



STATE OF TENNESSEE  
**DEPARTMENT OF COMMERCE AND INSURANCE**  
**REAL ESTATE APPRAISER COMMISSION**  
500 JAMES ROBERTSON PARKWAY  
NASHVILLE, TENNESSEE 37243-1166  
615-741-1831

May 11, 2009

Second Floor Conference Room, Andrew Johnson Tower

The Tennessee Real Estate Appraiser Commission met May 11, 2009, at 8:45 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.  
Kenneth Woodford  
Marc Headden (arrived at 8:55 a.m.)  
Thomas R. Carter  
Najanna Coleman  
William R. Flowers, Jr.  
Dr. Edward A. Baryla

**COMMISSION MEMBERS ABSENT**

Jason West  
Herbert Phillips

**STAFF MEMBERS PRESENT**

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

**ADOPT AGENDA**

Dr. Baryla made the motion to accept the agenda and it was seconded by Mr. Flowers. The motion carried unopposed.

**MINUTES**

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

**GENERAL BUSINESS**

**Experience Interviews**

**Patrick Thompson** made application to upgrade from a certified residential real estate appraiser to become a certified general real estate appraiser. Mr. Wade was the reviewer and he recommended

approval of his experience. Dr. Baryla made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

**Joshua M. Alberts** made application to upgrade from a registered trainee to become a certified residential real estate appraiser. Mr. Carter was the reviewer and he recommended deferment of this matter to a later date for consideration. He recommended the applicant submit three (3) additional residential appraisal reports and for at least one of the three reports to be a multi-family property illustrating use of the income approach. Mr. Flowers made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

**Travis L. McKinney** made application to upgrade from a registered trainee to become a certified residential real estate appraiser. Mr. Flowers was the reviewer and recommended approval of his experience. Mr. Woodford made the motion to accept the recommendation and Dr. Baryla seconded the motion. The motion carried unopposed.

**Nathan James Griffin** made application to upgrade from a registered trainee to become a licensed real estate appraiser. Mr. Woodford was the reviewer and he recommended approval of his experience. Mr. Flowers made the motion to accept the recommendation and Ms. Coleman seconded the motion. The motion carried unopposed.

**Paul Harper** made was in attendance for a 500 hour experience audit. Mr. Flowers was the reviewer and stated that his reports were very good.

### Education Committee Report

Dr. Baryla reviewed the education and submitted his recommendations to the Real Estate Appraiser Commission. Mr. Flowers made the motion to accept the recommendation as written. Mr. Woodford seconded the motion. The motion carried unopposed.

Course Provider	Course Number	Course Name	Instructors	Hrs.	Type	Rec. from Dr. Baryla
ASFMRA	1293	Valuation of Conservation Easements and Other Partial Interests in Real Estate	John Widdoss	22	CE	Recommend for
ASFMRA	1294	Appraising Rural Residential Properties	James Synatzske	8	CE	Recommend for
ASFMRA	1295	Wind Power	Terry Argotsinger	8	CE	Recommend for
ASFMRA	1296	Land Investment Analysis	Randy Hertz	24	CE	Recommend for
ASFMRA	1297	Sales Comparison Approach	Brent Stanger	8	CE	Recommend for
IRWA	1298	Principles of Land Acquisition C 100	Lawrence D. Dupree	32	CE	Requested Retroactive Approval back to April 20, 2009. Recommend for
Appraisal Institute	1299	On-line Valuation of Green Residential Properties	Alan F. Simmons	7	CE	Recommend for
RealTracs Solutions	1300	RealTracs Statistics	Stacy Dudley, Bobbi Jo Nugent, Donna Christ, Joann Henslee	2	CE	Recommend for

**Individual Course Approval**

Name	License #	Provider	Course Name	Hrs	Type	Recommendation from Dr. Baryla
Travis McKinney	3987	TREES	App 101 – Appraisal Principles	30	QE	Courses not currently approved under the matrix requirements for 2008. Recommend for
Travis McKinney	3987	TREES	Course 400 – Real Estate Appraisal Methods	30	QE	Courses not currently approved under the matrix requirements for 2008. Recommend for

Dr. Baryla revised the proposed rules from the previous meeting. Further changes were discussed to clarify the language. A motion was made by Mr. Flowers to send out these proposed Rule changes as an exposure draft by means of the website, the Newsletter Listserv, and by letter to the education course providers to solicit responses and concerns or support for these proposed changes to the Rules. Mr. Carter seconded that motion. Ms. Avers reiterated that this would only be an exposure draft and no Rules changes would be made until a Rule Making Hearing was held. The motion carried unopposed. Mr. Woodford asked is there was some possible way to take a survey of how many course proctors for these courses may be available and the locations of these proctors that comply with the proposed Rules.

