



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

March 9, 2010
Third Floor Conference Room, Andrew Johnson Tower

The Tennessee Real Estate Appraiser Commission met March 9, 2010 at 8:30 a.m. in Nashville, Tennessee, at the Andrew Johnson Tower in the third 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
Thomas R. Carter
William R. Flowers, Jr.
Najanna Coleman
Dr. Edward A. Baryla

COMMISSION MEMBERS ABSENT

Erik Sanford
Marc Hadden

STAFF MEMBERS PRESENT

Nikole Avers, Administrative Director
Aminah Saunders, Staff Attorney

Mr. Carter arrived at 8:35 a.m.

ADOPT AGENDA

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

MINUTES

The February 2010 minutes were reviewed. Mr. Flowers made the motion to accept the minutes as written. It was seconded by Mr. Woodford. The motion carried unopposed.

GENERAL BUSINESS

Experience Interviews

Steven Howard Williams made application to upgrade from a registered trainee to become a state certified general real estate appraiser. Mr. Woodford was the reviewer and recommended approval of his experience request. Mr. Wade made the motion to accept the recommendation and Mr. Flowers seconded the motion. The motion carried unopposed.

Paul Harper made application to upgrade from a registered trainee to become a certified residential real estate appraiser. Mr. Phillips was the reviewer and recommended approval of his experience request. Mr. Flowers made the motion to accept the recommendation and Mr. Wade seconded the motion. The motion carried unopposed.

Christopher R. Holt 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 request. Mr. Wade made the motion to accept the recommendation and Dr. Baryla seconded the motion. The motion carried unopposed.

Education Committee Report

Dr. Baryla reviewed the following education reports and submitted his recommendations to the Real Estate Appraiser Commission.

March 2010 Education Committee Report

Course Provider Course # Course Name Instructors Hrs. Type Rec.

Course Provider	Course #	Course Name	Instructors	Hrs.	Type	Rec.
Van Education Center	1366	Planning 101	Burton Lee	5	CE	For
Van Education Center	1367	Fundamentals of Commercial Real Estate	Burton Lee	7	CE	For
International Right of Way Assoc.	1369	C 701- Property/ Asset Management: Leasing	Barry Ditto	16	CE	Approve with 1 hour exam
International Right of Way Assoc.	1370	C 801- United States Land Titles	Ted Williams	16	CE	Approve with 1 hour exam
International Right of Way Assoc.	1371	C 901- Engineering Plan Development	Barry Ditto	8	CE	Approve with 1 hour exam
International Right of Way Assoc.	1372	C 902 - Property Descriptions	Ted Williams	8	CE	Approve with 1 hour exam
International Right of Way Assoc.	1373	C 700- Introduction to Property Management	Barry Ditto	16	CE	Approve
International Right of Way Assoc.	1374	C 209- Negotiating Effectively with a Diverse Clientele	Ted Williams	16	CE	Approve
National Highway Institute	1375	Appraisal for Federal- Aid Highway Programs, NHI #141043	Thomas A. Anderson Robert Kleinburd	12	CE	Approve

National Highway Institute	1376	Appraisal Review for Federal- Aid Highway Programs, NHI #141044	Thomas A. Anderson Robert Kleinburd	6	CE	Approve
International Right of Way Assoc.	1377	C 600- Environmental Awareness	Jeffery N. Reece	8	CE	Approve
International Right of Way Assoc.	1378	C 603- Environmental Awareness	Jeffery N. Reece	8	CE	Approve
International Right of Way Assoc.	1379	C 703- Real Property/ Asset Management	Barry Ditto	8	CE	Approve
Career WebSchool	1368	An FHA Single Family Appraisal	A.M. Bud Black	14	CE	Approve
Franklin Educational Institute	1380	Foreclosures & Short Sales: Dilemmas and Solutions, No. 1097	Richard L. De Heer; Diana T. Jacob; Bobby Crisp; Amelia Brown; Marc Taylor	7	CE	Approve
Appraisal Institute- Memphis Chapter	1381	Valuation by Comparison: Residential Analysis & Logic	James B. Atwood	7	CE	Approve

Individual Course Approval

Name	License #	Provider	Course Name	Hrs	Type	Recommendation from Dr. Baryl
Christopher R. Holt	3253	Appraisal Institute	Basic Appraisal Principles	39	QE	Approval upon submission of education completion certificate

Mr. Wade made a motion to approve the education reports. Mr. Carter seconded the motion. The motion carried unopposed.

LEGAL REPORT

The Chairman is signed orders in the following matters regarding which prior Commission approval has been obtained:

William Louis Boue (approved 12/09) – signed Consent Order requiring a \$1000.00 civil penalty and completion of a thirty (30) hour Basic Appraisal Procedures course and a fifteen (15) hour Site Valuation and Cost Approach course. In an appraisal report there was a failure to properly apply recognized methods and appraisal techniques and properly report the appraisal communicated to the client. Respondent violated Standard Rules (SR's) 1-1(a), 1-1 (b), 1-2 (e) (i), 1-4 (a), 1-5(b), 2-1(a), 2-2, 2-2(b) (iii)(viii) of the Uniform Standards of Professional Appraisal Practice.

Charles Aldridge (approved 12/09) – signed Consent Order imposing a \$500.00 civil penalty and a thirty (30) hour Residential Report Writing and Case Studies course. The two appraisals indicate negligence in applying FHA requirements, which FHA sanctioned the appraiser for and this negligence in reporting deferred maintenance was found also by the reviewing expert. For that reason, I do not recommend additional education sanctions. Respondent violated Standards Rules (SR's) 1-1(a), (b), & (c), 1-2(e) (i), 1-4(a), 2-1(a) & 2-2(b) (ii) (viii), Scope of Work Rule: Assignment Conditions, Ethics Rule, Recordkeeping Section and Ethics Rule: Conduct Section of USPAP.

