



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

July 13, 2009

Second Floor Conference Room, Andrew Johnson Tower

The Tennessee Real Estate Appraiser Commission met July 13, 2009, at 9:05 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
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

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

MINUTES

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

ELECTION OF OFFICERS

Mr. Flowers made a motion to appoint Commissioner Phillips as the new Chair of the Real Estate Appraiser Commission. Mr. Carter seconded that motion. The motion carried unopposed. Mr. Flowers made a motion to appoint Commissioner Carter as the new Vice-Chair of the Real Estate Appraiser Commission. Mr. Woodford seconded that motion. The motion carried unopposed. Mr. Wade thanked Ms. Avers and Mr. Joseph for all the hard work in the previous year and stated that he felt the

Commission had a very successful year. He handed over the gavel to Vice-Chair Carter to conclude the Commission meeting business as Mr. Phillips was unable to attend this day's meeting.

GENERAL BUSINESS

Experience Interviews

Jason John Roler 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 his experience. Mr. Flowers made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

Christopher Kyle Rogers made application to upgrade from a registered trainee to become a certified general real estate appraiser. Mr. Wade was the reviewer and he recommended approval of his experience. Mr. Headden made the motion to accept the recommendation and Mr. Flowers seconded the motion. The motion carried unopposed.

Adam Calvin Wyatt 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. Mr. Wade made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

Tracy Christine Lindsey made application to upgrade from a registered trainee to become a certified residential real estate appraiser. Mr. Carter was the reviewer and recommended approval of her experience. Mr. Headden made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

William A. S. Breeding made application to upgrade from a licensed real estate appraiser to become a certified residential real estate appraiser. Mr. Carter was the reviewer and he recommended approval of his experience. Mr. Woodford made the motion to accept the recommendation and Ms. Coleman seconded the motion. The motion carried unopposed.

Stephen Craig Coates made application to upgrade from a registered trainee to become a certified residential 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 Mr. Headden seconded the motion. The motion carried unopposed.

Nancy Jane Heiser made application to upgrade from a registered trainee to become a licensed real estate appraiser. Mr. Headden was the reviewer and he recommended the applicant submit one (1) additional residential appraisal report and if the report is found to be acceptable then no second experience interview would be required and approval of experience would be granted. Mr. Wade made the motion to accept the recommendation and Mr. Flowers seconded the motion. The motion carried unopposed.

Curtis Dale Hance made application to upgrade from a licensed real estate appraiser to become a certified residential real estate appraiser. Mr. Headden was the reviewer and he recommended the applicant submit one (1) additional residential appraisal report and if the report is found to be acceptable

then no second experience interview would be required and approval of experience would be granted. Mr. Wade 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 recommendations to the Real Estate Appraiser Commission. Mr. Wade made the motion to accept the recommendation as written. Ms. Coleman seconded the motion. The motion carried unopposed.

Course Provider	Course Number	Course Name	Instructors	Hrs.	Type	Rec. from Dr. Baryla
ASA – Knoxville Chapter	1306	Appraisal of REO	Lee F. Butzin, ASA	7	CE	Approval
ASFMRA	1307	Real Estate Modules 2	Leonard Meador, AAC	8	CE	Approval
Appraisal Institute	1308	On-Line Data Verification Methods	Alan Simmons	5	CE	Approval: AQB Hours
Appraisal Institute	1309	On-Line Advanced Internet Search Strategies	Jim Amarin	7	CE	Approval: AQB Hours
Appraisal Institute	1310	On-Line An Introduction to Valuing Commercial Green Buildings	Alan Simmons	7	CE	Approval: AQB Hours
IRWA	1311	Ethics and the Right of Way Profession C 103	Lawrence D. Dupree	7/8	CE	Approval retroactive approval back to June 17, 2009. Approval of 7 hours + 1hour if proof of passing exam is submitted
IRWA	1312	Legal Aspects of Easements C 802	Lawrence D. Dupree	7/8	CE	Approval of 7 hours + 1hour if proof of passing exam is submitted
IRWA	1313	Reviewing Appraisals in Eminent Domain C 410	William B. Milton	7/8	CE	Approval of 7 hours + 1hour if proof of passing exam is submitted
IRWA	1314	7 Hour National USPAP course C 406 B	Thomas Crockett	7	CE	Approval
Appraisal Institute	1316	The Discounted Cash Flow Model: Concepts, Issues & Applications	Ken Lusht	7	CE	Approval