\*\*\*\*\***DRAFT\*\* ONLY**\*\*\*\*\*

*1255-2-.04 COURSE GUIDELINES.*

*(1) The following definitions are provided for the terms "qualifying education" and "continuing education":*

*(a) Qualifying education means education that is creditable toward the education requirements for trainee registration, initial licensure or certification under one (1) or more of the three (3) real estate appraiser classifications (Licensed Real Estate Appraiser, Certified Residential Real Estate Appraiser, and Certified General Real Estate Appraiser.)*

*(b) Continuing education means education that is creditable toward the education requirements that must be satisfied to renew registration as a trainee or licensure or certification as a Licensed Real Estate Appraiser, Certified Residential Real Estate Appraiser, and Certified General Real Estate Appraiser.*

*(2) An applicant to be a course provider shall demonstrate to the satisfaction of the Commission that each course submitted for approval shall:*

*(a) cover subjects which are reasonably related to the practice of real estate appraisal and suitably advanced to benefit and enrich the students enrolled,*

*(b) be conducted in a facility that meets the requirements of the Americans with Disabilities Act and contains adequate space, seating, and equipment,*

*(c) consist of no fewer than two (2) classroom hours for continuing education and fifteen (15) hours with an examination for licensure/certification requirements, and*

*(d) incorporate appropriate methods for determining whether a student has successfully completed such course. Such methods shall include, but not be limited to:*

*1. provisions to make up for classes or hours missed by a student, and*

*2. for qualifying education and the fifteen (15) hour course in the Uniform Standards of Professional Appraisal Practice, a minimum passing requirement of seventy percent (70%) and a comprehensive final examination (or equivalent measure of achievement).*

*(3) Internet Education/Distance Education for Qualifying Education*

*(a) Qualifying educational requirements may be satisfied through the completion of Board approved distance educational offerings.*

*\*Distance education is defined as an educational process in which instruction does not take place in a traditional classroom setting but rather through other media (Non-conventional methods) in which teacher and student are separated by distance and sometimes by time and the course provides interaction..*

*(b) Persons or entities seeking Board approval for a distance educational offering shall submit an outline and description of the entire course and provide documentation which demonstrates the course complies with the following criteria:*

*i. That the educational offering is presented by an approved or accredited college, community or junior college or university that offers distance educational programs and credit in other disciplines; or*

*ii. The educational offering is presented by a proprietary school that has been approved by the Real Estate Appraiser Commission, the course design and delivery mechanism has been approved by the International Distance Education Certification Center (IDECC) and the AQB.*

*A. Any approval will cease upon notice that the certification has been discontinued for any reason*

*and*

*iii. That the course teaches to the mastery of the subject and at a minimum covers the following criteria:*

*A. Divides the material into major units as approved by the board;*

*B. Divides each of the major units of content into modules of instruction for delivery on a computer or other approved interactive audio or audio visual programs;*

*C. Divides the learning objectives for each module of instructions. The learning objectives must be comprehensive enough to insure that if all the objectives are met, the entire content of the course will be mastered;*

*D. Specify an objective, quantitative criterion for mastery used for each learning objective;*

*E. Provide a means of diagnostic assessment of each student's performance on an ongoing basis during each module of instruction;*

*F. Require the student to demonstrate mastery of all material covered by the learning objectives for the module before the module is completed;*

*G. That the course offering is designed in such a way that the material is presented under an approved instructor who shall be available to answer student questions or provide assistance on a timely basis as necessary;*

*H. The instructor will provide reasonable oversight of a student's work to ensure that the student who completes the work is the student who enrolled in the course;*

*iv. The course provider must provide documentation of an acceptable method that ensures that the student achieves the classroom hourly equivalent as approved by the Board. Any form of delivery that provides the student the opportunity to circumvent instructional design strategies that require them to read the material and spend the appropriate amount of time in the course will not be approved;*

*v. For distance education courses where an official cannot proctor classroom attendance, and an exam is required, such an examination shall be:*

*A. Proctored by an individual approved pursuant to (e) and (f) below; or*

*B. Conducted at a proctored testing facility pursuant to (e) and (f) below;*

*vi. And such other information as the Board may require.*

*vii. Students are to submit a notarized affidavit certifying that they have personally completed each assigned module of instruction.*

*(e) Examination Proctors Qualifications*

- i. The person shall not be related to the student by blood or marriage and may not be engaged in any association (personal or business) with the student.*
- ii. The proctor may be selected from the following professions:*
  - a. A university, college or community college professor or instructor*
  - b. A public and private school professional (superintendent, principal, guidance counselor, librarian, etc.)*
  - c. An AQB certified instructor or an approved professional association's instructor.*
  - d. A Notary Public or member of the legal profession*
- iii. The following formal proctored testing facilities are also acceptable:*
  - a. a university, college or community college testing facility.*
  - b. the testing facility of a professional association.*
  - c. a public or university, college or community college library that provides a testing facility as part of their normal course of business.*
- iv. The individual proctor in (ii) or testing facility in (iii) must be approved by the commission prior to taking the test.*

*(f). Examination Proctor Duties*

- i. Be satisfied that the person taking the examination is the person registered for the course. This should be verified with a picture ID and another identification document (driver's license, student ID card, etc.).*
- ii. Be in the room while the student is taking the exam or within line of sight of the student. Assure that the student does all the work him/herself without aids of any kind including books, notes, conversation with others or any other external resource. If the exam calls for mathematical calculations, a non-programmable hand-held calculator may be used.*
- iii. The proctor shall see that the student adheres to the time limit requirement specified for the examination. The examination must be completed in one sitting.*
- iv. Upon completion of the examination, the proctor shall submit a certificate indicating the verification of the identity of the student, that the examination was completed on the date assigned during the time permitted and that the student has done all the work him/herself without aids of any kind including books, notes, conversation with others or any other external resource while taking the examination, including access to Internet search engines or web pages other than that displaying the examination.*

