



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
REAL ESTATE APPRAISER COMMISSION**

500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-1166
615-741-1831

March 9, 2009

Second Floor Conference Room, Andrew Johnson Tower

The Tennessee Real Estate Appraiser Commission met March 9, 2009, at 8:35 a.m. in Nashville, Tennessee, at the Andrew Johnson Tower in the second floor conference room. Chairman, James E. Wade, Jr., called the meeting to order and the following business was transacted.

COMMISSION MEMBERS PRESENT

James E. Wade, Jr.
Herbert Phillips
Marc Headden
Thomas R. Carter
Najanna Coleman
William R. Flowers, Jr.

COMMISSION MEMBERS ABSENT

Jason West
Kenneth Woodford
Dr. Edward A. Baryla

STAFF MEMBERS PRESENT

Nikole Avers, Administrative Director
Jesse D. Joseph, Staff Attorney

ADOPT AGENDA

Mr. Headden made the motion to accept the agenda and it was seconded by Mr. Phillips. The motion carried unopposed.

MINUTES

The February 2009 minutes were reviewed. Mr. Phillips made the motion to accept the minutes as written. It was seconded by Mr. Flowers. The motion carried unopposed.

GENERAL BUSINESS

Applicant Conferences

Gregory Scott Lakas made application to become a certified general real estate appraiser as an out of state applicant. Mr. Lakas was required to attend an applicant conference because on the application he checked "yes" to character question three (3) pertaining to a conviction which occurred in 2000 of misdemeanor involuntary manslaughter. Mr. Lakas and three other men caused the death of a fifth

passenger in a car when they handcuffed this person and put him in the trunk of an Infiniti Q x 4 automobile and while fleeing another vehicle were in an accident that caused this person to be ejected from the vehicle and receive fatal injuries. In his letter to the Commission Mr. Lakas stated he was 18 years old at the time of the accident and no alcohol or drugs were involved. The. Mr. Flowers made a motion to accept his application. Mr. Carter seconded that motion. The motion carried unopposed.

Abbey Rose Hampton made application to become a registered trainee. Ms. Rose was required to attend an applicant conference because on the application she checked "yes" to character question three (3) pertaining to convictions which occurred in 2004 and 2005 simple possession and theft of property/services \$500 or less. In her response letter to the Commission the applicant stated she made some bad decisions when she was younger and acted irresponsibly and used poor judgment. She had passed some bad checks and used drugs. She stated that since that time she committed to a constructive future. She stated she has a 2 year old son now and she is also now attending college. Mr. Headden made a motion to accept her application. Mr. Flowers seconded that motion. The motion carried unopposed.

The meeting was called to break at 9:00 a.m. CST so that a scheduled formal hearing that was held over from the previous month could begin. The Real Estate Appraiser Commission meeting resumed after the conclusion of the formal hearing at 6:40 p.m. CST.

Experience Interviews

Pamela G. Reese made application to upgrade from a registered trainee to become a certified residential real estate appraiser. Mr. Wade was the reviewer and he recommended approval of her experience. Mr. Flowers made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

Addison Ray Smith made application to upgrade from a registered trainee to become a certified residential real estate appraiser. Mr. Flowers was the reviewer and he recommended approval of his experience subject to prior completion of a seven (7) hour Scope of Work course. Mr. Phillips made the motion to accept the recommendation and Ms. Coleman seconded the motion. The motion carried unopposed.

Julianne S. Clarke made application to upgrade from a non-AQB compliant licensed real estate appraiser to become a certified residential real estate appraiser. Mr. Flowers was the reviewer and he recommended approval of her experience. Mr. Phillips made the motion to accept the recommendation and Ms. Coleman seconded the motion. The motion carried unopposed.

Troy A. VanDyke, Jr. made application to upgrade from a registered trainee to become a certified general appraiser. Mr. Phillips was the reviewer and stated that the reports were satisfactory and he would recommend approval of his experience. Mr. Headden made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

Jack J. Johns made application to become a certified general real estate appraiser as an out of state applicant. Mr. Carter was the reviewer and stated that the reports were fine and he would recommend approval of his experience. Mr. Headden made the motion to accept the recommendation and Mr. Flowers seconded the motion. The motion carried unopposed.

Gregory Scott Lakas made application to become a certified general real estate appraiser as an out of state applicant. Mr. Headden was the reviewer and stated that he would recommend approval of his experience. Mr. Phillips made the motion to accept the recommendation and Mr. Flowers seconded the motion. The motion carried unopposed.

Education Committee Report

Dr. Baryla reviewed the education and submitted his recommendation to Ms. Avers via e-mail and she read the recommendation into the record. Mr. Flowers made the motion to accept the recommendation as written. Mr. Phillips seconded the motion. A roll call vote was called after some discussion on the content of the "Assessment Administration" course taken by a Mr. Arthur D. Lewis, which Dr. Baryla had recommended against approval. Mr. Carter, Mr. Headden and Mr. Phillips voted no to the recommendation as written. Ms. Coleman and Mr. Flowers voted yes. The motion failed. Mr. Headden made a recommendation that the individual course approval request be granted 15 hours of continuing education. Mr. Carter seconded the motion. The motion carried unopposed.