Individual Course Approval

Name	License #	Provider	Course Name	Hrs	Type	Recommendation from Dr. Baryl
Jerry L. Miller	36	IRWA	103 – Ethics and the Right-of-Way Professional	8	CE	Conditional approval of course content subject to a clarification of the 8 hours from the applicant. Some information submitted is for an online course, some for a ground course
Jean Matthews	2213	JT & A Inc.	12 th National Mitigations and Ecosystem Banking Conference	9.5	CE	Approval
James B. White II	TR 3884	Auburn University	Statistics 2010	15 hours towards Statistics	QE	34 Hour course; matrix allows for 15 hours credit towards “Statistics, Modeling, & Finance” Approval
James B. White II	TR 3884	Auburn University	Accounting: Business Law I – Constitutional Law, Civil Procedure, Tort Law, Products Liability, Contact and Sales Law	20 hours towards electives	QE	46 hour course; matrix allows for 20 hours QE for electives Against: business law course

Applicant Conferences

Trainee applicant **Derrick Smith** admitted on his application being convicted of DUI Manslaughter, and DUI with serious bodily injury (felonies) in Panama City, FL in 2001. Applicant served almost 7 years of a 10 year sentence in prison, and in late 2008, was released on probation until 2015. Applicant, pursuant to an interstate agreement, is being supervised on probation by the Tennessee Board of Probation and Paroles. The applicant signed an agreement to surrender his registration or any future license or certification if he violated his probation which is not scheduled to end until 2015. A letter was submitted to the administrative office from his probation officer agreeing to notify the Real Estate Appraiser Commission if the parolee violated his probation. Woodford made a motion to approve the applicant request for registration as a trainee. That motion was seconded by Mr. Headden. The motion passed unanimously.

LEGAL REPORT

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

Mark B. Alexander (approved 3/09) - signed Consent Order relating to his appraisal of a residential property acknowledging that the Commission may find that he failed to properly identify which 5 acres of a larger tract he was appraising where there was no evidence that a division of the property actually occurred, that he did not analyze the prior purchase agreement or the listing history of the subject, and that he erred in his description of the condition of the subject property as “good” with no repairs noted,

while other evidence reflected that there were numerous items of deferred maintenance which needed to be addressed. Respondent's adjustments in the sales comparison approach did not appear to be understandable, his cost figures were inconsistent with Marshall & Swift data and there was no support included for the site value indication or how the depreciation adjustment was developed. Respondent violated the Ethics Rule, Conduct Section, and SRs 1-1(a), (b), & (c), 1-4(b)(i), 1-5(a), 1-6(a) & (b), 2-1(a) & (b), and 2-2(b)(iii) & (viii). He has paid a \$500 civil penalty and is required to complete the following course within 90 days of today: (i) a 30 hour sales Comparison and Income Approach course; and (ii) a 15 hour Site Value and Cost Approach course.

David J. Brocklehurst (approved 02/09) – signed consent order agreeing in a residential appraisal, that he failed to note Home Owner Association fees, that he used an erroneous flood map and erroneously stated that the subject had city water, and that he erroneously stated that subject was in a residential zone when it had no zoning. Respondent also misreported the driveway as concrete; misreported the distance of sales from the subject; made many errors in the sales comparison approach; and was found to have engaged in actions which tended to favor the cause of a party. Respondent violated the Ethics Rule Conduct Section, the Competency Rule (Items 2 and 3) and Comment, SRs 1-1(b) & (c), 1-2(e)(i) & (iv), 1-3(a), 1-4(a), 1-6(a), 2-1(a) & (b), and 2-2(b)(iii) & (viii). He has paid a \$1,000 civil penalty and is required to complete the following courses within 90 days of today; (i) a 30 hour Basic Appraisal Procedures course; and (ii) a 15 hour USPAP course.