Russell Craig Farley (approved 01/09) – signed Consent Order imposing a voluntary surrender of his appraiser certification. Two complaints were opened against the Respondent; however, as Respondent indicated that he wanted to relinquish his license there was no expert review. Both complaints alleged that the Respondent communicated a misleading appraisal report.

Michael Duncan - (approved 11/09) – signed Consent Order requiring a \$500.00 civil penalty and completion of a thirty (30) hour Residential Sales Comparison course and a fifteen (15) hour USPAP course. In an appraisal report there was a failure to properly apply recognized methods and appraisal techniques and properly report the appraisal communicated to the client. Respondent violated Standard Rules (SR's) 1-1(a), 1-1 (b), 1-2 (e) (i), 1-4 (a), 1-5(b), 2-1(a), 2-2, 2-2(b) (iii)(viii) of the Uniform Standards of Professional Appraisal Practice.

Horace Broome – (approved 12/09) – signed Consent Order requiring a \$1000.00 civil penalty and completion of a fifteen (15) hour Residential Report Writing course. In an appraisal report, Respondent failed to verify relevant data and report information accurately. Respondent also failed to submit his complete work file. Respondent violated Standard Rules (SR's) 1-1(a), 1-1 (b), 1-4 (a), 2-1(a), 2-2(b) (iii) & Ethics Rule: Recordkeeping Section.

Merv Leroy Norwood – (approved 12/09) – signed Consent Order imposing a \$3000.00 civil penalty and completion of a 15 hour "Advanced Residential Applications & Case Studies" course, a 15 Residential Report Writing Course, and a 15 hour Cost Approach & Site Valuation course. In an appraisal report, Respondent was not competent in his appraisal of a lake front property. The Respondent failed to properly analyze the lake influence on the value of the property. Respondent violated Standard Rules (SR's) 1-1 (a)(b), 1-2 (e)(i), 1-4(a), 2-1(a), 2-2(b)(iii)(viii), and the Ethics Rule, Competency Section & Recordkeeping Section.

Bradley Eldridge – (approved 01/10) – signed Consent Order suspending his Certified General appraiser license for two (2) years or indefinitely pursuant to reciprocal discipline with the Kansas Real Estate Appraisal Board.

Frederick Hooks – (approve 01/10) – signed Consent Order imposing a \$1000. civil penalty and completion of a fifteen (15) hour Residential Writing course and a fifteen (15) hour Highest & Best Use course. In this appraisal there were negligent reporting issues throughout and failure to analyze and report market conditions, seller concessions and sales history and condition of the improvement information accurately. Respondent violated the Scope of Work Rule, Assignment Conditions and Ethics Rule, Recordkeeping Section and Standard Rules (SR's) SR's 1-4 (a), 2-1 (a).

Duane Carson Harris – (approved 01/10) – signed Consent Order imposing a \$1500.00 Civil Penalty and completion of a fifteen (15) hour USPAP course. Respondent signed a misleading appraisal report that indicated that he had conducted a visual inspection; in fact Respondent's trainee conducted the inspection. The reviewer found that the appraisal was, otherwise USPAP compliant.

Rex McCasland (approved 8/09) - signed Agreed Order agreeing to permanent revocation of his CR certificate and payment of costs of Administrative Procedures Division due to his guilty plea to a 1 count Criminal Information in the US District Court, Western District of Tennessee which alleged that he

engaged in a conspiracy to violate federal mail, wire and bank fraud statutes based on his actions in developing 5 residential appraisals in Memphis in 2004.

Christopher Doran – (approved 01/10) – signed Consent Order imposing a \$4000.00 civil penalty and completion of a thirty (30) hour Sales Comparison and Income Approach course and a fifteen (15) hour USPAP course. The reviewer found that in an appraisal report the value was inflated due to the use of inappropriate comparables. Respondent violated Standard Rules, (SR's) 1-1(a)(b), 1-4(a), 2-1(a),2-2(b)(iii) and the Scope of Work Rule: Problem Identification Rule, Ethics Rule: Conduct Section and Recordkeeping Section.

MATTERS TO RE-PRESENT

1. 2009001241 Danny Wiley was the Reviewer

This complaint was previously considered by TREAC at the January, 2010 meeting. As to the appraisal at issue, the reviewer found that the listing and transfer history of the subject and the comparable sales was not adequately addressed, that there were significant information regarding current market condition was omitted. The current zoning of the subject property was not accurately reported or adequately addressed and the report date was inaccurate.

The Commission imposed a **CONSENT ORDER** imposing a \$1000 civil penalty and completion of a fifteen (15) hour Residential Report Writing course and a fifteen (15) hour Residential Market Analysis and Highest and Best Use course. The Respondent was not allowed to receive Continuing Education credit for this course.

After discussion with the Respondent, Counsel and the Administrative Director feel that seven hundred fifty dollar (\$750) civil penalty in this complaint serves an adequate economic deterrent and that allowing the Respondent to receive Continuing Education credit for the first fifteen (15) hours of course work for renewal purposes would not be detrimental to the public but would make completing the course work more economically feasible.

Recommendation and reasoning: Counsel for the State and the Administrative Director respectfully recommend if Commissioner Members concur that the Commission approve the revised proposed consent order as set forth above.

