



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

August 10, 2009

Second Floor Conference Room, Andrew Johnson Tower

The Tennessee Real Estate Appraiser Commission met August 10, 2009, at 9:00 a.m. in Nashville, Tennessee, at the Andrew Johnson Tower in the second floor conference room. Chairman, Herbert Phillips, called the meeting to order and the following business was transacted.

COMMISSION MEMBERS PRESENT

Herbert Phillips
James E. Wade, Jr.
Kenneth Woodford
Marc Headden
Thomas R. Carter
William R. Flowers, Jr.

COMMISSION MEMBERS ABSENT

Najanna Coleman
Dr. Edward A. Baryla
Erik Sanford

STAFF MEMBERS PRESENT

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

ADOPT AGENDA

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

MINUTES

The July 2009 minutes were reviewed. Mr. Wade made the motion to accept the minutes as written. It was seconded by Mr. Carter. The motion carried unopposed.

ADOPTION OF ROBERT'S RULES OF ORDER

Chairman Phillips stated the next order of business was to adopt Robert's Rules of Order. A motion was made by Mr. Flowers to adopt Roberts Rules and Mr. Wade seconded that motion. The motion passed.

GENERAL BUSINESS

Experience Interviews

Heather Marie Young made application to upgrade from a registered trainee to become a licensed real estate appraiser. Mr. Wade was the reviewer and he recommended approval of her experience. Mr. Woodford made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

Jason Blankenship 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. Woodford seconded the motion. The motion carried unopposed.

Michael A. Swift 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. Flowers made the motion to accept the recommendation and Mr. Wade 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 recommended approval of his experience. Mr. Wade made the motion to accept the recommendation and Mr. Flowers seconded the motion. The motion carried unopposed.

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

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

Connie E. Childress made application to upgrade from a licensed real estate appraiser to become a certified residential real estate appraiser. Mr. Phillips was the reviewer and he recommended approval of her experience. Mr. Flowers made the motion to accept the recommendation and Mr. Wade seconded the motion. The motion carried unopposed.

Education Committee Report

Dr. Baryla reviewed the education and submitted his recommendations via e-mail to Ms. Avers, the Administrative Director, to present 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
IRWA	1315	Residential Relocation Assistance C 501	Lawrence D. Dupree	16	CE	Approval
ASFMRA	1317	Non Real Property Collateral	Richard Gilmore	11	CE	Approval
McKissock, Inc.	1318	On-Line Fannie Mae Form 1004MC, HVCC, & More	Lore DeAstra	7	CE	Approval
Appraisal Institute	1319	Real Estate Finance, Value, & Investment Performance	Richard Borges	7	CE	Approval
IRWA	1320	Introduction to the Income Approach C 402	Lawrence D. Dupree	7	CE	Approval

Individual Course Approval

Name	License #	Provider	Course Name	Hrs	Type	Recommendation from Dr. Baryla
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

LEGAL REPORT

1. & 2. L08-APP-RBS-2008026671 & 20080216672 Commissioner Woodford was the Reviewer
The second listed Respondent's prior certification as a certified residential appraiser expired on December 12, 2007 and he would have to re-apply with the Commission in order to become a licensed or certified appraiser again, since the 6 month grace period in which this second listed Respondent was permitted to late renew has long expired. As of the time of the development and reporting of the appraisals under review in this complaint, this second named Respondent signed the reports as the supervising appraiser.

Commissioner Woodford's analysis and findings as to this complaint are as follows:

The land appraisals and dates are as follows: 60 Sanders Road, Humboldt, TN - the Respondents prepared an appraisal dated 4/4/06 with a value of \$217,000, 4.7 acres of land, and an appraisal of 5/3/06 with a value of \$680,000, which included a proposed building. The Respondents also prepared an undated addition (update) consisting of a 1 page comment, which increased value to \$1,364,246.

All of the appraisals are offered on a residential form and information presented is very limited, both as to the property being appraised as well as the comparable sales. There are notes on one of the appraisals which indicate that the property purchased was within the reporting period required by

Standards. No prior sales were reported.

The following listing sets out the Standards and comments related to each that Commissioner Woodford indicates are of consideration in this case.

Standard Rule 1-1(a)

This Standard requires that the appraiser be aware of, understand and correctly employ the recognized methods and techniques that are necessary to produce a credible appraisal. The appraisals are lacking from the standpoint of information, adequateness of comparables from a standpoint of comparability, which in combination appears to lead to something less than a credible appraisal.