James L. Pemberton, Jr. (approved 04/09) – signed consent order agreeing in a residential appraisal, that he did not develop an opinion of exposure time linked to the value opinion or adequately describe the subject's improvements; that he did not provide proper adjustments or explain his adjustments in the sales comparison approach; that he failed to give any analysis for the effective age/age adjustments and provided no analysis explaining the large discrepancies between his sq. ft. figures and those of the assessor as to the sale comps; and that he failed to analyze the prior sale and transfer history of the subject and to develop an opinion of site value by an appropriate appraisal method or technique. Respondent violated SRs 1-1(b) & (c), 1-2(c)(Comment), (e)(i), & (iv), 1-4(a), & (b)(i), and 1-5(a) & (b). He is required to complete the following courses within 180 days of today: (i) a 30 hour residential sales comparison and income approach course; and (ii) a 15 hour residential site and valuation course.

Kim Shiney Realey (approved 2/09) – signed consent order admitting that she failed to describe the condition of the subject residential property adequately to support the use of renovated comparables, failed to summarize the analysis of the sales, transfer and listing history of the subject and comparable properties, failed to support adjustments for gross living area and basement, failed to analyze possible seller concessions for comparable sales 2 and 3, and failed to support the lack of adjustments made for design and quality, and misreported the bedroom totals. Respondent committed a substantial error that affected the appraisal conclusion by failing to adequately recognize the condition of the comparable properties relative to the subject property. This is substantiated by the comparison of recent sale compared to prior sale and the extensive renovation noted for the comparables considered. Inasmuch as there were substantial sale price differences between the prior sales and the more recent sales, the comparables were indicative of significant renovation. This failure, coupled with the Respondent's minimal adjustment for condition, leads to the conclusion that a significant or substantial error was made. Respondent violated SRs 1-1(b), & (c), 1-4(a), and 2-1(a), & (b), and 2-2(b)(viii). She has paid a \$2,000 civil penalty for the infractions noted above.

Thomas P. Lynch, Sr. (approved 5/09) – signed consent order agreeing that he inconsistently referred to the lender/client and the borrower as the same individual in a URAR and on another page of the report, by referring to a different borrower and a financial institution as lender; that he did not properly report the intended use or identify the client in this appraisal; that he failed to provide a signed certification which complied with SR 2-3, and submitted to the Commission's administrative office an incomplete copy of a report – omitting certain pages from the Fannie Mae Definitions, and Statement of Assumptions and Limiting Conditions sections; that he provided no land sale data to support the site value he arrived at in the cost approach, and how physical depreciation was calculated. Respondent's adjustments in the sales comparison approach were excessive and he did not disclose the scope of work in his report or determine and perform the scope of work necessary to develop credible assignment results, as he is required to do. He has paid a \$1,000 civil penalty and is required to complete the following course within 180 days of today: (i) Basic Appraisal Procedures; (ii) a 15 hour USPAP course; and (iii) a 15 hour Site Value and Cost Approach course, with no continuing education being granted for these courses.

1. & 2. L08-APP-RBS-2008021461 & 2008021462 Commissioner Wade was the Reviewer

A prior consent order in this matter was authorized in April of this year (*please see Items #3 & #4 in April, 2009 report for factual summary*).

An informal conference was conducted on June 15 in this matter and as a consequence thereof, an agreement was reached between the Chairman, the Administrative Director and the undersigned to agree to recommend a reduction of the civil penalties imposed to \$2,500 from a total of \$6,000 approved previously, to allow the Respondents to agree to the consent order on "no contest" grounds, and to allow them continuing education credit up to a maximum of 21 hours for the completion of the residential sales comparison and income approach course, and for the residential site valuation and cost approach course. This was primarily due to the honesty and remorse expressed by the registered trainee at the informal conference. Although there are still concerns with the supervising appraiser's work and recollection, since there was no suspension sought earlier, and since they have signed the revised order and are tendering the \$2,500 check today if the Commission's approves this revised order, we recommend approval of this revised consent order.