Vote: Mr. Woodford made a motion for a Consent Order imposing a \$750 civil penalty and to allow the Respondent to receive Continuing Education credit for the first fifteen (15) hours of course work for renewal purposes. Mr. Flowers seconded the motion. The motion carried by a vote of five to one (5-1). [Voting "yes" were Ms. Coleman, Mr. Flowers, Mr. Woodford, Mr. Carter and Dr. Barylá; and Mr. Wade voted "no."]

2. 200900969 Danny Wiley was the Reviewer.

This complaint was previously considered by TREAC at the January, 2010 meeting. The reviewer found that the Respondent used inappropriate comparables that acted to inflate the Respondent's value conclusion. The Commission authorized a Consent Order imposing a \$4,000.00 fine and a six month suspension. An informal conference was conducted with the Respondent on March 3, 2010. In that

discussion it became the opinion of the Administrative Director and Counsel that the following discipline serves the objectives of adequately protecting the public and providing a sufficient economic deterrent; a **CONSENT ORDER** imposing a \$1,500 civil penalty, a one (1) year **PROBATION** period where the Respondent would be required to submit his experience log from which the Administrative office will select three (3) appraisals for possible audit for compliance with USPAP. In addition Respondent would be required to successfully complete the following course: a fifteen (15) hour Residential Report Writing course and a fifteen (15) hour Residential Applications & Case Studies course. The Respondent signed the agreement on the day of the informal conference and has agreed to pay \$500.00 towards the total civil penalty within ten (10) days of the execution of the consent order; the balance to be paid within 180 days. The Respondent agrees that if he fails to satisfy the terms of this agreement his certification may be suspended immediately. Though the allegations in the complaint were serious, Counsel and the Administrative Director feel that the issues addressed by the review appraiser were more indicative of sloppy work than intentional misleading conduct. This appraiser has been certified since 2003 and has not been previously disciplined.

Recommendation and reasoning: Counsel for the State and the Administrative Director respectfully recommend if Commissioner Members concur that the Commission approve the revised proposed consent order as set forth above.

Vote: Mr. Flowers made a motion to approve Legal's recommendation. Mr. Woodford seconded the motion. The motion carried unopposed.

1. **2009011671 Danny Wiley was the Reviewer.**

The Complainant alleged that the Respondent over-valued a residential property by indicating a value opinion of \$88,000 on January 14, 2008. The Complainant submitted a residential appraisal field review as support for the allegation which indicated a value of \$69,000 on the same effective date. The complainant alleged that the Respondent made unsupported adjustments in the sales comparison approach and used inappropriate comparables from the city when the subject was rurally located.

The Respondent stated in his response letter that subject property location is a recreational and farming community area. He indicated sales from the neighboring country were not considered as similar because of the county codes and that the subject county has greater demand to buyers.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The report appears to provide credible support for the assignment results.
- The major allegations in the complaint are not supported by the available data.
- The complaint alleges that the home was over valued, but the value expressed in the Respondent's report is within the value range indicated in the field review report that was submitted with the complaint.

Prior Complaint / Disciplinary History: 200901814 (Open)

Recommendation and Reasoning: This Respondent has been a licensed appraiser since 2002. Counsel and the Administrative Director recommend that this matter be **DISMISSED** as the reviewer found no USPAP violations.

Vote: Mr. Flowers made a motion to approve Legal's recommendation. Mr. Wade seconded the motion. The motion carried unopposed.

2. 200901814 Danny Wiley was the Reviewer.

This complaint was submitted anonymously. The complaint alleges that the Respondent lack geographic competency and may have been seeking a predetermined value based on the adjustments made within the report. The complainant stated that the market conditions were misreported in that the subject is in a declining market area. The complainant further alleged that the heating/cooling system was unclear in the report, the basement finish of comparable one (1) was misreported per county records, the square footage of comparable two (2) was misreported, comparable three (3) was not an arms length transaction, made gross adjustments between 22 and 54%, identified the market as stable but then made negative adjustments for time of sales for current sales, used superior quality and condition comparable sales without adequate adjustment, misreported the acreage of comparable five (5) as 24 acres rather than 48 acres, and used comparables located in an urban area.

The Respondent stated in his response letter that he has been involved in appraisals in the subject county since 2003 and that his office does not accept any orders with a predetermined value opinion. Respondent states that the market area is stable. Respondent states that he identified the heating system in the appraisal as HP/AC which refers to a heat pump with air conditioning. Respondent concedes that he made an error in the square footage of comparable two (2). Respondent states that the adjustments made were based on the subjects needed repairs and large site area. Respondent states that he only applied time adjustments to comparable five (5) and six (6). Respondent states that per MLS, comparable five (5) was selling as only the residence and 24 acres and that the remaining acreage was not for sale. He also wrote that the adjustment was made for location of comparable sales located in an urban location.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- There are errors in the adjustment grid, but it does not appear that the errors would significantly affect the assignment results.
- The data provided in support of the market trends has not been reported in accordance with the published instructions for proper completion of form 1004MC.

NEIGHBORHOOD

There is conflicting information in the report regarding the number of sales in the area. It appears that market conditions have not been reported in accordance with the published instructions for proper completion of the 1004 MC. The report indicates, at the top of page 2 of the URAR, that there have been 17 sales of comparable properties in the neighborhood in the past year. The 1004 MC form indicates that there have been over 8,000 sales of comparable homes in the neighborhood in the past year. It appears likely that the sales reported on the 1004MC form are the sales in the entire county rather than just the comparable sales in the neighborhood. [SCOPE OF WORK RULE, Problem Identification section]

Prior Complaint / Disciplinary History: 2009011671 (Open)

Recommendation and Reasoning: This Respondent has been a licensed appraiser since 2002. Counsel and the Administrative Director recommend that this matter be closed with a **Letter of Caution** regarding the Scope of Work Rule: Problem Identification Section.