*(g) Approval by the Board is initially granted for a period of two years provided no substantive changes in course content is made and approval may be extended for another two years on written request by the provider. Failure to timely request an extension will result in automatic termination of the educational offerings approval status.*

*(h) The Board may at its discretion adopt and implement various procedures for the auditing of any offerings that have been accepted for qualifying and continuing education approval by this agency.*

*(4) Internet Education/Distance Education for Continuing Education*

*(a) Courses given for continuing education via internet or distance education can make up to one hundred percent (100%) of the total requirement for continuing education each cycle and may be acceptable to meet the requirements of continuing education if:*

- 1. The course provides interaction. Interaction is a reciprocal environment where the student has verbal or written communication with the instructor,*

2. Content approval is obtained from the AQB, a state licensing jurisdiction, or an accredited college, community college, or University that offers distance education programs and is approved or accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. Non-academic credit college courses provided by a college shall be approved by the AQB or the state licensing jurisdiction, and

3. Course delivery mechanism approval is obtained from one of the following sources:

(i) AQB approved organizations providing approval of course design and delivery,

(ii) a college that qualifies for content approval in paragraph 2 above that awards academic credit for the distance education course, or

(iii) a qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporate interactivity.

(4) Each hour of course instruction shall consist of fifty (50) minutes of actual instruction for every sixty (60) minute segment.

(5) Attendance. For distance education seminars where classroom attendance cannot be proctored by an on-site official approved by the presenting entity, the provider shall have a method acceptable to the Commission for ensuring student achievement of the course hour equivalent.

(6) The courses listed in rules 1255-2-.05 and 1255-2-.06 are additions to those outlined in other sections and those lists of courses supplement those courses identified in other rules.

## LEGAL REPORT

---

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

**Brian B. Livesay** (approved 3/09) - signed Consent Order in matter where he submitted 2 evaluations performed on TN real estate as part of attempting to meet his experience requirement without following the requirements of T.C.A. § 62-39-104 defining evaluations, since he identified market value in these reports rather than "collateral" or "asset" value. Respondent also failed to include the required label "this is not an appraisal" on the face of both of these reports and improperly stated in a cover letter to a client that he had "appraised" subject property; that the "appraisal" was attached; and that the purpose of the "appraisal" was to estimate the "market value" of the property as described in the "appraisal report". Respondent, licensed only in VA, was found to have engaged in the real estate appraisal activity in TN without being licensed in violation of T.C.A. § 62-39-103, since he set forth written opinions of market value of real estate located in TN (which constitutes an appraisal according to § 62-39-102(3)). Respondent was assessed and has paid a \$500 civil penalty and has agreed to cease and desist from the unlicensed practice of real estate appraising in TN until he is licensed or certified to do so by this Commission. Respondent agreed that his actions violated §§ 62-39-103(3)(a), 62-39-104(d)(1)(B) & (C), and USPAP's Scope of Work Rule, Problem Identification Section and its Comment, and SR 2-1(a).

**Alden Eugene Hess** (approved 01/09) – signed consent order agreeing for purposes of this case, that he did not provide any support for the site value in one report of the subject which was a lake lot; Respondent did not included any sales of lake lots in his report; he did not make any adjustments for site size or state why such adjustments were not necessary; and his sq. ft. adjustments in the sale grid were inconsistent with his indicated sq. ft. figures in the cost approach. Respondent failed to provide any adjustments for age and failed to provide any explanations as to why such adjustments were unnecessary, even though the subject was constructed in 1990 and his comp sales 1-3 were constructed in 1977, 2003, and 1998, respectively. Respondent's value indications do not appear to be credible, supportable conclusions and he failed to document within his report his methods and techniques used. Respondent was assessed and

has paid a \$1,000 civil penalty and must complete the following courses with 120 days after the effective date of this order: (i) Basic Appraisal Procedures (30 hours); (ii) Residential Site valuation and Cost Approach (15 hours); and (iii) Advanced Residential case Studies (15 hours).

---

**1. L08-APP-RBS-2008017741 Docket No. 12.36-102364A  
Commissioner Phillips was the Reviewer**

A prior consent order in this matter was authorized in December of last year, and was issued to Respondent on December 30. Respondent requested an informal conference which was conducted in late January of this year. Respondent did not agree to the consent order which was presented to him through January, 2009. In early April, 2009, a notice of hearing and charges (formal proceeding) was filed against Respondent, since there was no agreement as of that point regarding a consent order.

This complaint involved, amongst other things, Respondent's failure to identify a cross-easement which he knew of or its impact on the subject property or its value, and Respondent's alleged failure to investigate and report a right of first refusal which the adjoining property owners to the subject property possessed pursuant to a Deed of Correction filed in April, 2001 with the Sullivan County Register's Office. Respondent's client for this assignment was an attorney, and apparently, the client did not wish for Respondent to see the pending sales contract or take into account the right of first refusal, in Respondent's report.