Recommendation and reasoning: The Chairman, Counsel for the Commission and the Administrative Director recommend that the revised consent order as explained above be approved.

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

3. L08-APP-RBS-2009005641 There was no Commission member reviewer necessary.

This complaint was filed in late April of this year by the administrative director and legal counsel for the Real Estate Appraiser Commission for actions involving dishonesty, fraud or misrepresentation in violation of TCA 62-39-326(4) & (5), given that the Respondent has, since November of 2008:

1. Failed to return the wall certificate to the office of the Commission's Administrative Director, which characterized the Respondent as a certified general real estate appraiser, immediately after the Commission's October 28, 2008 final order filed in Docket No. 12.36-099112A (after the October 20, 2008 hearing), in accordance with numbered paragraph 5 on p. 8 of this order, and also failed to

return said certificate after counsel for the State sent two reminder letters to the Respondent's counsel, dated November 10 and December 15, 2008.

2. Since November 13, 2008, the Respondent physically maintained two wall certificates simultaneously in violation of the October 28, 2008 order -- one as "licensed" as ordered by the Commission, and a second certificate as "certified general" which the Respondent was ordered to immediately return pursuant to said October 28, 2008 order.
3. Failed to timely file any appeal of the October 28, 2008 final order to Chancery Court, and failed to request or obtain any stay of the Commission's October 28, 2008 order.
4. Failed to phone counsel for the State or the Commission's Administrative Director as requested in counsel for the State's November 10 and December 15, 2008 letters faxed and mailed to his counsel, in case there was any question about the requirement for him to return the certified general wall certificate.

The Respondent was sent a letter on April 28, 2009 requesting response to these allegations. The Respondent received the certified mail and signed for receipt on April 30, 2009. No response has been received as of May 22, 2009.

The Office of Legal Counsel asked for an investigation by RBS investigators at the end of March of this year. The Respondent told the investigator in April of this year that he thought he could just destroy or discard the "old" wall certificate referring to himself as a certified general real estate appraiser, and that is what he did.

Prior Complaint / Disciplinary History:

- 199901544 – Closed with a Letter of Warning
- 200104204 – Closed with a Letter of Warning
- 200418536 – Closed – Final Order
- 200500151 – Closed - Final Order (Downgrade from CG to LI for 3 years; \$3,000 civil penalty)
- 200708543 – Close – Final Order (10/28/08 – downgrade from CG to LI for 3 years)

Recommendation and reasoning: Counsel for the Commission and the Director recommend a consent order imposing revocation be offered to Respondent, and if not agreed to, that a formal proceeding be filed seeking revocation, without the opportunity for an informal conference.

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

4. & 5. L09-APP-RBS-2009007891 & 2009009271 Commissioner Headden/ Danny K. Wiley were the reviewers in these matters.

Case No. 2008023621 is pending against the Respondent, having been reviewed by Commissioner Headden with a consent order approved by the Commission for voluntary surrender. The consent order has been served; however, Respondent did not retrieve his certified mail for about 5-6 weeks between late April and early June of this year since he didn't pay his annual mailbox fee to the Postal Service. He has apparently refused this proposal.

The above two newer complaints have come in since April of this year, and counsel for the State and the Administrative Director recommend that the two new complaints be sent to Danny K. Wiley for expert review – who has just been approved on a contract to review all Commission complaints requiring review – those resulting in dismissal, other forms of closure and those requiring consent orders and formal proceedings.

2009007891

This complaint was submitted by the Department of Financial Institutions and included allegations that the Respondent over-valued two residential properties.

In the first appraisal (1326 Laudeen Drive), the Respondent indicated a value opinion of \$110,000 on August 18, 2004. The Complainant alleged that the Respondent omitted subject sale information dated February 25, 2004 for \$63,900 and a summary of the analysis of that sale which has been alleged to have been a foreclosure sale and reconcile that data with the indicated value opinion.

In the second appraisal (6512 Frosty Leaf Drive), the Respondent indicated a value opinion of \$86,000 on October 13, 2004. The Complainant alleged that the Respondent failed to identify the prior sale of the subject property as a foreclosure sale and reconcile that data with the indicated value opinion.