EDUCATION COMMITTEE REPORT

Course Provider	Course Number	Course Name	Instructors	Hrs.	Type	Recommendation from Dr. Baryla
THE SPEARMAN CENTER	1278	The Bailout, AMC's & Appraisers	W. Lewis Spearman	7	CE	Recommend for
IRWA	1279	Principles of Real Estate Appraisal	Lawrence D. Dupree	16/14	QE/CE	Recommend for with a condition to review and clarify the Time Allocation Matrix Module. Numbers do not add up and the CAP application has 2 exam hours, while the matrix has 1 exam hour. Content is fine.
COLUMBIA INSTITUTE	1281	Fannie Mae Today, No. 116	B. Boarnet Lovorn-Brown C. D. Clark E. C. Fisher K. Guilfoyle G. Harrison S. Henderson D. T. Jacob	8	CE	Recommend for
ASFMRA	1282	Appraisal Through the Eyes of the Reviewer	Jim Cannon	7	CE	Recommend for

Individual Course Approval

Name	License #	Course Provider	Course Name	Hrs	Type	Recommendation from Dr. Baryla
Arthur D. Lewis	CG 1876	IAAO	Assessment Administration – IAAO course 400	30	CE	Recommend against. This course appears to cover topics that would be classified under 1255-2-.06 (4) (b) Unacceptable topics 5. (vi), (vii),(viii).

LEGAL REPORT

Based on prior Commission approval, the Chairman signed orders in the following matters:

Michael Deal (approved and signed 12/08) - signed Consent Order agreeing that he violated SRs 1-1(a), (b) & (c), 1-2(e)(i), 1-4(a), 1-5(c), and 2-1 (a) and (b). Respondent also agreed to pay, and paid a \$1,250.00 civil penalty. On or about August 7, 2002, the Respondent prepared an appraisal report of 9.285 acres of vacant property in Savannah, TN, and admitted that in preparing this report, he did not sufficiently detail the conditions of the sale and neighborhood location characteristics, that he misreported the site size of one of the comparable properties, and

that he did not develop a credible and supported opinions of the value after the remainder. Respondent also agreed that his actions violated T.C.A. §§ 62-39-326(5) and 62-39-329.

Charles C. Chatham (approved and signed 02/09) – signed consent order agreeing that the Commission could find that he violated SRs 1-4(a), (c)(ii) & (iv), 1-4(g), 1-5(a), and 2-2(a)(viii) and its Comment, in his October, 2007 appraisal report of a hotel in Dickson County constructed in 1972. In the sales comparison approach, Respondent used 3 hotels which were all constructed much later (1990-1998) than the subject, which had far fewer rooms and which had no restaurants. Respondent also failed in the sales comparison approach to analyze the relationship of revenue of these properties against their sales prices, such as by using a gross revenue multiplier. Respondent also failed to report that the seller in the subject's pending contract was to pay \$100,000 in the buyer's closing expenses. In the income approach, Respondent did not set out within the report any history of the subject's past performance in the categories of either revenue or expense, which would demonstrate the relationship between historical items and projected items, and how such projections were supportable and reasonable. Finally, the Respondent did not analyze within this report the effect on value of furniture, fixtures and equipment (FFE), where these non-real property items were specifically referred to and included in the appraisal. Respondent agreed to complete the following courses within 1 year after the effective date of this order: Forecasting Revenue (7 hours online); Analyzing Operating Expenses (7 hours online); Small Hotel/Motel Valuation (7 hours online); and Report Writing & Valuation Analysis (40 hours classroom).

Billy S. Phillips (approved and signed 02/09) - signed consent order agreeing to a 2 year suspension of his certified residential certificate and that he violated SRs 1-4(a), 1-5(b) and 2-2(b)(viii) and its Comment, and T.C.A. §§ 62-39-326(5), 62-39-329, 62-39-317(a), (b), & (c), Tenn. Comp. R. & Reg. 1255-5-01(2), in his April, 2007 appraisal of a residential property in Soddy Daisy, TN. Respondent did disclose that the subject had been a Quit Claim sale within the past 36 months: however, he did not discuss the details of that Quit Claim sale, and he does not list at all the two prior transfers of one of his comps within 12 months of the sale date included within his adjustment grid. Respondent also failed to respond to e-mails sent to him at his last-known e-mail address in order to attend an informal conference regarding this complaint previously sought by the reviewing Commission member in October of 2008. The administrative staff and counsel for the Commission had no good residential, business or other mailing address for Respondent from September, 2008 until approximately mid-January of 2009.

Bonnie K. Milliard (approved 12/08) – signed consent order agreeing that she violated SRs 1-4(a) & (b)(iii), and 2-2(b)(viii), and T.C.A. §§ 62-39-326(5), 62-39-329, and Tenn. Comp. R. & Reg. 1255-5-01(2), in her May, 2008 appraisal of a residential property. Respondent's report in this matter contained inconsistent neighborhood and market information, and she did not include any support within the report for her effective age opinion or the condition of the subject property. In the cost approach section of this report, Respondent does not adequately reconcile depreciation with sales data, and her adjustment for square footage in this report also conflicts with her depreciation indication in the cost approach. Respondent agreed to successfully complete a fifteen (15) hour residential report writing course (with successful completion of the course examination), within four months (120 days) after the effective date of this order.