The State engaged the services of one of its contracted expert witnesses to provide an appraisal review report prior to the filing of the formal proceeding, and after the results of the review were communicated, the parties were able to agree upon a settlement of this matter in April of this year upon almost the same terms as were discussed in January. The Respondent has agreed to take and complete a 15 hour USPAP course and a 30 hour Sales Comparison course (with continuing education credit available for the sales comparison course) within 120 days after the effective date of this order. The Respondent also agreed that the Commission may find all facts, and conclude all matters of law as are included within this proposed Agreed Order, even though he desires to have the order be submitted on a "no-contest" basis without him either admitting or denying the specific matters. Respondent has also agreed, and has sent the State a check in the amount of \$400, to reimburse the State the amount of the invoice of Danny Wiley, which was paid to Mr. Wiley as his expert review fees.

Mr. Wiley's findings are as follows: **(1)** Since Respondent did not mention the easement, it is impossible to determine from the report whether the easement was analyzed. Respondent's failure to summarize the easement as a relevant characteristic of the subject property and his failure to report any analysis of the easement, violates SRs 2-2(b)(iii) & (b)(viii) of USPAP; **(2)** Respondent was told about this right of first refusal by his client but was instructed to disregard this matter in performing this assignment. Respondent did not disclose this significant characteristic of the subject property within this report. The right of first refusal was disclosed in the public MLS listing of the subject. Respondent's failure to disclose this significant characteristic within his report violated SR 2-2(b)(iii) of USPAP; **(3)** The right of first refusal constituted a restriction which could potentially affect the value conclusion. Given that Respondent did not review or analyze the agreement contained within the Deed of Correction setting forth the right of first refusal, he was required to complete the assignment using an extraordinary assumption that the agreement granting the right of first refusal had no effect. Respondent did not identify or disclose within the report that he used any extraordinary assumption, and his failure to do so violated SRs 1-2(f) and its Comment, & 2-2(b)(viii) of USPAP; **(4)** Although the Respondent's client did not permit the pending sales contract to be made available to the Respondent in the normal course of

business, Respondent did not set forth within this report the efforts undertaken to obtain this information, as required, and his failure to do so violated SR 2-2(b)(viii) & its Comment within USPAP; (5) Respondent improperly used a URAR for this assignment, given that this form is intended for mortgage finance transactions. Page 4 of 6, of the Fannie Mae URAR Form 1004 (March 2005), states very clearly that this is the intended use, and that the Intended User is the "lender/client". This assignment was for an attorney. In order to avoid misleading parties in possession of an appraisal report, Respondent should have included specific language modifying this standardized intended use and user identification language as contained on page 4 of the URAR form. Respondent's failure to modify this standardized disclosure of the intended use and intended user or to utilize a different reporting form, violated the Scope of Work Rule, Disclosure Obligations Section and its Comment, and SRs 2-1(a) & 2-2(b)(ii) of USPAP; (6) In the Description of Improvement Section of this report, Respondent concludes that there is no external obsolescence, particularly as to the large detached workshop /garage (40 ft. x. 40 ft.). Respondent also does not mention any obsolescence within either the coast approach or sales comparison approaches of this report. However, within his August, 2008 written response to this complaint, Respondent explains his reasoning by implicitly concluding that the large workshop/garage suffers from functional obsolescence in that its cost (minus physical depreciation) far outweighs the contributory value of such a site improvement. While Respondent's analysis (as set forth in his written response) clearly appears to reflect his belief that there was a considerable degree of functional obsolescence to this large workshop/garage, and to the other improvements, he has not properly documented his analysis in writing within the report, thus rendering the report misleading in violation of SR 2-1(a) and 2-2(b)(viii) of USPAP; (7) The Respondent's failure to either withdraw from this assignment, to modify the assignment conditions, or to use extraordinary assumptions about the information which was not made available to him because of the assignment conditions imposed by the client as set forth above -- which limited Respondent's research, inspection of documents and information gathering, violates the Comment to the Scope of Work Rule, Acceptability Section within USPAP.

Neither Commissioner Phillips as the Commission reviewer, nor Mr. Wiley, found that there was any evidence that Respondent was in collusion with his client or that his results were biased in favor of the client.

**Prior Complaint / Disciplinary History:** None.

**Recommendation and reasoning:** Counsel for the Commission and the Administrative Director recommend that the Agreed Order recently negotiated after the filing of the notice of charges and after the obtaining of Mr. Wiley's review, with the additional requirement that Respondent reimburse the State for payment of Mr. Wiley's fees, be approved.

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

## **2. L08-APP-RBS-2008027771 Commissioner Wade was the Reviewer**

The Complainant, an agent of the Metropolitan Government of Nashville and Davidson County, alleged that the Respondent used inappropriate comparable sales in an appraisal of 3.55 acres of vacant land which resulted in an over-valuation of the property. The Complainant stated that she received a copy of the appraisal from the owner/seller of the property while acting on behalf of the Metropolitan Government of Nashville and Davidson County to acquire the property. She stated that while reviewing the

comparable sales data she observed significant flaws in the report. She included two other appraisals which were conducted on the same property as additional documentation.