The Respondent was sent a certified letter of this complaint on April 28, 2009. The certified mail was received by the Respondent on June 5, 2009. As of this date, the Respondent has not submitted any response to this complaint to the Administrative Director of the Real Estate Appraiser Commission. This complaint was submitted by the Department of Financial Institutions and included allegations that the Respondent over-valued two residential properties.

2009009271

This complaint was submitted by a fellow practitioner and included allegations that the Respondent over-valued a residential property by indicating a value opinion of \$120,000 on October 13, 2007. The Complainant further alleged that the Respondent omitted subject listing information and a summary of the analysis of that listing and failed to reconcile that data with the indicated value opinion. In addition, the Respondent was alleged to have provided a misleading neighborhood description in that he failed to identify foreclosure activity, failed to analyze the subject sale, report functional obsolescence and deferred maintenance. In the sales comparison approach, the Complainant alleged that the Respondent failed to analyze and adjust for the superior characteristics of the comparable sales used including that the properties were in superior condition, of more desirable style and that the Respondent adjusted inconsistently for garage feature and gross living area. In the cost approach the Respondent was alleged to have inflated the cost per square foot, while not applying the depreciation appropriate to market reaction.

The Respondent was sent a certified letter of this complaint on May 19, 2009. The certified mail was received by the Respondent on June 5, 2009. As of this date, the Respondent has not submitted any response to this complaint to the Administrative Director of the Real Estate Appraiser Commission.

Prior Complaint / Disciplinary History: 200802362 (open); 200900789 (open); 200900927 (same); 200901322 (open)

Recommendation and reasoning: The Respondent has one complaint (200802362) that has been previously reviewed and authorized for consent order, or if rejected formal hearing proceedings should be commenced. The Respondent received and rejected that consent order. Staff and counsel for the State

would recommend adding these two captioned complaints for review and authorization to proceed to formal hearing for all three open complaints at one formal hearing, should the results of the review set forth additional alleged USPAP violations.

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

6. L08-APP-RBS-2009009211 There was no Commission member reviewer necessary.

This complaint was filed by consumers who alleged that the Respondent accepted an appraisal fee of \$350 on May 24, 2009, but failed to deliver the appraisal report or refund the appraisal fee.

The Respondent stated in his response letter that he was having a family crisis at the time because a family member had died. He stated he agreed to refund \$150 of the appraisal fee. He stated that no appraisal report was ever completed (although he did commence work and had compiled a "partial appraisal"). He further added that he had been assigned to appraise a residential property, but when he went to do the inspection he found that the property has a small store on one corner of the property. He wrote that he was very angry that the loan officer and property owners were "trying to pull a fast one" and the property owners currently have a residential loan on a property that has a commercial interest. He estimated that he had worked four to five hours on this assignment, but will give the property owners the "benefit of the doubt" and return \$150 of the \$350 fee. The Respondent included a photocopy of the refund check he sent to Complainant for \$150 as well as documentation from the workfile for the partial appraisal report completed and the subject property data, including the commercial property. At the end of June of this year, Complainants confirmed that they had received a refund of \$150.

Prior Complaint/Disciplinary History: 200603044 (Dismissed)

Recommendation and reasoning: Although we note no probable violations, the Administrative Director and counsel for the State 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 Dr. Baryla seconded the motion. The motion carried unopposed.

7. L09-APP-RBS-2009003241 There was no Commission member reviewer necessary.

This complaint was filed by a mortgage lender which alleged the Respondent over-valued a residential property on October 29, 2007, by rendering a value opinion of \$250,000. The Complainant submitted a field review appraisal with the same effective date and a value opinion of \$200,000 as support to that allegation. The Respondent was also alleged to have failed to support adjustments made in the sales comparison approach including site, age, gross living area, and pool.

The Respondent stated in his response letter that he feels that his appraised value of \$250,000 was conservative and asks the Commission to re-evaluate the situation. He stated that public records indicated that the subject was built in 1989; however, that information is misleading because the house was destroyed in a fire in 1999 and completely rebuilt. He indicated the review appraisal the client obtained had numerous errors included.

