 effective date of the appraisal. No time/market condition adjustments were made.  
15

16 14. Despite the addendum comment that "within the last year and especially  
17 within the last 6 months, values in the Tucson metropolitan area have increased from 10-  
18 40%," three paragraphs later the addendum states "Market data does not support a time  
19 adjustment for comps over 6 months."  
20

21 15. Sale 4 is located outside the neighborhood boundaries described in the  
22 report. There is no discussion of the possibility of a locational difference in value, and no  
23 location adjustment was made. Sale 4 had an extensively remodeled interior that would  
24 appeal to a broad spectrum of buyers. It was superior to the subject in the interior  
25 features but this was neither discussed nor adjusted for in the sales analysis.  
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2546

3. The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition: Standards Rule 1-1(a) and (c); Standards Rule 1-5(a); Standards Rule 2-1(a); Standards Rule 2-2(b)(ix); Standards Ethics Rule – Conduct.

2547

4. The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition: Standards Rule 1-1(a), (b) and (c); Standards Rule 1-4(a) and (b)(ii); Standards Rule 2-2(b)(ix); Standards Ethics Rule – Conduct and Recordkeeping.

2548

5. The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition: Standards Rule 1-1(a) and (c); Standards Rule 1-5(a); Standards Rule 2-1(a); Standards Rule 2-2(b)(ix); Standards Ethics Rule – Conduct and Recordkeeping.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the parties agree to the following:

1. **Upon the effective date of this Consent Agreement, Respondent’s Certificate as a Certified Residential Appraiser shall be suspended for a period of thirty (30) days.** During the period of suspension, Respondent shall not issue a verbal or written appraisal, appraisal review or consulting assignment involving real property in the State of Arizona. The effective date of this Consent Agreement is that date that

1 the Consent Agreement is signed by the Board President or by the Board's Executive  
2 Director on behalf of the Board.

3         2.       If, between the effective date of this Consent Agreement and the  
4 cessation of Respondent's period of suspension, Respondent fails to renew his license  
5 while under this Consent Agreement and subsequently applies for a license or  
6 certificate, the remaining terms of this Consent Agreement, including any remaining  
7 period of suspension, shall be imposed if the application for license or certificate is  
8 granted.

9         3.       Respondent has read and understands this Consent Agreement as set  
10 forth herein, and has had the opportunity to discuss this Consent Agreement with an  
11 attorney or has waived the opportunity to discuss this Consent Agreement with an  
12 attorney. Respondent voluntarily enters into this Consent Agreement for the purpose  
13 of avoiding the expense and uncertainty of an administrative hearing.

14         4.       Respondent understands that he has a right to a public administrative  
15 hearing concerning each and every allegation set forth in the above-captioned matter,  
16 at which administrative hearing he could present evidence and cross-examine  
17 witnesses. By entering into this Consent Agreement, Respondent freely and  
18 voluntarily relinquishes all rights to such an administrative hearing, as well as all  
19 rights of rehearing, review, reconsideration, appeal, judicial review or any other  
20 administrative and/or judicial action, concerning the matters set forth herein.  
21 Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

22         5.       Respondent understands that this Consent Agreement, or any part  
23 thereof, may be considered in any future disciplinary action against him.

24         6.       The parties agree that this Consent Agreement constitutes final  
25 resolution of this disciplinary matter.

26         7.       Time is of the essence with regard to this agreement.

1           8.     If Respondent fails to comply with the terms of this Consent Agreement,  
2 the Board shall properly institute proceedings for noncompliance with this Consent  
3 Agreement, which may result in suspension, revocation, or other disciplinary and/or  
4 remedial actions. Respondent agrees that any violation of this Consent Agreement is a  
5 violation of A.R.S. § 32-3631(A)(8), which is willfully disregarding or violating any  
6 of the provisions of the Board's statutes or the rules of the Board for the  
7 administration and enforcement of its statutes.

8           9.     Respondent understands that this Consent Agreement does not constitute  
9 a dismissal or resolution of other matters currently pending before the Board, if any,  
10 and does not constitute any waiver, express or implied, of the Board's statutory  
11 authority or jurisdiction regard any other pending or future investigation, action or  
12 proceeding. Respondent also understands that acceptance of this Consent Agreement  
13 does not preclude any other agency, subdivision or officer of this state from instituting  
14 other civil or criminal proceedings with respect to the conduct that is the subject of  
15 this Consent Agreement.

16          10.    Respondent understands that the foregoing Consent Agreement shall not  
17 become effective unless and until adopted by the Board of Appraisal and executed on  
18 behalf of the Board. Any modification to this original document is ineffective and  
19 void unless mutually approved by the parties in writing.

20          11.    Respondent understands that this Consent Agreement is a public record  
21 that may be publicly disseminated as a formal action of the Board.

22          12.    Pursuant to the Board's Substantive Policy Statement #1, the Board  
23 considers the violations in the above-referenced matters to constitute to a **Level V**  
24 **Violation.**

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DATED this 27<sup>th</sup> day of ~~APRIL~~ May, 2009.

Thomas M. Kittelmann

Thomas M. Kittelmann  
Respondent

Deborah G. Pearson

Deborah G. Pearson, Executive Director  
Arizona Board of Appraisal

**ORIGINAL** of the foregoing filed  
this 27<sup>th</sup> day of May, 2009 with:

Arizona Board of Appraisal  
1400 West Washington Street, Suite 360  
Phoenix, Arizona 85007

**COPY** of the foregoing mailed regular mail *and certified mail 7008 1140 0004 9529 4750*  
this 27<sup>th</sup> day of May, 2009 to:

Thomas M. Kittelmann  
P.O. Box 29  
Cave Creek, Arizona 85327

Jeanne M. Galvin  
Assistant Attorney General  
Arizona Attorney General's Office  
1275 West Washington, CIV/LES  
Phoenix, Arizona 85007

By: Deborah G. Pearson

-#441459