Carol A. Smith (approved 12/08) – signed consent order in three complaints agreeing to a 60 day suspension (to run concurrently with an existing 6 month suspension which she is presently serving and which commenced in November, 2008), and agreeing in two of the complaints (relative to the same subject property) that she didn't complete the referenced appraisal assignment, but that somehow someone created a terrible report and scanned her signature to the file; that a former office assistant (terminated due to other alleged fraud) had access to her electronic signature during that time period; that her office cashed the \$600 check for the appraisal involved in these two complaints, even though she states unequivocally that she did not do the work. In the third complaint, Respondent incorrectly reported the actual ownership of the subject, she failed to analyze the sales contract, and her reconciliation of the cost and the sales comparison approaches was inadequate. Respondent admitted in this order her violations of T.C.A. §§ 62-39-326(4) & (5), 62-39-329, and Tenn. Comp. R. & Reg. 1255-5-01(2), USPAP's DEFINITION of SIGNATURE and its Comment, and Standard Rules (SRs) 1-1(b), 1-5(a) & (b), & 1-6(a).

1. L08-APP-RBS-2008021441 Commissioner Phillips was the Reviewer

This complaint was submitted by out of state consumers and included allegations that the Respondent over-valued an acreage residential property, omitted an extensive list of deferred maintenance items, including pest infestation, and misreported the acreage total. Complainants included photos of deferred maintenance and evidence of infestation. They also included estimates from contractors to repair deferred maintenance items and cure the infestation problems. They stated the property was under purchase agreement on March 13, 2007 for \$161,900 and the property was appraised by the Respondent, at that time, for \$170,000. They also included that the Respondent had appraised the property previously for another individual a year earlier but the loan didn't close because the person couldn't get the property insured. The appraisals submitted by the Complainants include the appraisal completed for them which included 33 acres and a value estimate of \$170,000 and the prior appraisal of the property which included only 5 acres and indicated a value of \$145,000.

The Respondent stated in his response letter that, he feels the Complainants are only after monetary damages and they have filed a lawsuit against him. He stated that a Realtor presented an offer to purchase the property subsequent to their purchase when they expressed their displeasure with the subject property. He stated they were not interested in selling the property. He also stated that when he appraised the property in 2006 he was instructed (by the loan officer) to *"appraise the subject and only 5 acres. At this time it was reported to me that the sales price was \$144,200 with an estimated value of \$160,000. My appraisal using only 5 acres was \$145,000. When engaged to appraise the subject property for (Complainants), I was instructed to appraise the subject and all 33 acres. This time it was reported to me that the sale price was \$161,900 with and estimated value of \$165,000. My appraisal with all 33 acres was \$170,000. As to the merits of the (Complainants) complaint and the statements they filed with the commission, my assistant, who is not a trainee or a licensed appraiser stated that he has absolutely no recollection of the (Complainants) stating they wanted a true market value. What difference does the (Complainants) request make since I perform all appraisal assignments according to appraisal standards and guidelines and developed my estimated market value as I would any other assignment?"* The Respondent further stated that the seller stated that a home inspection was performed and the inspector stated the subject was acceptable prior to closing; that the sellers signed documents at closing that there were no problems with the subject property and the Complainants signed a property acceptance at closing, that indicated they had inspected the property and no representation had been made by the sellers or their agents. The buyers also signed that they were purchasing the property sight unseen and they were afforded the opportunity to hire a home inspector. A termite inspection was reported to have been conducted and was included with the response with no infestation reported. He stated that when he met the Complainant two months after closing, she told him that she felt considerable damage had been done to the subject between closing and the time she moved in, that wiring had been stolen and several other items had been stolen and vandalized at the subject property. He also stated that the property was insured since the time of closing and that the Complainants had not filed any claims (to his knowledge) pertaining to that purported vandalism.

Both appraisal reports were completed on Fannie Mae URAR forms (ed. March 2005) and had an intended use of "mortgage finance transaction" as part of "purchase transactions" with different contract prices and market value indications. The subject is listed in public records as being a 33 acre site. There is no indication that this property was split into a five acre tract in 2006 or that there was any proposal to do so. Both reports were prepared "as-is". The 2006 appraisal does not identify which 5 acres is being appraised and the legal description line only references the deed book and page that the legal description can be found; this is the same reference in the 2007 appraisal report. Fannie Mae and other members of the secondary market have identified appraising only five acres of a larger parcel an unacceptable appraisal practice as this creates a misleading appraisal report when no such division of the property is proposed. There is no summary in the 2006 appraisal report that the five acres appraised represents less than what actually exists on the parcel, nor is this five acres outlined where or how this proposed division would apply. The subject "five acres" is not identified on the plat map.

Commissioner Phillips' findings follow:

This is a violation of Ethics Rule, Conduct Section, line 224-226 with states "An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report. The misreported size of 5 acres in the 2006 report is misleading.

No analysis of the prior purchase agreement was included in the more recent appraisal report. There was no analysis of the listing history of the subject property included in either appraisal report.

This is a violation of Standard Rule 1-5(a), which sets forth that an appraiser must, "analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal."

The condition reported in the 2007 appraisal was reported as "good" and the improvements description reports, "Only normal physical depreciation was noted. No repairs were noted."

Violation of Standard Rule 1-1(b), an appraiser must, "not commit a substantial error of omission or commission that significantly affects an appraisal." The appraiser failed to describe or note the alleged repairs or state the "as is" condition of the subject property. I have reviewed a video that shows numerous item of deferred maintenance.