Vote: Mr. Wade made a motion to approve Legal's recommendation. Mr. Flowers seconded the motion. The motion carried unopposed.

3. 2009017541 Danny Wiley was the Reviewer.

This complaint was filed by a consumer that alleged the Respondent under valued a residential property by indicating a value opinion of \$120,000 on July 22, 2009. A second appraisal was submitted as evidence that indicated a value opinion of \$145,000 for the subject property one (1) week later.

The Respondent stated in his response letter that the accusation that he under valued the subject property was without merit. He submitted his appraisal report, engagement letter and work file contents as support.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The complaint alleges that the home has been under valued. The complaint also refers to a possible "improper connection" between the appraiser and the client. The reviewer found no support for either allegation.
- Some minor issues were noted.

NEIGHBORHOOD

The report does not contain adequate support for the conclusions reported regarding market conditions. The grid at the top of the form 1004MC has been completed, and it appears to have been completed appropriately. However, there are insufficient sales of similar homes in the area for trend analysis. In such cases, appraisers are required to supplement the grid with additional data. The form 1004MC was relatively new at the time the appraisal was performed, and many appraisers were not completing the form correctly. [SCOPE OF WORK RULE: Problem Identification section]

COMPARISON APPROACH

The data presented is consistent with the data sources cited. No significant issues were noted. The report indicates that the data sources used for the comparables were MLS and county records. MLS data sheets were included in the workfile documents submitted for review, but county records were not included. A letter sent to the Respondent on August 25, 2009 by the TREAC specifically requested that copies of all data sheets be provided, including any courthouse records that were used. Some of the data presented in the report is not in MLS, so it does appear that courthouse records (or some similar source) were used, but copies of those records were not retained in the workfile. [ETHICS RULE: Record Keeping section]

Prior Complaint / Disciplinary History: None

Recommendation and Reasoning: This Respondent has been a licensed appraiser since 1992. Due to the minor issues noted above Counsel and the Administrative Director recommend that this matter be closed with a **LETTER OF WARNING** regarding the Scope of Work Rule: Problem Identification Section and Ethics Rule: Recordkeeping Section.

Vote: Mr. Flowers made a motion to approve Legal's recommendation. Mr. Wade seconded the motion. The motion failed. After some discussion, Mr. Wade made a motion to dismiss the complaint. Mr. Woodford seconded the motion. The motion carried unopposed.

4. 2009011501 Danny Wiley was the Reviewer.

The anonymous complainant alleged that the Respondent failed to identify significant appraisal assistance properly in the certification of the appraisal report which created a misleading appraisal. Further the complainant alleged that the Respondent failed to properly analyze the sale history of comparable sale three used in the appraisal report.

The Respondent stated in his response letter that he did disclose the significant appraisal assistance performed by his registered trainee. This information was found on the Additional Comments section of the URAR form (page 3 of 6). The Respondent indicated the sale history of comparable three was reported, but a foreclosure sale was omitted by mistake. He indicated this omission was corrected as soon as it was brought to his attention and he communicated the correction to his client. He indicated he will ensure this type of error will not happen in future appraisal reports.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The allegation that the report is misleading does not appear to have merit.
- A prior transfer of one of the comparable sales was not disclosed and analyzed as required by applicable assignment conditions.
- HUD was not identified as an intended user.
- Overall, the analysis appears to be credible.

INTENDED USERS

HUD is not identified as an intended user as required for all FHA appraisal reports. This is a common oversight. [SR 2-2(b)i)]

Prior Complaint / Disciplinary History: 200501263 – Dismissed; 200501987 – Consent Order - \$300.00 Civil Penalty

Recommendation and Reasoning: This Respondent has been a certified appraiser since 2003. Due to the minor issues noted above Counsel and the Administrative Director recommend that this matter be closed with a **Letter of Caution** regarding identifying HUD as the Intended User in FHA appraisal assignments as this is a reporting requirement which was an assignment condition in this appraisal.

Vote: Mr. Wade made a recommendation to approve Legal's recommendation. Mr. Woodford seconded the motion. The motion carried unopposed.

5. 200901425 Danny Wiley was the Reviewer.

This complaint was filed by a consumer and included allegations that the Respondent under-valued a residential property by indicating a value opinion of \$445,000 in February of 2009. The Complainant stated that two other appraisers appraised the property for \$550,000 and \$530,000 as support for her allegation. The Complainant further added that the comparable sales used were inappropriate and alleged geographic incompetency on the part of the Respondent.

The Respondent stated in her response letter that the subject property sold towards the high end of the neighborhood value range in 2005. She wrote that there were few sales in the immediate neighborhood at the time she appraised the property and she had to expand the research area to other neighborhoods.

She claimed that the allegation that she lack geographic competency was untrue and described her background in the area. She wrote that comparable sale one was most similar to the subject property. She indicated that she did not appraise the subject property in February as indicated by the complaint.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The report appears to provide good support for the final value conclusion. The reviewer found no evidence to support the allegation that the home had been undervalued.

Prior Complaint / Disciplinary History: 941807 – Closed w/Letter of Instruction; 200105200 - Dismissed

Recommendation and Reasoning: Counsel and the Administrative Director recommend that this matter be **DISMISSED** as the reviewer found no USPAP violations.