The Respondent stated in his response letter that, "the appraisal was to be used in negotiating a selling price for the subject and he requested a Restricted Use Report. The report was then given to Metro and Metro requested clarification. As you will see, I responded to the questions asked by Metro Davidson County as to my rationale for the final value opinion." Further he stated, "As you can see in my response, I discounted the final value approximately 50% because of the parcel that was considered to be undesirable. Taking this to another level, if you just determined that the undesirable property had absolutely no value and assigning the value to the 1.77 +/- acres that had good functionality using the value assigned at approximately \$4.00 per square foot would still fall within the range of comparables used. Vacant sales in the immediate neighborhood were limited. The sales used were taken within close proximity to the subject and were considered the best available. As noted in the appraisal, the Davidson County Assessor's Office has the property appraised for \$201,900. Tax appraised amounts are typically lower than market value. I am curious to know how much they think that I inflated the value of the subject property. It appears to me that they are just trying to discredit my appraisal and acquire the property at a lower price."

Commissioner Wade's findings and analysis are as follows: The Respondent states on page 2 of the Restricted Use Appraisal Report that the "report is for the exclusive use of the addressee. The appraiser is not responsible for unauthorized use of the report". The Respondent states in his response letter to the Administrative Director of the Tennessee Real Estate Appraiser Commission that "the appraisal was to be used in negotiating a selling price for the subject and he requested a Restricted Use Report. The report was then given to metro and Metro requested clarification. As you will see, I responded to the questions asked by Metro Davidson County as to my rationale for the final value opinion". Based on this statement, it appears that the appraiser had prior knowledge that the report would be relied upon by parties other than the addressee. It appears that the appraiser is in violation of SR 2-2 (c) (i) and (ii).

If the Respondent is knowledgeable of the Restricted Use Appraisal Report requirements as indicated in the preceding paragraph, he may be in violation of the confidentiality rule since he had a significant communication with Metro and did not provide documentation in his report file that he had a release from the client. This is a violation of the Ethics Rule-Confidentiality and SR 2-2 (c) (i).

An appraiser must perform assignments ethically and competently, in accordance with USPAP and any supplemental standards agreed to by the appraiser in accepting the assignment. Respondent's conduct here appears to be a violation of the Ethics Rule, Conduct Section. The Respondent did not develop an opinion of exposure time linked to the value opinion, which is a violation of SR 1-2 (c). On page 4 of the Respondent's report, the report does not provide the reader with a reasonable description of the area of the 3.55 acre subject property that is affected by the steep slopes and by flooding. The reader is uninformed as to the size of the area unaffected by the slopes and flooding. The workfile information submitted is inadequate to meet the requirement of S. R. 2-2 (c) (ii).

The neighborhood information does not provide an adequate explanation of the industrial property uses in the area. The Respondent only mentions commercial and residential uses as typical uses in the neighborhood. The workfile information submitted is inadequate to satisfy the requirements of SR 1-1 (c) and S. R. 2-2 (c) (vii). The report summary states that zoning classification is "I-R Industrial Restrictive" and the report states that "the subject property is situated in the industrial zoning classification of

Madison." The workfile information submitted is inadequate to satisfy the requirement of SR 1-3 (a), which requires that the Respondent identify and analyze the effect on use and value of existing land use regulations.

The subject improvements were not accurately or adequately described. The Respondent does not state the reason the "older concrete block building" is not assigned any contributory value. The workfile information submitted is inadequate to meet the requirements of SR 1-1 (b) and (c). The Administrative Director of the Tennessee Real Estate Appraiser Commission directed the respondent to provide all appraisals performed on the property and also **the complete workfile for this assignment**.

In the Scope of Work section of the report on page 5 of the report, the appraiser states that he completed the sales comparison approach to value. In the following section of the report headed Appraisal Procedure Followed, the appraiser states that "This Restricted Report sets forth only the appraiser's conclusions and presents little or not discussion of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's file. The depth of discussion contained in this report is specific to the needs of the client and the intended use stated. The appraiser is not responsible for unauthorized use of this report".

In the Summary of Sales on page 7 of the report, the appraiser indicates a sales range of \$1.76 per square foot to \$4.48 per square foot. He states "The portion of the subject that is located across the connector road (034-11-029.00) is not considered to contribute much value to the overall value of the other three parcels therefore my final value opinion will be granted to the lower end of the range @ \$2.00 per square foot x 164,638sf = \$309,276 Rounded to \$310,000.00." In reviewing the 6 sales in the work file information submitted by the appraiser, he uses a 1.47 acre, commercial zoned, that sold for \$3.66 per square foot, a multiple parcel, I-R zoned property that sold for \$1.95 per square foot, a 1.04 acre, IR zoned tract that sold for \$1.76 per square foot, a 0.70 acre, IR zoned tract that sold for \$3.00 per square foot, a 0.70 acre, IR zoned tract that transferred from Tom Pursell to Tom Pursell for \$2.72 per square foot, and a \$0.87 acre, IR zoned parcel that sold for \$1.99 per square foot. The appraiser's work file provided no analysis.