In the 2006 appraisal all comparables are listed as "good" condition also, though comparable 1 received an adjustment for having a 3 year effective age as compared to the subject's 15 year effective age. In the 2007 appraisal all comparables used have an effective age listed of 2 years and received an adjustment for effective age compared to the subject's 15 year effective age, but all comparables were also listed as "good" condition. No functional or external depreciation was noted for the subject property. The subject is reported to be a 23 year old dwelling with a 15 year effective age in the 2007 appraisal report. Three of the four comparable sales used are significantly newer dwellings 2-6 years old and all have a reported effective age of 2 years. No support was included for the effective age opinions of the comparable sales or the adjustments made of \$6,500. Comparable 1 is the same in both reports though it was seven months old in the first report and 1 ½ years old at the time of the second appraisal report.

This conduct appears to be a violation of Standard Rule 1-1(a) which requires, an appraiser must, "be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal; and (b) not commit a substantial error of omission or commission that significantly affects an appraisal". Comparable No. 1 was used in both the 2006 and 2007 report; it adjusted out to \$144,680 in 2006 and \$171,700 in 2007. It is noted that different land area were used in each report, but the adjustments are not logical.

Seller concessions were not analyzed in either appraisal report.

This conduct appears to be a violation of Standard Rule 1-5(a), which sets forth that an appraiser must, "analyze all agreements of sale, options, and listings of the subject property current as of the date of the appraisal."

The adjustments for acreage are inconsistently applied. The same adjustment (2007 report) was made to a 1.94 acre property as a 19.4 acre property (+\$13,600), but a 2.1 acre property received a different adjustment (+\$12,900); no summary for the rationale for these adjustments were included.

This conduct constitutes another violation of Standard Rule 1-1(b), and a violation of SR 1-1(c), which sets forth that

an appraiser must (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.”

No summary of what made these sites good or average was included and the direction of the adjustments appears inconsistent with the data in the sales grid. Adjustments for gross living area in the sales comparison approach (\$10) are inconsistent with the indicated depreciated cost per square foot in the cost approach (\$45). Cost data does not appear consistent with Marshall and Swift data as cited as the source of cost figures (both reports).

These actions appear to constitute yet another violation of Standard Rules 1-1(b) & (c.)

There is no summary of how adjustments were derived in the sales comparison approach or support included for those conclusions (both reports).

These failures constitute yet another violation of Standard Rule 1-1(b).

There was no support included for the site value indication within the appraisal report or how the depreciation adjustment was developed (both reports).

This failure constitutes a violation of Standard Rule 1-4(b)(i), which states that “When a cost approach is necessary for credible assignment results, an appraiser must: develop an opinion of site value by an appropriate appraisal method or technique.”

No rationale was included in either report for the exclusion of the income approach.

This omission on Respondent’s part constitutes a violation of Standard Rule 1-6(a), which sets forth that an appraiser must, “reconcile the quality and quantity of data available and analyzed within the approaches uses and (b) reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at the value conclusion(s).

Prior Complaint / Disciplinary History: 946781 (consent order – courses); 199901297 (Letter of Caution); 200311950 (Dismissed); 200316093 (Dismissed); 200316273 (Dismissed)

Recommendation and reasoning: Commissioner Phillips recommends that the Respondent be offered a consent order imposing a \$500 civil penalty and that he be required to complete a 30-hour Sales Comparison and Cost Approach course within the next 60 days (with successful completion of the course exam, with no credit), and that he be offered the opportunity for an informal conference. Should he reject this proposal, a formal proceeding should be commenced.

Vote: Mr. Flowers made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

2. L08-APP-RBS-2008021671 Commissioner Carter was the Reviewer

This complaint was submitted anonymously and contained allegations that in the appraisal of a residential property, the Respondent misreported the subject information such as census tract, HOA fees, zoning, water source, flood map, driveway material, basement information, and access to attic. Further the Complainant alleged that he used a comparable as a sale when the sale cannot be confirmed through public records or MLS information, misreported the sale date of comparable 2, used a photo for comparable two that is not the property referenced, omitted a barn

amenity from comparable 2's sale data, and misreported the distances of all three comparable sales and misplaced them on the location map.

The Respondent stated in his response letter that, the census tract information was obtained from the FFIEC website. He stated that he asked the home owner at the time of inspection "if there were any dues or assessments that I should know about" and that the homeowner said there weren't; he also stated other properties in the neighborhood did not have HOA fees reported on their MLS sheets. He stated he obtained the flood map information from "Floodmaps OnLine". He stated he got the zoning information through a phone call to the Mayor's office and county zoning and was told the zoning was residential. He stated the owner told him that the property was on public water and a septic system and according to city information other homes in the development have city water. He stated he was in error on the paving on the driveway and that he marked the wrong box on the report. He stated he did include the elevator in the building sketch of the report but did not address it elsewhere because he did not want to appear to be steering towards a higher or lower value by indicated that the residents were handicapped. Pertaining to the crawlspace/basement area, he stated only the area under a bedroom had a crawlspace. This was a small part of the whole and he felt it was not pertinent. He referenced the MLS information for comparable 1 as proof of the sale and included a copy with his response. He stated the date of sale for comparable 2 was taken from the tax record rather than the date listed on the MLS sheet. He stated he did not include the "barn" of comparable 2 because it appears to be a storage building and was considered as personal property. He stated the photo of comparable 2 may have been an error, but the information pertaining to the sale was correct. He stated the locations of the comparables used in the report were manually placed on the flood map and was based on the realtor's location directions. He stated he did not attempt to mislead the reader.

There were two reports sent in by the Respondent which do not match the one report sent in by the complainant. All three reports have the same effective date.