Vote: Mr. Flowers made a motion to approve Legal's recommendation. Mr. Woodford seconded the motion. The motion carried unopposed.

6. 2009020491/2009020492 There was no Reviewer.

This complaint was submitted as five (5) separate complaints – all anonymous. The correspondence from the complainants allege that the Respondent – Supervisor is abusing drugs, failing to supervise his trainee, communicating misleading appraisal reports, failing to maintain sole control of his digital appraiser signature, accepting payment for appraisals but failing to complete the appraisal reports, has committed theft and passing bad checks.

The complainants alleges that the Respondent - Trainee is completing appraisal reports without supervision and applying the "Supervisors" digital signature in a false or misleading manner in that the Supervisor has not reviewed and collaborated on the real estate appraisal. Included in one of the complaint letters was an allegation that a specific property had been appraised while the Supervisor was in county jail.

The Respondent(s) are both represented by counsel. Respondent (Supervisor) states that he pled guilty to misdemeanor theft and misdemeanor possession of a scheduled IV substance in September 2009. Respondent states that at the time of his conviction he had a fully developed prescription narcotic addiction. Respondent states that although he is embarrassed, he is grateful for the help that he has received in the court system. Respondent states that he was in possession of a single pill of diazepam, a prescription drug that he was prescribed, nonetheless he realized that he had a problem and pled guilty to this charge to begin his recovery process. Respondent states that he was released from custody on October 5, 2009 and ordered to complete a residential drug program. The Respondent states that he completed the drug treatment program on November 2, 2009. Respondent submitted his certificate of completion as evidence of his completion of the program. Respondent denies all remaining allegations. Respondent states that at all times he supervised his trainee, he never intentionally communicated a misleading appraisal report, has sole control over his digital signature and has performed all appraisals that he has received compensation for. Respondent states that he has not been advised by his banking institution that he has any overdrawn accounts.

Respondent (Trainee) denies the allegation that he completed an appraisal report without direct supervision and applied the signature of supervisor. Respondent states that he did conduct a field inspection of a vacant tract of land while Supervisor was in the residential treatment program. Respondent

states that pursuant to Rule 1255-1-.12, trainee is allowed to inspect properties within fifty (50) miles of Supervisor's office once trainee acquires 500 hours of work experience.

Staff notes that the trainee/supervisor never sent in the inspection affidavit that is required for a trainee to inspect properties alone. According to his work log, the trainee has logged more than 1000 hours of experience.

Prior Complaint / Disciplinary History: Supervisor - 200900324 (Dismissed); Trainee None.

Recommendation and Reasoning: The Respondent supervisor has been a certified residential appraiser since 2006. The Respondent submitted evidence that he has completed the court ordered residential treatment program and based on Respondent's lack of prior discipline and candor to this agency, Counsel and the Administrative Director recommend a **CONSENT ORDER** imposing a \$500 civil penalty as the misdemeanor charge that Respondent pled guilty to involve an act of dishonesty. In addition, Counsel and the Administrative Director recommend that Respondent's license be **RESTRICTED** in that he will not be permitted to supervise any additional trainees for a period of one (1) year from the execution of the consent order. If the Respondent does not accept this proposal, a formal proceeding should be commenced.

As to trainee, Counsel and the Administrative Director would recommend that Respondent be sent a **LETTER OF CAUTION AND INSTRUCTION** instructing the Respondent to provide the Administrative Director an inspection affidavit certifying that Respondent has acquired 500 hours of experience, before Respondent conducts any additional inspections without supervision.

Vote: After much discussion, Mr. Woodford made a revised recommendation that the sponsor be offered a consent order for voluntary surrender, and if he rejects the offer proceed directly to formal hearing. He recommended that the Commission adopt the Counsel and the Administrative Director's recommendation as noted for the Letter of Caution. Mr. Wade seconded the motion. The motion passed.

7. 200901366 Danny Wiley was the Reviewer.

This complaint was submitted by a lender and alleged that the Respondent misreported the acreage of the subject property including only one (1) tract of a two (2) tract parcel and reported only twenty (20) acres when the property is a 122 acre property in violation of Fannie Mae requirements.

The Respondent states that when he was engaged to appraise the property the homeowner advised that the property to be appraised was the house residing on tract one (1) of the Warranty deed, comprising twenty (20) acres, more or less. There was a second tract also identified on this warranty deed having 101.24 acres with an exclusion of 5.2 acres from tract two (2). Respondent states that he had a conversation with the appraisal coordinator regarding the two (2) separate parcels and he told her if both parcels needed to be included he would have to decline the assignment because of the scarcity of sales of newer homes in the subject market area with comparable acreage. Respondent states that he was give the "go ahead" to appraise the property as the homeowner indicated on just the single tract of land. In specific response to the allegation that a fractional interest of the subject property was appraised and that the appraisal was misleading. Respondent states that the allegation is unsubstantiated as of the specific legal agreement contained in the warranty deed of tract one (1) and that he included a copy of said warranty deed in the appraisal report. Respondent states that no hypothetical or extraordinary assumption was used in the development of the appraisal report because of the specific "legal description" for tract

one (1) contained in the warranty deed. Respondent states that he does not feel that he is in violation of USPAP.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The subject property is an unsubdivided portion of a larger tract. If compliance with the standards of Fannie Mae is required in the assignment, this is an unacceptable appraisal practice.
- The appraisal report contains a form 1004MC. That form has not been completed appropriately.
- The size reported for two of the sales is not consistent with the cited data sources.
- A prior transfer of Sale 3 was not reported.
- The report contains no reconciliation of how the value indication from the comparison approach was derived from the wide value range indicated by the comparison approach.