Staff Observations from Complaint file:

The appraisal report contains sufficient summary information and the appraisal report appears credible. No violations of USPAP were readily observable to staff. The workfile contents appear to contain sufficient content pertaining to the appraisal report.

Prior Complaint / Disciplinary History: None

Recommendation: Administrative Staff would recommend dismissal of this complaint for the above noted reasons.

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

8. L09-APP-RBS-2009002861 There was no Commission member reviewer necessary.

This complaint was filed by a mortgage lender that alleged that the Respondent over-valued a residential property by indicating a value opinion of \$105,000 on September 14, 2007. The Complainant submitted a review appraisal that indicated a value opinion of \$88,000 on the same effective date as support for the allegation. In addition, the Complainant alleged that the Respondent:

1. Failed to provide a complete listing history;
2. Used inappropriate comparable sales (new construction);
3. Failed to report comparable site sizes;
4. Failed to adequately summarize opinions, analysis and conclusions within the report;
5. Failed to support your site value opinion with accepted appraisal methods;
6. Failed to support your depreciation estimate and effective age in the cost approach;
7. Failed to support cost to cure for the roof with credible figures;
8. And, failed to adequately explain and support the condition adjustments made to comparable sales one and three in the sales grid leading to an inflated value estimate.

The Respondent stated in her response letter that she refutes all allegations, stating her appraisal contained all items of the allegation either in her appraisal, addendum and supplemental addendum.

1. Pertaining to the listing history, she stated the subject had not been listed since 2006 and this was analyzed and reported in the addendum, which exceeded USPAP requirements.
2. She stated one new construction property was included as a comparable sale because the subject had been completely renovated (gutted down to brick) and she included a list of the extensive updating in the addendum of the report.
3. She stated the comparable site sizes were typical and she has found no place (in USPAP) where the site size of the comparable sales must be reported.
4. She stated, pertaining to the failure to summarize her opinions, analysis and conclusions; she included these throughout the report.
5. Pertaining to site value opinion, she stated at that time she was using public records (assessor) average when she couldn't find land sales in the area; however, now she has found other reliable sources for land sales and recently learned the allocation ratio method, which she is now utilizing.
6. She stated that she supported her effective age and depreciation estimates in the addendum to the appraisal report and used an age/life method to develop a cost to cure for the roofing adjustment in the sales comparison approach for this item of remaining deferred maintenance.

7. She stated that her condition adjustments were minimal and supported with a summary in the addendum of the report.
8. She stated she does not feel she communicated an inflated value opinion and she included interior and exterior pictures to additionally support her summaries in the report. She stated she did not subtract seller concessions from the comparable sales, which was her practice at the time if the concessions were typical in the market; however, she did disclose their existence.

Staff Observations from Complaint file:

The Respondent's appraisal does contain summaries of her opinions and conclusions throughout the appraisal report and does include a list of the renovations the subject property had undergone. There was an explanation in the appraisal report for the use of one new construction comparable sale in the appraisal report. The site value opinion was not supported with acceptable appraisal methods, but the Respondent has indicated that she recognizes this error and has changed that practice. The seller concessions were not subtracted in conformance to the Fannie Mae included definition of market value in the appraisal report; however, the Respondent has indicated this too has been a practice that has been changed.

Prior Complaint / Disciplinary History: None

Recommendation and reasoning: Staff would recommend closing this complaint matter with a Letter of Instruction pertaining to supporting the site value opinion with recognized appraisal methods and adjusting for seller concessions when the definition of market value includes that these concessions are to be deducted from comparable sales.

There was some discussion which began with a question from Mr. Headden as to if a course should be required in the interest of consistency. The matter was discussed and the Letter of Instruction was decided to be sufficient in this complaint matter.

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

9. L09-APP-RBS-2009012281 There was no Commission member reviewer necessary.

This complaint was filed by a consumer who alleged that the Respondent accepted an appraisal fee of \$350, but failed to deliver the appraisal report or refund the appraisal fee. She stated in her complaint that the check was not supposed to be cashed until the paperwork had been completed. She stated the paperwork was not completed and the Respondent was supposed to have returned the check and only charged \$75 as a trip charge.