Commissioner Carter's findings and analysis follows:

Since there were three separate reports submitted to Commissioner Carter, a correlation of the three reports was performed to distinguish the difference between the reports. Each had the same effective date and date of report. All three reports were found to be the same with some exceptions. The report submitted by the complainant had three comparable sales with a value conclusion of \$310,000. The first report submitted by the respondent had a fourth comparable sale added to the report and a value conclusion of \$325,000. The third report was submitted by the respondent and was the same as the second report with additional comments in the addendum that respond to a field review which questions the square footage given to the subject, the room count, and the basement square footage.

Identification of the Subject

In the identification of the subject section of the appraisal report under review a question concerning the accuracy of the census tract # was made by the complainant. A review of census tract data found the census tract number to be sufficient for the purpose of this report. According to the complainant, the Home Owners Association Fees were omitted in the report. The respondent's rebuttal gives an explanation stating the property owner denied any dues existed and a review of the MLS found no dues or assessments for homes in the neighborhood. It appears there are Home Owners Association dues of \$7.50 per month. This constitutes a violation of SR 1-2 (e) (iv).

Contract

The data reported in the contract section of the appraisal under review was found to be credible and consistent with the information found by the reviewer. The data was reviewed presuming the same effective date as the appraisal.

Neighborhood

The data reported in the neighborhood section of the appraisal under review was found to be credible and consistent with the information found by the reviewer. The data was reviewed presuming the same effective date as the appraisal.

Site

A review of the neighborhood section of the appraisal report under review found discrepancies in zoning, flood map #, and available utilities. The report stated the subject was located in a residential zone. Research found the subject neighborhood does not have zoning. The flood map was found to be different from that given in the report but the indicated zone was correct. The subject is not in a 100 year flood zone. The appraisal report states the subject has city water. It was found the subject does not have city water and relies on a well as a water source. The respondent's explanation for these errors is based on incorrect data provided by phone from the city and county officials, and the property owner. These errors constitute violations of SR 1-1 (b), SR 1-3 (a).

Improvements

The complainant reported the driveway surface was asphalt not concrete which the Respondent admitted as being in error. Although some questions were raised concerning the square footage of the subject no data was found that contradicts the dimensions shown in the building sketch submitted in the report. This error is a violation of SR 1-2 (e) (i).

Sales Comparison Approach

There were several issues submitted by the complainant concerning sales data. The respondent did provide some reasonable explanations for some of the allegations that included discrepancies in dates, minor improvements to comparable sales, and MLS data. A search was made by the reviewer for sales similar to the subject in physical characteristics and within a reasonable distance. The results found a number of sales within a reasonable distance from the subject that appear to be comparable in size, age, and quality to the subject but were not used in the report. The sales that were used in the appraisal are located in a suburban area in the adjoining county and were found to be significantly further from the subject than the distance stated in the report. In all three sales the distances were misrepresented which indicates a possible intentional misrepresentation rather than an oversight. Other errors or omissions include; Sale #1 is located in a PUD which has a HOA fee of \$180/month and includes amenities of a pool and tennis court that were not reconciled in the report. The photo of Sale #2 was incorrect which was admitted in error by the respondent in his response. Sale #3 is a log home with workshop and was given a negative adjustment for Design (Style) without explanation. Sale #4 was found to have 8.70 acres and was reported in the appraisal to have 1.00 acre with no adjustment for site difference. A large adjustment was made to Sale #4 for condition without explanation. These actions constitute violations of SR 1-4 (a), SR 1-6 (a), and SR 2-1 (a) & (b).

Cost Approach

The data reported in the neighborhood section of the appraisal under review was found to be credible and consistent with the information found by the reviewer.

CONCLUSION

While some of the errors are minor and do not affect the valuation outcome of the report, there appears to be a pattern of inadequacy on the part of the appraiser to perform a thorough search of pertinent data pertaining to the assignment. This is a violation of Standard 1-1 (c).

The appraiser was not familiar with the neighborhood and did not take the appropriate steps necessary or appropriate to complete the assignment. This is a violation of the Competency Rule.

By adding a fourth sale and increasing the value conclusion the appraiser was advocating the cause or interest of another party or issue. By misrepresenting the distance of sales from the subject and avoiding or creating adjustments in the sales analysis which favors a value conclusion the appraiser has possibly communicated the assignment in a misleading and fraudulent manner which could possibly be a violation of the conduct section of the Ethics Rule.

Prior Complaint / Disciplinary History: None

Recommendation and reasoning: Commissioner Carter recommends that the Respondent be offered a consent order imposing a \$1,000 civil penalty and requiring that he complete (and provide documentary evidence to the Commission's administrative office of such completion) within 90 days after the effective date of such order, a USPAP course (15 hours, no credit), and a Basic Appraisal Procedures course (30 hours, no credit). The Respondent should be offered an informal conference, and a formal proceeding should be commenced if he does not accept the specific consent order he is sent.

Vote: Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

3. L08-APP-RBS-20080238811 Commissioner Woodford was the Reviewer

This complaint was submitted by a lender and included allegations that the Respondent misrepresented the legal description, used comparable sales outside the market in a superior location without adjustment, used comparable sales superior in condition without adjustment, and failed to support the site value or depreciation estimates in the cost approach.