The report identifies the subject property is being a portion of parcel 28 on tax map 64. The report also includes a deed that describes parcel 28 as having two tracts. Tract 1 is the identified subject site. In general, appraising part of parcel does not constitute unacceptable appraisal practice. However, appraising part of a parcel is an unacceptable appraisal practice if the appraisal assignment is subject to the guidelines and requirements of Fannie Mae. Fannie Mae announcement 08-30 states that an appraisal must include the actual size of the subject site, not a portion of the site. It says, *“For example, the appraiser may not appraise only 5 acres of an unsubdivided 40-acre parcel.”* In the case of the subject property, the 20 acres has been recognized as a separate tract in the deed. However, the 20 acres has not been subdivided; it remains part of parcel 28, which contains over 100 acres. Even if 20 acres is legally severable, it must be subdivided from the parent parcel or the loan would not be eligible for sale to Fannie Mae. Description of the 20 acres as a separate tract in the deed does not constitute legal subdivision of the 20 acres. [SCOPE OF WORK RULE, Problem Identification section]

NEIGHBORHOOD

The information provided regarding market conditions does not comply with Fannie Mae reporting requirements:

1. The phrase “N/A” has been entered in several fields in the grid at the top of the 1004MC form. No explanation is provided. The instructions for completing the form specifically state, *“If any required data is unavailable or is considered unreliable, the appraiser must provide an explanation.”*
2. It appears that the grid at the top of the 1004MC form has been completed correctly. It reports data related to similar homes in the subject neighborhood. However, as the Respondent noted on the 1004MC form, the data in the grid is too limited to support valid trend analysis. In such cases, the appraiser must supplement the grid with additional data that supports the trend analysis reported in the NEIGHBORHOOD section of the URAR form. No additional data was provided.
3. The Supplemental Addendum states that in counting the number of listings duplicate listings were not used. This is contrary to Fannie Mae reporting requirements. Use of Form 1004MC became mandatory only a few months before the effective date of the appraisal. Many appraisers still do not complete the form in accordance with Fannie Mae reporting requirements. [SCOPE OF WORK RULE, Problem Identification section]

SITE DESCRIPTION

The site description is consistent with the description of Tract 1 in the deed that is included in the report. The site section of the report makes no mention of the fact that the 20 acres is part of a larger tract; however, this is addressed in other sections of the appraisal report

COMPARISON APPROACH

Sale 1: The appraisal report indicates that Sale 1 has 2,321 square feet of gross living area. The data sources cited are courthouse records, MLS, and tax records. The work file documents submitted by the Respondent included a property record card from CRS and four separate MLS listings. These all indicate that the property has 2,912 square feet of gross living area. It appears that either (1) a data source other than those indicated and provided by the Respondent was used, or (2) an error was made in reporting the gross living area. If another data source was used, failure to retain a copy of that data source would violate the record keeping rules of USPAP, and failure to report the data source would mean that the report is not clear and accurate. [ETHICS RULE, Record Keeping section, SR 2-1(a)]

Sale 2: The appraisal report indicates that the data sources used for Sale 2 were courthouse records, MLS, and tax records. The workfile documents submitted by the Respondent include only a property record card from CRS. No MLS listing was provided for Sale 2. It appears that either (1) the MLS was used, but a copy of the data was not retained, or (2) the report does not accurately state the data sources used for Sale 2. If an MLS listing was used, failure to retain a copy would violate the record keeping rules of USPAP. [ETHICS RULE, Record Keeping section] If an MLS listing was not used, then the data sources are not accurately reported. [SR 2-1(a)]

The report states that Sale 2 has 3,379 square feet of gross living area. The CRS data sheet indicates that the home has 2,004 square feet on the main level, 1,075 square feet of upper story finished area, plus another 600 square feet of upper story area, for a total of 3,679 square feet. It appears that either (1) a data source other than those provided by the Respondent was used, [Record Keeping section of the ETHICS RULE and SR 2-1(a)] or (2) an error was made in analyzing and reporting the gross living area. [SR 1-1(b), SR 1-4(a) and 2-1(a)]

Sale 3: The appraisal report indicates that there had been no other transfers of this property in the year prior to the sale reported in the adjustment grid. However, the CRS property record card included in the workfile documents submitted by the Respondent indicates a transfer of this property on 12/13/2007. Since this transfer occurred within the prior year of the sale in July 2008, analysis and reporting of this transfer is required by applicable assignment conditions. [SCOPE OF WORK RULE, Problem Identification section, SR 2-1(a)]

RECONCILIATION

The comparison approach includes three comparable sales and a comparable listing. The indicated value range from these four properties is from \$213,000 to \$365,200. A final value opinion of \$240,000 is reported. However, the report contains no reconciliation of how the final value opinion was derived from the wide value range indicated by the data used in the comparison approach. [SR 1-6(a), SR 2-2(b)(viii)]

Prior Complaint / Disciplinary History: None.

Recommendation and Reasoning: The Respondent has been a Certified Appraiser since 2001 and was a trainee from 1996-2001. Because the Respondent has no disciplinary history and use of Fannie Mae Form 1004 became mandatory only a few months before the Respondent completed this appraisal

assignment, Counsel and the Administrative Director recommend the Respondent be offered a **CONSENT ORDER** imposing a \$500 civil penalty for the identified violations in the review and 15 hour Residential Report Writing course **AND** a course that is at least 7 hours in length in Fannie Mae Form 1004MC, HVCC, & MORE; **OR** URAR Form Review; **OR** a Commission approved course at least 7 hours in length that is specific to Fannie Mae requirements. Continuing education credit should not be granted. If the Respondent does not accept this proposal, a formal proceeding should be commenced.