The appraiser provided a copy of a correspondence with Mr. Hoover, the property owner and who is not his client, on October 6, 2008. The correspondence indicated that the appraiser was responding to a letter he received on September 30, 2008. A copy of this letter was not provided by the appraiser. In the appraiser's response, he indicated that he was summarizing his rationale for the value opinion in report #CD-08-46 dated 8/31/2008 along with copies of sales used in his analysis. This indicates to the reviewer that the analysis provided in the Restricted Use Report was inadequate.

Based on the workfile submitted, the appraiser did not provide a reasonable analysis of the comparable sales comparison data to provide a credible assignment result. This is a violation of SR 1-1 (a), (b), (c) and SR 1-4 (a).

Commissioner Wade is of the opinion that given his scope of work, the report by the Respondent is incomplete due to substantial errors of omission or commission that significantly affect the appraisal. The accuracy of the data is in question. The appraisal services were rendered in a careless or negligent manner, such as by making a series of errors that in total may affect the value conclusion.

**Prior Complaint / Disciplinary History:** None

**Recommendation and reasoning:** Commissioner Wade recommends that the Respondent be offered a consent order requiring him to attend and complete the following educational courses with a passing grade within the next 6 six months (120 days): a general appraiser 30 hour report writing and case studies course and a 30 hour general appraiser site and cost approach course, with continuing education credit provided. Respondent should be offered the opportunity to request an informal conference, if he desires such, and if this consent order proposal is not accepted by the Respondent, a formal proceeding should be commenced.

**Vote:** Mr. Carter made the motion to accept the recommendation and Dr. Baryla seconded the motion. The motion carried unopposed.

**3. L08-APP-RBS-2009007941 No Reviewer was necessary**

The Complainant, a mortgage lender, alleged that Respondent was contracted to complete an appraisal assignment on April 4, 2009. The subject property was inspected on April 14, 2009 by the Respondent and the Complainant alleged that a three business day turn around time was promised. The Complainant further alleged that numerous calls were made to the Respondent, but no appraisal was delivered. The Complainant submitted a complaint to TREAC April 29, 2009 stating as of that date the appraisal was not delivered and the appraisal fee had not been returned. The lender alleged this caused his customers to lose a financing rate.

The Respondent replied to the complaint the same date it was e-mail to him, April 29, 2009. He stated the borrower rescheduled twice for the property inspection after the order was place. He stated that on April 22, the Complainant had indicated that the borrowers were "wishy washy" and he was not sure if they were even going to commit to the refinance. He stated he did tell the Complainant that he would make every effort to have the appraisal completed by April 27<sup>th</sup>, but he was not aware of any time sensitive circumstances. He stated the subject property is located in a rural area and limited data available in that County made completing the appraisal difficult. He stated he didn't even know the Complainant was grieved in the matter until he received the complaint. He spoke to the Complainant after the complaint was received and agreed to refund the money for the appraisal.

The Complainant confirmed on April 30, 2009 that such an agreement had been made and on the same date a copy of the refund check, made out to the borrower and signed as received by the borrower was received by the TREAC administrative office.

**Prior Complaint / Disciplinary History:** None

**Recommendation and reasoning:** Although we note no probable violations, Counsel for the Commission and the Administrative Director recommend that this file be closed and flagged in case a pattern develops in this regard.

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

#### 4. L08-APP-RBS-2009005981 No Reviewer was necessary

This complaint was filed by consumers who alleged the Respondent failed to set a specific appointment time and did not call the home owners when she was on her way for the inspection, causing the Complainants to miss the first appointment. Also, Complainants alleged rude conduct in setting a second appointment and during the appraisal inspection. The Complainant stated the Respondent was only present at home for 10 minutes for the appraisal inspection. Finally, the Complainant alleged that the Respondent had bias against them and under-valued their home by indicating a value opinion of \$210,000 on March 16, 2009. He stated he contacted two real estate agents that indicated his home would list for no less than \$221,000 that is also what he paid for his home and since he added \$16,000 in real hard wood floors, that the agents indicated it may be more in the \$225,000 range. He stated that the average price per square foot of the comparables (\$96.36) used in the Respondent's appraisal is more than indicated for the subject property (\$91.80).

The Respondent stated in her response letter that an appointment was set to see the subject property between 11-1 on March 5<sup>th</sup>. She was asked to set a specific appointment time, so an appointment was set for noon. She stated that she and her trainee arrived at 11:55 a.m. at the subject property. They knocked and heard a dog barking, but no one answered the door. She stated they measured the exterior of the home and took photos of the property, and left at 12:25. She stated that she contacted her client, told them of the situation and requested a trip charge for the previous visit. The client authorized that payment and an appointment was rescheduled for March 16. She stated that she and her trainee again visited the subject property, took interior measurements and photographs, but it didn't take as long as it normally would have because she had already measured the dwelling previously. Pertaining to the allegation of under-valuing the subject property, she stated that the subject is a three year old house in a neighborhood of new construction. She stated her research indicated that resale properties in this neighborhood typically sell below \$200,000, while new construction dwellings sold between \$220,200 and \$226,800 and that the higher sale had been on the market for 299 days. She stated she used two re-sale properties and one new construction dwelling. She stated she used the new construction dwelling because of the new flooring in the subject home. She stated that Complainant had contested her value opinion with her client by sending in two comparable sales. She indicated that one of those was used in her appraisal and that both were new construction homes. She concluded that property values in this neighborhood are not currently as high as they were in 2006 when the Respondent purchased his home, but there had been no bias on her part and the missing of an appointment did not influence the value opinion.