The Respondent stated in his response letter that, he made an error by omitting two lots from the legal description; however, the correct plat showing all lots was provided in the original report. He stated he used comparable sales from a competing market area due to extremely limited sales in a small suburban community of less than 14,000 people; that it was his opinion the sales are not in a superior location and no adjustment was warranted; and that the field review appraiser did not view the interior of the subject home and did not take into consideration the recent improvements made to the subject home which were noted in the original report. He went on to state that another appraiser in his office also did a prior appraisal on comparable sale #4 and said it was in similar condition to the subject home; and that he also analyzed comparable sites which are in the work file and \$40,000 for the subject's site value was indicated.

The field review appraiser also stated that the depreciation was out of line; however, due to the improvements made and the condition of the subject home the Respondent stated he determined that the depreciation shown in the report is an accurate assessment. The review appraiser also stated that the cost estimates seem high; however, he indicated he was a project manager for a construction company for many years and has experience in the market with the cost of new construction and determined that the cost estimates are realistic. The Respondent wished it noted that all comparable sales used in the review were not arms length transactions. He stated that Comparable sale #1 in the review is a family sale and Comparable sale #3 was a foreclosure and is a disqualified sale per the Courthouse Retrieval System. He also added that comparable sale #2 has no MLS record and the square feet in the review appraisal does not match the square feet in the Courthouse Retrieval System.

Commissioner Woodford considers that the Respondent should have been more diligent in reporting the legal description of the subject property and should have reviewed the deed rather than relying on secondary sources such as CRS alone; however, the report is not considered misleading on this basis. Moreover, it is noted that the

Respondent's neighborhood description as suburban and encompassing the entire city may be a bit inaccurate inasmuch as the neighborhood is better described as urban due to the built-up nature of the area, density, etc.

Commissioner Woodford also considers that the Respondent should have analyzed the prior sale of the subject, the condition since sale, and other factors relative to the value conclusion. The prior sale was \$236,500 on June 21, 2007 and Respondent's appraisal of March 25, 2008 included a value conclusion of \$293,000, or \$56,500 more than the prior sale over a 9 month period. Respondent indicated that renovations were made at an estimated cost of \$22,000 – which would indicate an investment by the purchaser of \$258,500. It seems that more explanation would be in order especially considering the timeliness of the prior sale of the subject relative to the comparables used. Three of the comparables used were actually older sales than the prior sale of the subject. Given the dates of sale and the prior sale, it seems reasonable that a thorough explanation of the prior sale of the subject or utilization of said prior sale as a comparable would have enhanced the credibility of the conclusion, or alternatively indicated a different value conclusion.

Prior Complaint / Disciplinary History: 200707661 (Dismissed)

Recommendation and reasoning: Commissioner Woodford recommends that a letter of instruction (which does not constitute discipline) be issued to the Respondent for minor violations of SRs 1-2(e), 1-5(b), and 2-2(b)(viii) as noted above.

Vote: Mr. Flowers made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

4. L08-APP-RBS-2008024611 There was no Reviewer

This complaint against the Respondent (unlicensed in Tennessee, and licensed in VA only) was opened by the Administrative Staff and Legal Counsel of the Tennessee Real Estate Appraiser Commission and included allegations of:

1. Conducting appraisals in Tennessee by identifying them as "evaluations", but not following the requirements of Tennessee statutes on evaluation [T.C.A 62-39-104 (d)] in that "market value" was identified rather than collateral value or asset value;
2. Failing to identify on the face of the report "this is not an appraisal" as required of Tennessee statutes on evaluation [T.C.A 62-39-104 (d)];
3. Conducting appraisals in TN without licensure and compliance with USPAP and in violation of T.C.A 62-39-103 and 62-39-329. See definition of "appraisal" in T.C.A 62-39-102;
4. Identifying in the report on the property "lot 7 of Sherwood Forest Addition" on the certification and limiting condition pages that the report includes a market value (as defined) but does not comply with USPAP, then on the primary page of the report reported that "My analysis, opinions, and conclusions were developed, and this evaluation has been prepared, in conformity with (USPAP)." These statements seem in conflict with one another, and, further the report does not meet the reporting requirements of a self-contained, summary or restricted use report.
5. Identifying in the reconciliation of the same report that the "evaluation" is not an appraisal as defined in 54.1-2008 of the Code of VA, when the property identified was located in Tennessee.
6. Reporting in the cover letter to the client "Lee Bank & Trust Company" that he had "**appraised**" the above referenced property [4906 Memorial Blvd, Kingsport, TN]; that the report of that "**appraisal**" is attached; that the purpose of said "**appraisal**" is to estimate the "**market value**" of the property described in this "**appraisal report**", as improved, in unencumbered fee simple title of ownership;" that, "This appraisal was developed and the report prepared in accordance with the **Uniform Standards of Professional Appraisal Practice**;" and then inconsistently attaching to this cover letter the report he identified as an "**evaluation**".