Standard Rule 1-1(b)

The updated appraisal of the improved property indicates value of \$1,364,246, which has a comment that the increase is \$210,000. The prior (second) appraisal dated 5/3/06 furnished to Commissioner Woodford was for \$680,000. There is certainly a math error committed by Respondents or a misunderstanding in the information presented.

This is considered a substantial error that significantly affects the appraisal.

Standard Rule 1-1(c)

This Standard requires that the Respondents not render a service in a careless or negligent manner. The entire presentation set out within the appraisals is limited and is considered careless or negligent from a standpoint of typical appraisal expectations.

Standard Rule 1-2(e)(iv)

This Standard requires that any known easements, restrictions, encumbrances, etc., be included. The appraisal mentions an access easement but no information is set out nor discussed, which leads the reader to understand the nature of the site, shape, topography, etc.

Standard Rule 1-4

This Standard requires that in developing a real property appraisal, an appraiser must collect, verify and analyze all information applicable to the appraisal problem. The comparability of the sales is certainly questionable. Information relative to understanding what the sales are is limited.

Standard Rule 1-5

There is information within the appraisal (notes) that indicate the property may have been purchased recently relative to the appraisal date. The failure to analyze all agreements of past sales within three years, etc. is a violation of this Standard.

Standard Rule 1-6

This Standard requires that the Respondents reconcile the quality and quantity of data and reconcile the suitability of the various approaches used. The information presented in the appraisal is so limited that consideration of whether the data has been reconciled is impossible to determine.

Standard Rule 2

This Standard requires that the Respondents communicate each analysis opinion that is not misleading. The appraisal is so limited in presentation that the report is considered misleading.

Standard Rule 2-1(a)

This requires that the report be clearly and accurately set forth in a manner that is not misleading. The reports are not clear or accurate.

Standard Rule 2-1(b)

The report is required to contain sufficient information to enable the intended users to understand the report properly. The report is not understandable.

Prior Complaint/Disciplinary History: None as to either.

Recommendation and reasoning: Commissioner Woodford is of the opinion, after reviewing the entirety of this complaint material, it appears that the first listed Respondent appraiser is incompetent with regard to this property type or grossly careless and negligent to the detriment of the public.

Commissioner Woodford would recommend that a consent order be approved and sent to the first listed Respondent offering him revocation of his certificate, and counsel and the administrative director would recommend with no opportunity for an informal conference based on the gravity of the apparent violations. If the first listed Respondent refuses this offer, a formal proceeding should be commenced. As to the second listed Respondent whose certificate is expired, counsel and the director would recommend that his separate complaint be closed and flagged, to be reopened and reconsidered for possible disciplinary action if this second listed Respondent ever applies for any license or certificate (including a trainee application).

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

3. L09-APP-RBS-2009001971 Commissioner Wade was the Reviewer

This complaint was submitted anonymously to TREAC's administrative office and alleged the Respondent:

1. Exceeded the transaction value limits of a certified residential appraiser by performing an appraisal of a furniture store by indicating a value opinion of \$390,000 in an appraisal dated January 15, 2005 for a refinance transaction.
2. Failed to analyze and report the sales history of the subject property.
3. Failed to credibly support the site value opinion.
4. Misapplied or failed to support the cost approach.
5. Misapplied or failed to support the income approach.
6. Misreported the distance of the comparable sales.
7. Used comparable sales in the sales comparison approach that were dissimilar and not adjusted/reconciled.
8. Committed substantial errors and inconsistently reported information in the appraisal report.

In response to the complaint, the Respondent stated or claimed:

1. He was never given a loan amount or an estimated property value from the property owner and never had any contact with any lending institution.
2. He included the sales history of the property in his report.

3. He performed detailed research of the area and similar properties and supplied all the information obtained to support his determination of the value of the subject property.
4. He used the Marshall Swift Commercial Cost Guide to determine the cost approach and included the paved parking lot and a 15% entrepreneurial profit, and reported that original builders cost was \$750,000 for this property and he obtained this information from the original Realtor.
5. That the market area for the subject property has no public records that document or guarantee of the accuracy of this income information used in the income approach, and his income information was based talking to area realtors, commercial property owners and appraisers.
6. He uses a software package the provided the distance of the comparable sales and had no reason to doubt its accuracy.
7. He researched the area market and surrounding markets and relied on market data from business owners and realtors to make adjustments in the sales comparison approach and took into account the restrictions on the subject property.