Vote: Mr. Flowers made a motion to approve Legal's recommendation. Dr. Baryla seconded the motion. The motion carried unopposed.

8. 200901748 Danny Wiley was the Reviewer.

The complaint was submitted by consumers that alleged the Respondent under valued their lakefront property by communicating a value of \$124,070 when there property was worth over \$150,000. The complainants allege that the methodology used to develop the appraisal was questionable, in that the Respondent used inappropriate comparable sales, applied insufficient square footage adjustments, and inflated depreciation applied to cost of improvements.

The Respondent stated in his response letter that the subject property is located in a rural mountaintop community with a small lake that can be used for non motorized boating. Respondent states that when the property was appraised in 2008, the market was unstable. In response to the allegation that the square footage adjustments were insufficient, Respondent described the subject property as a 2290 square foot dwelling of fair/average mixed quality with a full unfinished basement and that the subject had received above average updating. Respondent states that the property lacks curb appeal.

Respondent added that in the cost approach the effective age opinion of 15 years was influenced by this "mixed quality and condition features of the property and in the reconciliation the cost approach was reported as considered by that the market approach was given greater weight. In the sales comparison approach the Respondent states that he used six (6) comparable sales and that these properties were considered superior in curb appeal, functional utility, floor plan, site appeal and wider "owner base". The Respondent submitted vacant land sale data to support the site value opinion. The Respondent strongly denied the allegation that there was some type of self interest or bias which caused the lower value.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The report does not address negative market conditions.
- Prior transfers of the comparables were not reported.
- The report states that courthouse records were used as a data source. The workfile documents submitted do not include courthouse records for the comparables.
- Multiple versions of the report were provided to the client, but only one version was submitted to TREAC.

NEIGHBORHOOD

The report states that the "market appears stable." Three of the six sales used in the comparison approach are foreclosure sales. Furthermore, in a response to TREAC dated 9/8/2009 the Respondent noted adverse market conditions that were not addressed in the appraisal report. [SR 1-2(e)(i), SR 2-2(b)(iii)]

COMPARISON APPROACH

Sale 2: The report states that there were no other transfers in the 12 months prior to the sale reported in the adjustment grid. Public records indicate a transfer of the home to Fannie Mae in September 2007. That transfer is neither reported nor analyzed. [SCOPE OF WORK RULE: Problem Identification section]

Sale 3: The report states that there were no other transfers in the 12 months prior to the sale reported in the adjustment grid. Public records indicate a transfer of the home to MTGLQ Investors in September 2007. That transfer is neither reported nor analyzed. [SCOPE OF WORK RULE: Problem Identification section]

Sale 5: The report states that there were no other transfers in the 12 months prior to the sale reported in the adjustment grid. Public records indicate a transfer of the home to Countrywide Home Loans in October 2007. That transfer is neither reported nor analyzed. [SCOPE OF WORK RULE: Problem Identification section]

Sale 6: The report state that this property sold for \$112,500. That is the price reported in the MLS, but public records indicate that the sale price was \$108,000. The appraisal report states that courthouse records were used as a data source. However, the workfile documents submitted by the Respondent included only the MLS listings for the comparables. No other data sheets were provided. Given the discrepancies noted above, and given that only MLS sheets were provided, it appears that courthouse records were not used as a data source. [ETHICS RULE: Conduct section, SCOPE OF WORK RULE: Scope of Work Acceptability section and Scope of Work Acceptability section, SR 1-4(a), SR 2-1(a)]

ASSISTANCE

On page 5 of the report the names of several individuals are provided, and there is a statement that they may have contributed to the completion of the report. IF any of those individuals provided significant assistance, then that person must be specifically named, and the extent of the assistance must be summarized. Simply stating that other individuals may have contributed to the report does not provide a clear statement of the scope of work. [SCOPE OF WORK RULE: Disclosure Obligations section, SR 2-2(b)(vii)]

RECORD KEEPING

The Respondent was directed to provide copies of all reports sent. Correspondence in the workfile indicates that multiple versions of the report were sent to the client. Only one version of the report was provided to TREAC. [ETHICS RULE: Record Keeping section]

Prior Complaint / Disciplinary History: None.

Recommendation and Reasoning: The Respondent was a Certified Residential appraiser from 1995-2007 when he upgraded his license to Certified General. Because the Respondent has no disciplinary history, Counsel and the Administrative Director recommend that the Respondent be offered a **CONSENT ORDER** imposing a \$1,000 civil penalty for the identified violations and that Respondent be required to successfully complete a fifteen (15) hour Residential Report Writing course, with no continuing education granted. If the Respondent does not accept this proposal, a formal proceeding should be commenced.

Vote: Mr. Flowers made a motion to approve Legal's recommendation. Mr. Wade seconded the motion. The motion carried unopposed.

9. 200902127 Danny Wiley was the Reviewer.

This complaint was filed by a fellow practitioner and included allegations that the Respondent reported incomplete or inaccurate neighborhood information, omitted 1900 square feet of basement area, combined basement living area with the above grade living area in comparable sale 1, failed to analyze and report the prior foreclosure sale of comparable 3, misreported the acreage total of the subject property, applying inconsistent or unsupported adjustments in the sales comparison approach.