7. Not labeling on the face of his evaluation report of the property at 4906 Memorial Blvd, Kingsport, TN that **“this is not an appraisal”** as required by T.C.A. § 62-39-104(d)(1)(C), and then on the primary page of the report reporting that “My analysis, opinions, and conclusions were developed, and this evaluation has been prepared, in conformity with (USPAP).”
8. Submitting the two above reports as appraisal experience as part of the licensing and certification requirements of Tennessee, although they are not USPAP compliant appraisal reports as is required in 1255-1-05 (c) (1).
9. In the appraisal of the property at 116 Lay Street, Weber City, VA the report fails to meet the reporting requirements of USPAP Standards Rule 2-1 and 2-2 (b) (viii) in that the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions and conclusions; and that the exclusion of the income approach much be explained.
 - a. There was no included summary of the support for the adjustments for “vinyl siding”, “other improvements” or “additional acreage/barn” or “superior location”.
 - b. The adjustment for square footage (\$24 per sq ft) in the sales comparison approach is inconsistent with that reported for the depreciated cost per square foot (\$90 per sq ft) in the cost approach.
 - c. The adjustment for basement (\$5 per sq ft) in the sales comparison approach is inconsistent with the depreciated cost of the basement (\$13.50) included in the cost approach.
 - d. The quality is reported as “good” in the sales comparison approach and “Avg” in the cost approach.
 - e. The cost per square foot in the cost approach is inconsistent with Marshall & Swift data for an average quality house even though this is the source reported.
 - f. There is no rationale for the omission of adjustments for site acreage differences or age differences.
 - g. The acreage of the subject (17 acres) was divided in the sales comparison approach to 5 acres and then a separate line adjustment for the additional 12 acres and the barn. This is an unacceptable appraisal practice, per Fannie Mae standards, and this appraisal was reported on Fannie Mae forms. Which “5 acres” was included in the primary site value was not identified, nor how the “additional acreage” contributed to the whole or if the smaller parcels used as comparables would skew the value opinion by indicating a higher per acre value as is typical of small sites versus larger parcels. All comparable sales used ranged in site size from 0.42 acres to five acres while the subject property is a 17 acre parcel. No adjustments were applied to acreages in the “5 acre” line in the sales comparison approach, but \$40,000 positive adjustments were applied to all six comparable sales for the additional 12 acres and the outbuilding. Which 12 acres this included or if this was a divided parcel was never described or defined in the appraisal report (i.e. by legal description).
 - h. Comparable sales four and five have previous sales which were identified “at market value” in the summary of the analysis of the sale history; however, no adjustments were applied for time of sale to any of the comparable sales (though property values were reported to be increasing) and the previous sales were \$30,000 less than the sales included in the sales grid. This analysis appears contradictory to statements, sales history and lack of adjustments in the report.
 - i. There was no summary of the analysis of the comparable sales included in the report as to how the three comparables that were not located in the same State received adjustments that would include such value influencing characteristics as taxes (VA vs. TN).
 - j. There was no support included for the external depreciation applied in the cost approach for loss in value for the metal building, which seems to be inappropriately placed in “external depreciation” as this would seem to be, as described, a functional depreciation.

An outbuilding of this nature does not seem like an atypical feature on a 17 acre parcel and may have been inappropriately discounted.

- k. There was no analysis of the reliability of the cost approach in the reconciliation.

The income approach was omitted without explanation.

A written response was received from Respondent on December 3, 2008 to the TREAC administrative office. He cites a policy that was not in effect when he initially applied for licensure as an unfair practice by TREAC to have denied his credential (however, no decision has been made by the Commission on his licensure application). He was given two experience interviews; in the first, his reports were found to be deficient and not compliant with USPAP. In the second interview, reports were also found that were not USPAP compliant and a concern arose that the Respondent may have been practicing in Tennessee without a license by "appraising" Tennessee properties without complying with the applicable "evaluation" statute (T.C.A. § 62-39-104). In his response letter the Respondent repeatedly requests to "withdraw" the evaluations from the experience log. The Respondent contends that because the reports were "evaluations" they did not need to comply with USPAP and that the reports were developed for a Virginia lender to document their "collateral value", even though "market value" was consistently defined in the appraisal reports on a large number of occasions. He further contends that the cover letter identifying the report as an "appraisal" several times and defining "market value" and that the report complies with "USPAP", was in error.

In response to the allegations that the one claimed appraisal report submitted for experience credit from VA was not USPAP compliant, the Respondent stated the allegations are "frivolous and without merit." He stated that adjustments made in the sales comparison approach have nothing to do with depreciated cost in the cost approach and that to do so is a "flawed assumption" and that "an appraiser could not sign the certifications on a URAR Report if he followed these suggestions". He stated the assertion that a metal building would be typical feature on a residential property on 17 acres is also not a valid assumption and that external depreciation may be caused by factors outside the property and this would not be a type of functional depreciation. He stated, "I would say that the typical buyer may like to have a building such as the 2400 square foot metal building located on the subject; however, they would not pay the full cost for a building like this." He stated that the report did include a reconciliation of both the cost and sales comparison approach and that it said the sales comparison approach was the most reliable. He did not, however, address the question of the reliability of the cost approach as was requested in the complaint letter. The Respondent failed to support his cost figures as was alleged in the complaint letter, but only replied "What local contractors in Southwest Virginia did you check with, what material lists have you reviewed?" The Respondent did not address or verify the use of Marshall and Swift as reported in the appraisal report. In response to the allegation that there was no rationale for the omission of site acreage differences or age differences, he Respondent stated "Have you read the first line on Page 5? It states that the site adjustments may reflect differences in size, shape, topography, landscaping, drainage streets, sidewalks and other features. As far as the age adjustment I have been trained not to double adjust for age and condition; adjustments for age are not made for the sake of having an adjustment, they are only made when warranted." The Respondent did not address these omissions in the appraisal report and there were no adjustments made for site, so the above site commentary does not seem consistent what was actually done in the appraisal report. The Respondent states that, "it is true that Fannie Mae prohibits appraising a segment of a parcel. This was not a Fannie Mae loan. The URAR is referred to as 1004 by Fannie Mae, Form 70 by Freddie Mac and is ordered and used by most lenders. Standards Rule 1-2(e)(v) allows for appraising a segment of a parcel of a property. This would have been appropriate for this lender, even if I had done what you allege. The fact is that the entire 17 acres was appraised." The Respondent does not seem to acknowledge that the sales grid only reported 5 acres for the subject property (17 acres) and made no adjustments for sites to the comparable properties which ranged in size from 0.42 acres to 5 acres. The Respondent also does not appear to understand that lenders order appraisals on the URAR form so that these loans can be sold to the secondary market (GSE's) and that compliance with those contractual obligations is required by the Scope of Work Rule of USPAP. The Respondent stated that the allegations submitted to him by Administrative Staff and Legal Counsel represents a lack of understanding on our part of Standard Rule 2-1 (b), intended users, reporting and appraisal methodology.