Commissioner Wade's findings, along with discussion of pertinent USPAP provisions violated (within brackets) and additional comments are as follows:

General USPAP Issues:

Ethics Rule-Conduct:

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. [Ethics Rule]

Competency Rule:

The appraiser failed to restrict his appraisal practice to the limits of his certified residential appraiser's license. Under Tennessee State Law, a state certified residential appraiser may perform appraisals with a transaction value of up to \$250,000.00. [Competency Rule]

Exposure Time:

At the bottom of page 11 of his report, the appraiser did not develop an opinion of exposure time linked to the value opinion, but rather discusses marketing time.

[SR 1-2 (c) (iv)]

Three Year Sales History:

The appraiser failed to provide a summary analysis of the prior sales history. [SR 1-1 (b); SR 1-5 (b)]

Neighborhood Description:

The neighborhood information provided by the appraiser is incomplete. The appraiser does not provide the boundaries of the neighborhood. [SR 1-1 (b); SR 1-2 (c); SR 2-2 (b) (iii)]

Highest and Best Use:

The highest and best use analysis is located on page 6 of the report. The highest and best analysis of the property as if vacant and as improved is weak at best and does not provide a reasonable summary analysis of the highest and best use. It leaves the reader questioning the appraiser's final opinion of the highest and best use. [SR 1-1 (b); SR 1-3(a) and (b)]

Site Description:

On page 4 of his report, the appraiser does not provide the street frontage of the site or the utilities available to the site. The appraiser fails to mention or summarize the easements and subdivision permanent water easement or the restrictive covenants that are referenced in the Record Book 13, Page 369. The appraiser failed to provide and analyze the zoning classification and failed to adequately analyze the restrictions on the property. [SR 1-1 (e) (i); SR 2-2 (b) (iii)]

Improvement Description:

The improvement description is considered adequate, but the appraiser doesn't provide a photograph of the rear of the building. [SR 1-1 (e) (i); SR 2-2 (b) (iii)]

Sales Comparison Approach:

Comparable 1: The subject is reported to be a 57,500 square foot metal building with a brick face built in 2003. Sale 1, which sold for \$200,000.00, does not appear to be comparable. The building is a 28,140 block building constructed in 1959. The building is approximately ½ the size of the subject building with ½ the road frontage. The sale was financed by the owner. The adjustments to the sale are all positive totaling \$115,000.00, which is a 183% adjustment. The appraiser states on page 27 of his report that "this comp was used to support commercial sales for the immediate area the subject property was located in".

Comparable 2: The address of Sale 2 is reported to be 3132 Madison Street, Shelbyville. According to CRS, the correct address is 2132 Madison Street. This appears to be another typographical error.

Comparable 3 is located in Coffee County. The building is approximately ½ the size of the subject building. The property was on the market 768 days or in excess of 2 years. The appraiser reports that the building is in good condition compared to the average condition of the subject. Also, the appraiser states that the subject building and comparable 3 have equal "good" quality construction. Looking at the photograph of comparable 3, it appears that the comparable is much superior in quality.

The appraiser's explanation and analysis for the sale comparison approach on pages 11 and 27 are inadequate and do not meet the standards required by USPAP. [SR 1-1(a), (b) & (c); SR 1-4 (a); SR 2-2 (b) (iii)]

Site Value: The local assessor has a value of \$10,400.00 as site value. The appraiser has estimated a site value of \$228,846.00 with support for the value estimate in the Comparable Site Grid. The appraiser has a calculation error in sale 2. The correct unit value is \$5.85; not \$5.99. The appraiser indicates that the site sales are 30 miles from the subject. The appraiser fails to provide a proper summary analysis of sales that were available in the area and important characteristics such as similarity of location. On page 7 of the report, the appraiser indicates that each comparable is 30 miles from the subject. The proximity of the sale appears to be reported incorrectly. According to Streets and Trips, Comparable Site 1 is 38.7 miles, Comparable Site 2 is 18.8 miles, and Comparable Site 3 is 21.5 miles. [SR 1-1 (a), (b), (c); SR 1-4 (a), (b) (i)]

Cost Approach:

At the top of page 4 of the appraisal report, the appraiser reports that the cost approach is completed using the Marshall Swift Commercial Guide and local contractor estimations. At the top of page 5, the

appraiser reports his source of replacement as only Marshall Swift Commercial Handbook with no mention or analysis of the local contractor's estimation. In the cost approach analysis section of the cost approach the appraiser's comments are confusing. He states that "this is the cost approach to replace the structure as built", but goes on to say that "the builder had many other amenities in the original structure that are not calculated into these figures as they were not completed and are not being use as the original intent". He gives no further analysis and leaves the reader unclear as to the extent that the building is finished and the cost to complete the building. He says the building has an effective age of 1 year, but applies no depreciation as if the building was new. Also, if the building is "over built for its indented use at present" as indicated by the appraiser, it appears that some amount of functional obsolescence is attributable to the replacement cost. [SR 1-1 (a), (b), (c); SR 1-4 (a), (b), (c)]

Income Approach:

On page 8 of the report, the reported 0.19-0.21 mile proximity range of the comparables to the subject appears to be incorrect. According to Street and Trips, Comparable Rental 1 is 0.8 miles; Comparable Rental 2 and Comparable Rental 3 are approximately 0.74 mile from the subject.