**Prior Complaint/Disciplinary History:** Prior Complaint / Disciplinary History: 200708680 (997) Dismissed 12/10/07 (Prior Complaint was based on Complainant feeling there was a discrepancy on the square footage).

**Recommendation and reasoning:** Administrative Staff observed no violations of USPAP in the appraisal report. Scheduling appointments is not generally considered within the purview of the authority of this Commission unless such behavior somehow may rise to the level of violating the public trust, which in this situation it does not appear that it would. Staff would recommend dismissal of this complaint.

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

## Applicant Conferences

---

Jacob David Seipel made application to become a certified residential real estate appraiser as an applicant with residence in Tennessee but holding an active certified residential real estate appraiser in the State of Washington. Mr. Seipel made application to become a certified residential appraiser in late September of 2007 using the reciprocity application. He had checked yes to character question 3 pertaining to a domestic violence matter and was requested to submit a letter of explanation and attend an applicant conference. Due to the distance between his residency state and TN he did not attend the first scheduled applicant conference in October of 2007 and the Commission voted to deny the application based on his failure to attend. He requested to attend the November meeting, which he did and the domestic violence matter passed on a four to one vote; however, staff subsequently realized the application for reciprocity was invalid because the applicant did not hold a credential in the state he resided in. He was then requested to submit an experience log and have his experience reviewed. He never submitted such log and his application expired six months after his submission application. Subsequently, in June of 2008 I received an e-mail from a Candace Bloedow of the Wisconsin Real Estate Appraiser Board. She stated that a complaint was open against Mr. Seipel for violations of USPAP and the matter was scheduled for formal hearing in June of 2008.

In early April of 2009, Mr. Seipel and his employer Mr. Huber requested an appointment to see me to discuss the application process. They explained that Mr. Seipel had been before the Commission previously pertaining to a character question matter and the Commission approved his application. They indicated they thought I denied his application because he didn't have residency in the reciprocal state. They asked about what paperwork was required to be filled out.

No mention was made at that time of any discipline in any other state nor was there an application submitted yet.

When the application was received by this office, only two pages were submitted, the cover page and the employment history page and there was an attached letter of good standing from Washington. The character page was not submitted nor the education log. These pages were requested from the applicant.

During the Commission meeting, the applicant was asked if he had a current open complaint in another state right now. Mr. Seipel stated, yes, in Wisconsin there is an Order that required him to pay a civil penalty and attend education courses should he wish to reapply for a Wisconsin license.

The applicant was then asked by Legal Counsel, Jesse Joseph, "When you submitted the character information – you read the questions correct?" Mr. Seipel responded, "Yes."

Mr. Joseph replied, "I'm concerned that on the question signed by a notary asking about discipline or other license and you answered "No". If you knew you received a disciplinary order from Wisconsin why did you answer "No". Mr. Seipel responded, "It happened after my license expired, and the education and civil penalty would be assessed if he decided to reapply."

Mr. Joseph asked the applicant about his understanding of the discipline when he signed the Agreed Order by Wisconsin. Mr. Seipel felt that it wasn't discipline since it would only be required if he reapplied. He further added that he talked with his legal counsel and considered it a gray area and his counsel stated that it was not required until he reapplied so it was not disclosed. He stated that he was not

disciplined because it wasn't carried out. He said he understood there is a standing Order, but it will never take effect. Mr. Joseph asked why this order should not be considered as discipline. Mr. Seipel felt it was only if he decided to reapply for a Wisconsin license.

Mr. Seipel was asked if his father had been disciplined. He answered, "No." Mr. Joseph pointed out that his father's license was active when the Order was signed – it states here it was suspended. Mr. Seipel stated, "No – neither license was revoked or suspended."

Mr. Seipel was told the Order clearly states that he was required to attend 60 hours education – not to be applied toward continuing education, and all costs equaling \$3,250.

Mr. Seipel was asked if he used his Wisconsin license as reciprocal to obtain a license with Tennessee. He answer no, he used his Washington credential to apply for license in Tennessee. He was further asked if his Washington license was in good standing. He replied that it was. He was asked what state is your original licensure state. He answered Wisconsin.

The applicant was asked about the domestic violence matter reported on the applicant and if it was dismissed from his record. Mr. Seipel answered, "I don't know if it was dismissed; I'm still married to the same woman and we have 3 children. What happened 6-7 years ago I don't know what the status is on those." He was asked if he complied with the deferred judgment. He answer that he had complied with everything. He was asked if he felt this resulted in a criminal conviction. He answered, "I don't know sir; I haven't checked the records."