Prior Complaint/Disciplinary History: None

Recommendation and reasoning: Staff and counsel for the Commission would recommend the Respondent be offered a consent order imposing a \$500 civil penalty and which requires that he **cease and desist** from further real estate appraisal activity in Tennessee without a license. This proposed order should outline the requirement for conducting “evaluations” in Tennessee in accordance with T.C.A. § 62-39-104, including emphasizing that a report cannot on the one hand be labeled “this is not an appraisal” and at the same time labeled as an “appraisal” in other parts of the report. Further, the proposed order should emphasize the inconsistency of stating that a report “complies with USPAP” when, in fact, it does not. In addition, it is recommended that the Respondent agree in the consent order that when performing an “evaluation” as a real estate appraiser, the important point is that an appraiser is bound by USPAP and must comply with USPAP whenever such appraiser provides an opinion of real property value, as outlined in the language of Advisory Opinion 13, in the 2008 USPAP book (pertinent authorities copied below). Adjudication of matters involved in Respondent’s VA appraisal report referred to above should be left to the VA regulatory authorities. Should the Respondent reject this proposed consent order, staff and counsel recommend that a formal proceeding should be commenced.

PERTINENT AUTHORITIES

AO 13

Lines 26-28 “This distinction is important because appraisers who are bound by USPAP must comply with USPAP whenever they provide an opinion of value.”

Lines 61-65 “Appraisers operating under USPAP may accept all requests for evaluations of real property collateral as long as the appraiser’s work meets minimum USPAP requirements. When an evaluation assignment includes a request for an opinion of value, under USPAP the evaluation becomes an appraisal, which USPAP defines as the act or process of developing an opinion of value; an opinion of value.”

62-39-104. Applicability. —

(a) This chapter does not apply to a real estate broker or salesperson licensed by this state who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. This opinion as to the listing price or the purchase price shall not be referred to as an appraisal and no opinion shall be rendered as to the value of the real estate or real property.

(b) This chapter does not apply to a full-time employee who, in the ordinary course of business, gives an opinion of the value of real estate to the employee’s employer; provided, that such opinion may not be represented as an appraisal.

(c) This chapter shall in no way affect any person who is registered with the state board of equalization in accordance with § [67-5-1514](#) while performing any service of any nature for any taxpayer before any tax or assessment authority, agency, or board of equalization.

(d) (1) This chapter does not apply to any evaluation of the value of real estate serving as collateral for a loan made by a federally regulated financial institution or to any evaluation of the value of the assets of a trust held by such institution; provided, that:

(A) The applicable federal regulator does not require an appraisal by a state-licensed or state-certified appraiser for such loan or trust;

(B) The evaluation is used solely by the financial institutions in their records to document the collateral or asset value;

(C) The evaluation shall be labeled on its face “this is not an appraisal”; and

(D) Individuals performing these evaluations may be compensated for their services.

(2) Nothing in this chapter shall prevent a state-licensed or state-certified appraiser from performing such evaluation.

Vote: Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

5. L09-APP-RBS-2009002871 No Reviewer was necessary

This complainant was submitted by a mortgage lender that alleged that the Respondent over-valued a residential property in an appraisal dated August 20, 2007 by rendering a value opinion of \$42,000 when a field review of the same property indicated a value opinion of \$25,000 on that same date. Additionally, the lender alleged that the Respondent failed to report foreclosure activity in the neighborhood and possible declining market conditions, failed to accurately describe the condition and utility of the garage and air conditioning, failed to report the subject is on a busy street with poor lot topography and in fair condition, used superior condition properties with the highest sale prices as comparables to the subject without adjustment or reconciliation, and failed to analyze and report the subject transfer history.

The Respondent has not responded to this complaint matter. On January 13, 2009, the Respondent's certified residential real estate appraiser credential was permanently voluntarily surrendered pursuant to a consent order entered in a prior complaint file, in lieu of the State taking further action in that prior complaint.

Prior Complaint / Disciplinary History:

200207074 (Closed with agreed order - \$1,500 civil penalty and 30 day suspension) 200801540 (permanent voluntary surrender)
200802556 (Closed and Flagged)

Recommendation and reasoning: Staff and counsel would recommend closing this complaint and flagging this complaint file due to the above mentioned consent order permanent voluntary surrender in the prior complaint. This would allow reactivation of this matter in case the Respondent ever applies for a new license or certificate.

Vote: Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

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Being no further business, the meeting was adjourned at 6:55 p.m.

Chairman, James E. Wade, Jr.

Nikole Avers, Administrative Director