The appraiser uses rental comparables that are located in close proximity, but only 1 of the rental comparables is similar in square foot size. It appears that the comparable market rent should be more in line with the 12,000 sq. ft. rental comparable no. 1. Rental comparables no. 2 and no. 3 are 1,800 and 1,200 sq. ft. in size, respectively. They should not be considered comparable to the much larger subject improvements. The appraiser only provided 1 sale that appears to support the market rent. The appraiser fails to adequately summarize his analysis at the top of page 9 of his report.

In the Income and Expense History and Forecast analysis near the end of page 9 of his report, the appraiser reports that "the figures he uses are estimated averages based on facts provided by local owners of rental commercial properties in the subject area". The appraiser fails to provide support and fails to properly discuss or analyze the information.

The appraiser fails to provide support for and analysis of the overall capitalization rate. [SR 1-1 (a), (b), (c); SR 1-4 (c); SR 2-2(b)]

Reconciliation and Final Value Estimate:

The appraiser does not reconcile the quality and quantity of data available or analyze within the 3 approaches to value. Nor does the appraiser reconcile the applicability or suitability of the approaches used to arrive at the value conclusions. [SR 1-6 (a) and (b)].

Prior Complaint / Disciplinary History: None

Recommendation and reasoning: After completing an appraisal review on the appraisal report captioned above, 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 appraisals. 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.

Holding the Certified Residential license in the State of Tennessee, Commissioner Wade does not believe that the Respondent was competent to complete this report and that he may have exceeded his \$250,000.00 transaction value limit of a certified residential appraiser.

Due to errors in the above mentioned report and having no prior complaints filed against the Respondent, Commissioner Wade recommends that the Respondent be offered a consent order imposing a civil penalty of \$1,000.00 due and payable immediately and which requires the Respondent to attend the following educational course and receiving a passing grade within the next 6 six months: a classroom, 30-hour general appraiser income approach course, with no credit toward his continuing education requirements.

If the Respondent does not accept this consent order, Commissioner Wade recommends that the Commission authorize a formal hearing on this complaint, and that an informal conference be approved, if requested by the Respondent.

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

4. L09-APP-RBS-2009013221 Commissioner Headden/ Danny K. Wiley are Reviewers

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 newer complaint has come in since April of this year, and counsel for the State and the Administrative Director recommend that the this new complaints (along with two sent after the July 2009 meeting) 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.

2009013221

This complaint was submitted by a mortgage lender and included allegations that the Respondent over-valued two residential properties.

In the first appraisal (4795 Royal Run Drive) the Complainant alleged the Respondent over-valued the property by indicating a value opinion of \$153,000 on November 27, 2007. The Complainant submitted a "one unit residential appraisal field review report" that indicated a value opinion of \$135,000 on the same effective date. Further the Complainant alleged the Respondent to have omitted two sales in September of 2007 in the subject's subdivision or a summary of the analysis of those sales and to have failed to support the site value opinion and cost data.

In the second appraisal (2531 Woodhurst Cove, Germantown, TN) the Complainant alleged the Respondent over-valued the property by indicating a value opinion of \$580,000 on April 13, 2006. The Complainant submitted a broker price opinion of \$500,000 as support for this allegation. Further the Complainant alleged the Respondent to have misreported or omitted comparable sale information that was relevant to the value opinion, used excessive adjustments, used inappropriate comparable sales, failed to support the site value opinion, failed to analyze and summarize the subject's prior sale, listing and current contract and reconcile those with the indicated value opinion.

The Respondent was sent a certified letter of this complaint on July 8, 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 by Commissioner Headden and authorized for consent order. The Respondent received and rejected that consent order. Staff and counsel for the State would recommend adding this complaint to the two captioned complaints already sent to Mr. Wiley for review after the July meeting, for future authorization to proceed to formal hearing for all four pending complaints at one formal hearing, should the results of the review set forth additional alleged USPAP violations.

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

5. L09-APP-RBS-2009002621 Danny Wiley was the Reviewer

Respondent allegedly over-valued a residential property by indicating a value of \$75,000 on October 19, 2007, according to Chase Home Lending, the Complainant. Complainant submitted another appraisal as proof which indicated the value was \$59,000 on November 16, 2007 as support for the allegation.