The Respondent sent in correspondence between herself and her client (mortgage lender) in response to the allegations. In an e-mail dated June 11, 2009 the Respondent sent an e-mail to the loan officer requesting the FHA case number for the assignment. A reply e-mail indicated the "loan has been canceled". In a subsequent e-mail on June 12, she indicated that she had already inspected the property and cannot send in an incomplete appraisal report to the client and must have the FHA case number before the assignment will be communicated. In an e-mail sent later that day by the lender a case number was communicated along with a request that the appraiser "send my customer the money for her refund, she has been waiting over 3 weeks". In a reply e-mail the Respondent informed the loan officer

that she is not obligated to refund the borrower's money for the appraisal because the mortgage company could not proceed with the loan. She stated she provided the lender with a list of closed sales in the subject property's development and the decision to proceed was up to the lender. She wrote in this e-mail that "I gave you the courtesy of sending a list of closed sales in the subject's development after you sent the appraisal request stating you needed a value between \$185,000-\$190,000". She further stated in this e-mail, **"Another courtesy I gave you was a verbal on a price range after the inspection. I did not guarantee a specific value, only a price range to allow you to work out a loan scenario to better serve your Borrower and if the loan scenario was not in your Borrower's best interest, I would charge an inspection fee and refund the remaining balance."** She stated she continued to work toward completion of the appraisal assignment, but the client called several days later and canceled the assignment and demanded the Borrower's money back. She concluded that she will refund \$100 of the Borrower's money.

Prior Complaint / Disciplinary History: 200800743 (Dismissed); 200900283 (Open)

Recommendation and reasoning: The Administrative Director recommends that this file be closed with a Letter of Warning pertaining to providing a client with a "price range after inspection" and how this may violate the definition of appraisal as she is a real estate appraiser, was hired to complete an FHA appraisal, and communicated a value range (price) to the client, but failed to document compliance with Standard 1 & 2 of USPAP. The Respondent is not a real estate agent. The Respondent does not appear to have provided a "price" to the client, but rather indicated a value range. **Price** is defined as the amount asked, offered, or paid for a property. It does not seem likely that the client requested a "price" from the appraiser, but rather a comparable sale check which is a value opinion. Given that the subject property was inspected, a specific property was identified and a range of value appears to have been verbally communicated by the Respondent without satisfying the requirements of USPAP – Ethic Rule – Record Keeping section, and Standard Rules 1 & 2. See **FAQ 130** for further information on the difference between providing sale data for an area and providing a "comp check" for a specified property.

Appraisal: (noun) the act or process of developing an opinion of value; an opinion of value. (adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services. Comment: An appraisal must be numerically expressed as a specific amount, **as a range of numbers**, or as a relationship (e.g. not more than, not less than) to a previous value opinion or numerical benchmark (e.g. assessed value, collateral value).

Note: The complain was discussed by the Commission members and Mr. Wade made the motion to offer the Respondent a consent order in which she must agree to complete a 15 hour USPAP course. Mr. Headden seconded the motion. The motion carried unopposed.

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Vice-Chair Carter asked the Administrative Director if there was any further business. Ms. Avers asked the Commission members about the scheduling of next year's Commission meetings. It was recommended that the meetings be scheduled on Monday's next year, and Monday-Tuesday's every other month. It was requested if quantity of business allowed for the meeting to start later in the day, on Monday's it would be helpful to several members.

Mr. Woodford opened a discussion about review appraisals and evaluations. T.C.A 62-39-104 was discussed at some length and whether this statute constituted an exception for appraisers to not comply

with USPAP. The matter was determined to be somewhat unclear. Mr. Flowers made a motion to have legal counsel, Jesse Joseph, write an advisory opinion on the matter. Mr. Wade seconded that motion. The motion carried unopposed.

Being no further business, the meeting was adjourned at 10:12 a.m.

Chairman, Herbert E. Phillips

Nikole Avers, Administrative Director