Mr. Seipel was asked where he works now and what work he does there. He stated he worked for Humber and Lamb since August of 2008 and did research and cost analysis for them. He was asked if this was appraisal related work. His employer responded that several insurance clients required specific cost analysis and research.

Mr. Seipel was asked when the last time he did an appraisal report was. He stated it was about 2 years ago. I've kept up with the software, and what has been going on in the business because I have to apply the knowledge. He was asked if he has completed any continuing education. He replied that in 2007 he had continuing education to continue his license. He asked if he was applying to become a certified residential appraiser. He responded that he was.

A Commission member asked what kind of business he was conducting in Wisconsin when he was sanctioned. Mr. Seipel replied the complaint was filed against the lender, not even him or his firm. He was asked why he agreed to the discipline. He stated that they did, they had asked to appear; however, at the time he lived in Montana and the complaint was in Wisconsin and they had only 30 days to appear and we couldn't financially go to the complaint hearing.

Mr. Seipel as asked again about his understanding on the matter of whether or not the order in Wisconsin was discipline. He stated again that he understood at that time it was not discipline and understood that it was not agreed to. He stated he and his father denied the allegations in the complaint.

The Commission asked the Administrative Director to clarify what they are being asked to consider for vote. Ms. Avers replied that the question presented to the Commission is on the discipline record noted in another State which was not initially disclosed in the application, the domestic violence matter that was

disclosed in the application, and whether an experience review would be required as part of any application process for this applicant.

Mr. Headden made a motion to deny his application until the matter is resolved with Wisconsin, which would include his completing the required continuing education and paying the civil penalty and any investigation costs before any application could be considered for future approval. He stated that the denial had nothing to do with the domestic violence matter and that appears to have been resolved between the applicants and the applicant's wife. He stated if Mr. Seipel does at some point wish to have the Tennessee Real Estate Appraiser Commission reconsider any application, that Mr. Seipel would be required to submit fifteen hundred hours (1500) hours of appraisal experience, and from that experience log, the Administrative Director should select between five (5) and seven (7) appraisal reports for review to determine the applicant's USPAP proficiency in appraisal reports. Mr. Flower seconded that motion. The motion carried unopposed.

**Brian Brady Livesay** made application to become a licensed real estate appraiser as an applicant with residence in Tennessee but holding an active certified residential real estate appraiser in the State of Virginia. The applicant applied first in February of 2008 and had an experience interview in April of 2008. At that time, the reviewer and stated that inconsistencies were noted in the appraisal reports. He recommended the applicant complete a thirty (30) hour Residential Case Study course, and, if taken previous, to take the course from a different course provider. He stated after the course is completed, the applicant should submit and updated experience log and three reports should be selected. He stated he would recommend a second required experience interview. Mr. Livesay did not submit the course and the application expired. Mr. Livesay reapplied in August of 2008 and an experience interview was conducted in September of 2008. The Commission voted to defer the matter on the recommendation of the reviewing member because two (2) of the reports submitted were labeled as "evaluations" and not USPAP compliant and the third report was a Virginia property and there were additional indications that this report also did not comply with USPAP.

Mr. Livesay was asked by the Commission if there were any complaints currently open in Virginia against him. He relied that there were two (2) complaints forwarded to Virginia, but he hadn't received anything further from them and it has been about 7 months.

Mr. Livesay was asked if he currently has a Virginia license. He relied that he does and has worked there about 2 years. He was asked if he lives currently in West Tennessee. He stated that he does and drives about 1.5 hours. He was asked what type of license he is applying for. He stated licensed residential. Mr. Livesay was asked if he has re-submitted an updated experience log. He said he has submitted two logs and completed two interviews. He was asked when his most recent experience interview. He answered September of 2008. He added that he took all the classes for residential, and was required to take 2 additional classes which he stated he completed.

Commissioner Woodford interviewed applicant and requested that he submit other appraisals after his first interview. Mr. Livesay was appraising in a rural area with few properties, it appeared that he couldn't explain why he didn't take in to consideration the land, and didn't make visible adjustments to the value. Mr. Woodford stated that he didn't get a comfort level from what the applicant was doing and requested additional reports.

They called James Lindsay who is Brian Livesay's father and employer. He stated the appraisal report in question was a very difficult rural area and the adjustments are a difference of opinion. He stated he trained Brian on my experience, and the textbooks he studied over the years and the appraisal institute guidelines. Some of the published material is in direct conflict with this board.

After some discussion of the complaint letter sent to Brian Livesay pertaining to the two "evaluation" reports and the appraisal in Virginia, the Commission asked for clarification on what is being asked of the Commission to consider for vote. Ms. Avers responded that the experience submission of Mr. Livesay for consideration of licensure, the disciplinary order just signed by the Commission today pertaining to the evaluations submitted by the applicant, and the open complaint matters in Virginia.

Mr. Woodford made a motion to accept his application. Mr. Flowers seconded that motion. The motion carried unopposed.

---

.....  
Being no further business, the meeting was adjourned at 10:20 a.m.

---

Chairman, James E. Wade, Jr.

---

Nikole Avers, Administrative Director