The Respondent was sent a letter on February 11, 2009 requesting response to the Complainant's allegation; he received the certified mail and signed for receipt on February 18, 2009. On March 2, 2009 the Respondent e-mailed the administrative director to ask for an extension to respond to the complaint matter. The Respondent was granted until March 13, 2009 to respond to the complaint. On March 16, 2009 a package arrived in the mail without a response to the allegation, but did contain the appraisal report and some very limited work file information including the order for the assignment, a hand-written building sketch, the MAAR data for the subject property and a Chandler report that included a list of sales in the area of the subject property, and the subject and only one of the six comparable sales MLS sheets were included. The listing data used for the remaining five comparable sale properties (CRS/Courthouse records/MLS/Chandler data, etc.) was not included, though this information was requested. On March 16, 2009 an e-mail was sent to the Respondent informing him that he had failed to respond fully to the complaint and that he should respond to the matter immediately or the matter would be referred to legal and the Commission without the benefit of his response to the complaint allegation. No response has been received as of May 22, 2009.

According to Mr. Wiley, there were only minor issues noted (violations in brackets), such as:

(1. HISTORY OF SUBJECT PROPERTY – The Respondent's report states that the prior sale of the subject was a "NORMAL CASH SALE." However, public records indicate that a mortgage of \$85,000 was taken out on the home in 2006. It appears that the \$25,000 sale in 2006 may have not been an arms-length transaction. [SR 1-5(b)].

(2. INCOME APPROACH - The home was tenant occupied. An income approach was not developed. In most cases a credible value opinion can be developed for a single family home without using the income approach. However, lenders often require an income approach when a home is tenant occupied. [SCOPE OF WORK RULE] Respondent

Prior Complaint/Disciplinary History: 199901392 (Closed), 200101138 (Dismissed), and 200500444 (Letter of Caution)

Recommendation and reasoning: The Administrative Director and counsel for the State recommend that this file be closed with a letter of warning due to minor violations of failing to report an accurate analysis of the sales history of the subject property as is required by SR 1-5 (b) and SR 2-2 (b) (viii), and failure to include a summary of why the income approach was not developed and reported in a tenant occupied property as is required in SR 2-2 (b) (viii).

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

6. L09-APP-RBS-2009004351 No Reviewer was necessary

This complaint was filed by a mortgage lender and included an allegation that the appraisal does not disclose subject's proximity to an interstate highway while none of the comparables have a similar external influence.

The Respondent stated in his response letter that he included a map of the subject location adjacent to the interstate though the appraisal never stated the proximity to the interstate. He stated that the complaint implies that the comparable sales used do not suffer the same external influence. He stated he used comparables that represented the subject's other unique features such as above grade square footage, garage location, lack of basement and in ground pool. He wrote that comparable sales two and three have in ground pools. He stated the features identified outweighed the use of other sales found which were fronting the interstate. He wrote that sales indicate that differences in frontage (interstate) do not indicate a significant value difference. He included two sales, one that backed to the interstate and is on the same street as the subject, as support for his assertion that there is no significant value difference. He stated they sold within 3 months of each other and the sale difference was \$1,100, which could be attributed to the square footage difference.

Staff Observations from Complaint file:

The Respondent included listings of the subject that were listed higher than the indicated value on the appraisal report, but were from the year prior to refinance and effective date of the appraisal report. He also included to sales on the same street as the subject property; one that back to the highway and one sale that did not, there was an approximate difference in sale prices of \$1000, which could have been attributable to other factors. One of the comparable sales used in the Respondent's appraisal report was 0.19 miles from the subject and had a higher sale price than the indicated value of the subject in the Respondent's appraisal report. The Respondent omitted the disclosure of the highway behind the subject property from his appraisal report in all but the location map. This highway externality should have been identified in the appraisal report, and the Respondent's analysis that there wasn't a significant impact on the value for location or site influence should have been summarized within the appraisal report so that the intended user(s) of the report would not be misled by the omission. [Standard Rule 1-2 (e) (i); 2-1 (b); 2-2 (b) (ix) – 2005 USPAP]

Prior Complaint / Disciplinary History: None

Recommendation and reasoning: Administrative Staff would recommend closing this complaint matter with a letter of warning based on the above failure to report the analysis of any influence proximity to the highway may have on the subject property.

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

7. L09-APP-RBS-2009005361 No Reviewer was necessary

The complaint information was sent in by the home owner who states Respondent failed to accurately represent the correct number of rooms and square footage of their home. He alleged the Respondent inconsistently identified his house has have 4 rooms, 1 bedroom and 1 bath with 941 square feet above grade, but then also reported that the subject has one bedroom and one bath on each of two levels. Further he indicated she reported, "the subject has a lower level which is partially below grade; however, there is a crawl space under the lower level and the finished area of the lower level is all above grade" in the appraisal report. He alleged the subject cannot both be 941 square feet and 1354 square feet and this inconsistency affected the price per square foot of the condominium unit and ultimately the indicated value.

The Respondent was requested to submit response to this matter to Tennessee and did submit response immediately. She stated that, the Complainant was not satisfied that the square footage of the main level and basement level were divided and not shown as a total combined square footage. She wrote that she reported the square footage per FHA guidelines and she included the referenced guideline with her response to the complaint which reads in part, "enter the total number of above grade rooms" and "do not include foyers, basement finished rooms, or unfinished attic space" and "enter the total square footage of the gross living area above grade". She indicated she included the basement area and basement finish on a separate field of the appraisal report in the adjustment grid and did not omit its consideration.

Prior Complaint / Disciplinary History: None

Recommendation and reasoning: No violation of USPAP or FHA guidelines was noted by a staff review of this complaint. Administrative Staff would recommend dismissal of this complaint matter.

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

8. L09-APP-RBS-2009006711 No Reviewer was necessary

This complaint was submitted by a home builder and included allegations against the Respondent of unprofessional conduct during an appraisal inspection and inappropriate commentary included in an appraisal report.

The Respondent wrote in his response letter that the report included the condition of the subject property, which included that there was water under the home and stated the opinion of the appraiser. He added he was not provided with any engineer prepared documents prior to this complaint. He wrote that the subject property was approximately one year old at the time of inspection. He added that the area had experience dry weather except for a rain shower the morning of inspection. He wrote that there was standing water under the home in such a manner that it was leading to the side of the exterior of the home even with a 4 inch drain pipe at the rear of the structure and was noted by the growth of the grass

adjacent to the standing water under the home on the west side of the structure. The growth of grass was noted as far away as twenty feet from the structure and got less as it got further from the dwelling. The foundation in the west area had already shifted to a degree that the block foundation wall had two cracks that had already been repaired once before the inspection. The grade and drainage from the front of the property was below street level. The vapor barrier was laid flat in a manner to cover the water where the interior fill was not even with the rest of the crawl space to make it look as if it were all level to the block. At the rear of the structure the weight of the water had rode down the plastic into a hole holding about 2 inches of water and when the plastic was pulled back the hole revealed about six inches of standing water. He stated he was not rude to the builder, but rather that the builder was rude to him.

Staff Observations from the Complaint file:

Photos of the subject dwelling show a newer two story home with vinyl siding and a double garage attached. In the cover page photo, a possibly repaired crack in the mortar of the foundation blocks is visible. The rear photo of the subject property shows apparent moisture on the concrete block foundation, but that could have been caused by the rain showers the Respondent indicated occurred earlier the day of inspection. Two cracks are evident on the "Settlement Right Side" photos in the appraisal report and there is a photo of standing water on what appears to be the vapor barrier under the house. There does appear to be a density of grass on visible in the photo identified as "Settlement Right Side".

In the site section, "No adverse factors were noted" was reported. The foundation walls were reported to be "Block – cracked" and in the improvements section it also reported, "Settlement due to dampness and standing water on the west foundation wall resulting in cracks in the block from foundation settlement." The appraisal was conditioned, in the reconciliation section of the report "subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed". The comment section on page 3 of the URAR included that, "The subject is a new home the builder seems to have known about the standing water in the crawl space since there is a 4" hole cut in the block foundation with a drain pipe exiting the structure. The west wall of the home has repaired cracks in the block where the grass is six times taller than the rest of the yard due to all the moisture at the foundation. The home looks to have a wet weather spring under it on the west side. A structural engineer inspection is required. If a wet weather spring is present in this appraiser's opinion this property will never meet FHA requirements.

An inspection report was submitted with the complaint matter by the Complainant. The report is dated after the effective date of the appraisal in question. The report indicated that water in the crawl space was not spring or ground water related. Further it indicated an opening in the foundation on the southern wall which was the result of a missing half-block which was allowing storm water to enter and pond within the crawl space and saturating the soils. The photos included with that report were consistent with the photos of the Respondent's appraisal report, but included additionally a photo of the foundation opening and photos after repair of that opening. There was also a follow-up report from a person that is presumably a structural engineer, but isn't clearly identified as such in the report/letter.

The Respondent failed to submit with his response letter to the complaint and appraisal report, his workfile contents, as was requested in the letter of complaint sent to him April 8, 2009 by administrative staff.

Additional Information 8/3/2009: The workfile contents were submitted from the Respondent at the request of staff. The Respondent claimed he did not realize the workfile was required as part of the complaint response.

Prior Complaint / Disciplinary History: None

Recommendation and reasoning: Administrative Staff recommends that this complaint matter should be dismissed as no violations of USPAP were observed in the appraisal report.

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

9. L09-APP-RBS-200900946 There was no Reviewer

This complaint was submitted by a lender that alleged the Respondent over-valued a residential property by indicating a value opinion of \$115,000 on August 17, 2007 and communicating a misleading appraisal report. The Complainant stated that the Respondent failed to analyze and report the subject is located on a busy four (4) lane street and the comparables are not similarly located. Further the subject is allegedly located between a large multi-family development and a church and there is no analysis of those site influences within the appraisal report. The comparable sales used were allegedly not adjusted for the above site influences. Finally, the Complainant alleged that the Respondent failed to analyze and report the prior transfer of the subject property on February 27, 2007, which had a significantly lower sale price (\$73,900) than the indicated value opinion and the appraisal failed to reconcile this difference.

The Respondent was sent a letter on May 21, 2009 requesting response to the Complainant's allegations. This request was sent by certified mail and also e-mailed the same date. The Respondent acknowledged the e-mail on May 26, 2009 and reported that she would respond by June 15. On June 10, 2009 the Respondent replied again to the e-mail saying she was trying to get her files out of storage and still indicated she would respond by June 15, 2009. The Respondent received the certified mail and signed for receipt on June 12, 2009. As of the date of this new matter transmittal on 7/7/09, no response from the Respondent-appraiser has been made to the staff for the Real Estate Appraiser Commission.

Violation of the Ethics Rule, Record Keeping Section, T.C.A. Section 62-39-332, and Tenn. Comp. R. & Reg. 1255-5-.01(2).

The Respondent holds a reciprocal certification and resides in the State of Mississippi. The Respondent was disciplined by the State of Mississippi on August 25, 2008. She has not notified the Tennessee Real Estate Appraiser Commission of her discipline in her Residency State. This disciplinary action included a ninety (90) day suspension held in abeyance and six (6) month of probation after the suspension period and four (4) qualifying education courses to be completed within 90 days of the order. The Administrative Staff of the Tennessee Real Estate Appraiser Commission was notified of the disciplinary action by staff of the Mississippi Real Estate Appraiser Licensing and Certification Board.

Staff observations from complaint file:

The Respondent failed to submit the appraisal and workfile for the appraisal report that is the subject of this complaint matter though she has had more than a month to do so and the appraisal is less than two years old. [Ethics Rule, Record Keeping Section, T.C.A. Section 62-39-332, and Tenn. Comp. R. & Reg. 1255-5-.01(2)]

The Respondent failed to identify in the appraisal reports that the subject was located on a busy street, next to a church, and next to a large multifamily apartment complex. [2006 USPAP: SR 2-1 (a) & (b); 2-2 (b) (viii)]

The previous transfer/sale of the subject property for \$73,900 (deed date 2/27/07; recorded 4/9/2007) is not reported in the appraisal report and there is no analysis of this sale included in the appraisal report. This information should have been readily available to the appraiser on the date of the appraisal. This previous sale was not reconciled with the indicated value opinion of \$115,000 on the effective date of the appraisal report, August 17, 2007. No improvements or upgrades were reported in the appraisal that would indicate a condition difference in the subject property from the time of sale six months prior. [SR 1-5 (b); SR 1-6 (a); 2-2 (b) (viii)]

Prior Complaint / Disciplinary History: 944130 (Closed – Letter of Caution), 200316647 (Dismissed), and 200421226 (Closed – Letter of Caution)

Recommendation and reasoning: Through 7/7/09 the Respondent has not responded to the allegations of the complaint, submitted the appraisal or workfile, nor disclosed the discipline taken against her in her Residency State. Staff would recommend the Respondent be offered a consent order for a six month suspension of her Tennessee Certified General Credential based on reciprocal disciplinary provisions and a \$1,000 civil penalty with no opportunity for an informal conference. If the Respondent does not agree to the terms of the consent order, staff would recommend this matter be approved for formal hearing and the matter be reviewed by the expert witness for any violations of USPAP. Counsel for the State concurs with this recommendation.

Note: After some discussion, Mr. Headden made the motion to amend the recommendation to include a 12 month suspension instead of the six previously recommended and a \$4,000 civil penalty rather than \$1,000 and Mr. Flowers seconded the motion. The motion carried unopposed.

10. L09-APP-RBS-2009012991 There was no Reviewer

This complaint was opened by the administrative office and legal counsel of the Real Estate Appraiser Commission in response to the licensee entering a guilty plea to charges in Federal Court to conspiracy for dishonest and fraudulent actions or omissions in a home-loan scheme, for violations of standards for appraisals and appraisal practice (including USPAP), and for conviction of a felony offense and a crime that is substantially related to the functions and duties of an appraiser, in violation of T.C.A. Sections 62-39-326(3), (4), & (5), and 62-39-329."

Respondent's pleaded guilty to conspiring to violate the federal mail, wire and bank fraud statutes in violation of 18 US Code, § 371, and this plea was filed in US District Court in Memphis on 5/14/09. Respondent will be sentenced on August 20, 2009.

The Respondent's attorney was sent a certified letter of this complaint on June 26, 2009 and response was received from that attorney. In the response letter, Respondent's attorney indicated that the Respondent has pled guilty to the charges which were placed against him and has been cooperating with the Federal investigation regarding his conduct and that of other wrongdoers. He wrote that the Respondent has expressed remorse concerning his involvement in this matter and has taken steps to make amends including an agreement of restitution. He further wrote that prior to his involvement in this matter, the Respondent has "had a good track record". He stated his client's only means of support for the past 23 years has been his appraisal business for himself and his family

Prior Complaint / Disciplinary History: Consent Orders and Letter of Warning attached.

941786 (Consent Order – Repeat USPAP)

200004331 (Letter of Caution)

200418423 (Dismissed)

200500457 (Dismissed)

200501265 (Closed Consent Order - \$1,000)

Recommendation and reasoning: The Respondent has had two prior disciplinary orders issued by this Commission. Counsel for the Commission and Staff both are of the opinion that the severity of the matter and its relevance to the real estate appraisal profession must be considered strongly and would recommend this Respondent be offered a settlement option of permanent Voluntary Surrender (with no ability for future applications of any nature with this Commission) through consent order (also with no ability for an informal conference). If this settlement offer is rejected, counsel for the Commission and administrative staff would recommend approval for formal disciplinary proceedings in the interest of protecting the public from an appraisal professional that has pled guilty to mortgage fraud conspiracy charges.

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

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Changes to Tennessee Law Pertaining to Real Estate Appraisers

Mr. Joseph reviewed the changes that went into effect this past July pertaining to Real Estate Appraisers. Discussion was held regarding the change to remove the language referencing “oral testimony” from the definition. Discussion revolved around what is versus what is not a real estate appraisal. Mr. Joseph concluded with the revision to the trainee statute that removed the term “licensed” from that statute.

Advisory Opinion 62-39-104

Legal Counsel, Jesse Joseph, presented a draft of a letter addressed to the Attorney General requesting an advisory opinion on the current statute. Discussion was held regarding the possible conflict with Advisory Opinion 13 in USPAP; however, it was noted that Advisory opinions are not binding but instructive. Discussion was held regarding T.C.A. 62-39-329 which requires appraisers to comply with USPAP, but then T.C.A. 62-39-104 begins with the phrase, “this chapter does not apply.” The Commission recommended adding a third question to the letter and discuss further at the September meeting. Mr. Wade made a motion to act on that recommendation. Mr. Woodford seconded that motion. The motion carried unopposed.

Chairman Phillips asked if there was any new business. The Commission members presented a letter which they had all received from a Robin Collins regarding the current upgrade requirements. Ms. Avers stated that she would reply to the letter and copy the Commission members. This prompted discussion of the new FHA requirements to be certified to perform real estate appraisals for FHA loans. Many licensed appraisers are now frustrated over the requirements because they did not meet the education requirements to be certified prior to 2008, and now are being required to meet the new education requirements which were established January 1, 2008. Mr. Flowers brought up the allowance for persons to take a break during the national examinations for certified general. Ms. Avers reported that the exam was given in two parts and that applicants could take a break between to the parts of the exam. The expert witness contract was discussed, including the scope of work performed, the reviews for non-

residential appraisal reports, and how informal conferences would be held moving forward. The last item of new business discussed was a request for a future allotment during a Commission meeting to discuss the possibility of regulation of Appraisal Management Companies (AMC's). Ms. Avers stated she would add this to the agenda of the next Commission meeting, if possible.

Being no further business, the meeting was adjourned at 11:23 a.m.

Chairman, Herbert E. Phillips

Nikole Avers, Administrative Director