The Respondent stated in his response letter that the square footage in the basement was measured by the appraisers and the finished area was based on proposed finished rooms supplied by the builder. He reported the appraisal was "subject to completion". He indicated he relied on MLS information for the living area sizes of the comparable sales. Respondent conceded that he did omit the forced sale of comparable three. Respondent states that he determined the subject lot size by multiplying the dimensions noted on the CRS of the irregular subject lot size. He indicated that adjustments made were market derived. Respondent alleges that Realtor, builder and the Complainant all made improper attempts to influence his value opinion.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The report states that the home has been offered for sale in the prior year, but there is no analysis of the offering.
- The reported site size is inaccurate.
- It appears that only one data source was used for the comparable sales.
- There are apparent errors in reporting the features of the comparable sales and the adjustments applied for those features

SUBJECT PROPERTY

The subject property has been adequately identified. The report states that the home has been offered for sale in the prior year, but there is no analysis of the offering. [SR 1-5(a), SR 2-2(b)(viii)]

NEIGHBORHOOD

There is contradictory information regarding the build-up in the area. The report indicates that the area is 25% to 75% developed, but it also states that land use is 91% one-unit. [SR 1-2(e)(i), SR 2-2(b)(iii)]

SITE DESCRIPTION

The report indicates that the site size is 0.43 acres. Online mapping sources indicate that the site size is approximately 0.92 acres. In a response to TREAC dated 10/11/2009 the Respondent stated that the reported site size was incorrect. This also affects the analysis in the comparison approach. [SR 1-2(e)(i), SR 1-4(a), SR 2-1(a), SR 2-2(b)(iii)]

PROPERTY DESCRIPTION

The information regarding the basement is incomplete, inaccurate, and contradictory. The report indicates that the home has 504 square feet of basement. Page 1 of the URAR indicates that the basement is unfinished. Page 2 of the URAR indicates that the basement is finished. The sketch shows a partial basement that is partially finished. According to the MLS, the data in the CRS, and a second appraisal report that was submitted with the complaint, there is a full basement that is partially finished. The total basement area is almost 2,400 square feet. This is a significant error that would affect much of the analysis. [SR 1-1(b), SR 1-2(e)(i), SR 2-1(a), SR 2-2(b)(iii)]

COMPARISON APPROACH

Data Sources: The report indicates that the data sources used for the comparable sales was MLS. No verification source was listed. The data in the MLS alone is insufficient to adequately complete the adjustment grid. [SCOPE OF WORK RULE: Scope of Work Acceptability section, SR 1-2(h), SR 1-4(a)]

Sale 1: The report indicates that Sale 1 has 2,941 square feet of gross living area. The MLS does report a total size of 2,941, but the listing also indicates that the home has finished basement area. Sale 1 has approximately 2,047 square feet of gross living area, and it has some finished basement area. This is a significant error that would affect the value indication from this sale. The only data source reported is MLS. Hence, it appears that the error is the result of data not being verified in a manner consistent with the actions of the appraiser's peers, the expectations of market participants and applicable assignment conditions. [SCOPE OF WORK RULE: Scope of Work Acceptability section, SR 1-1(b), SR 1-4(a), SR 2-1(a)]

Sale 3: The report indicates that there were no sales of this home in the year prior to the sale reported in the adjustment grid. Public records indicate a transfer to US Bank NA in July 2008. That transfer is reported on a CRS data sheet that was included in the workfile documents submitted by the Respondent. [SCOPE OF WORK RULE: Problem Identification section]

Sale 3 has 1,300 square feet of finished basement. This is over twice the size of the finished basement in the subject, but no adjustment is applied. This significantly affects the value indication provided by this sale. [SR 1-1(a), SR 1-1(b), SR 1-4(a)]

RECORD KEEPING

The TREAC asked the Respondent to provide copies of all reports that were prepared and copies of all data sheets used in developing the appraisal. One version of the report was provided by the Respondent. It appears that multiple versions of the report were prepared. The signature date on the report provided with the complaint differs from the signature date on the report provided by the Respondent. The fireplace count also differs. [ETHICS RULE: Record Keeping section]

Prior Complaint / Disciplinary History: None.

Recommendation and Reasoning: The Respondent has been a licensed real estate appraiser since 2004, Counsel and the Administrative Director recommend that the Respondent be offered a **CONSENT ORDER** imposing a \$1,000 civil penalty for the identified violations and that Respondent be required to successfully complete a fifteen (15) hour Residential Report Writing course, with no continuing education granted.

Vote: Mr. Flowers made a motion to accept Legal's recommendation. Ms. Coleman seconded the motion. The motion carried unopposed.

10. 200902335 Danny Wiley was the Reviewer

This complaint was filed by a mortgage lender and included allegations that the Respondent over-valued a residential property by indicating a value opinion of \$515,000 on March 13, 2007. The Complainant provided a field review appraisal which indicated the value of the property to be \$275,000 on the same effective date.

In response to the complaint, Respondent's counsel submitted an appraisal review and URAR (6/93) form report on the subject property. The report date signed on this appraisal was noted as November 10, 2009 with an effective date March 13, 2007. Respondent's review appraiser opined that the comparable sales the Respondent had used were "the best available at the time of the appraisal". Respondent's appraiser alleged that the lender's review appraiser used sales that were "grossly inaccurate" and that "none of his sales are located in a like kind resort development with amenities such as a clubhouse and pool". He indicated that the review appraiser failed to verify comparable sale amenities though reasonable access to this information was available. The indicated value in Respondent's review appraisal was \$515,000. The Respondent's appraiser used three different sales and included two of the same sales.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The report indicates that the subject property has been offered for sale, but there is no analysis of the offering(s).
- The site description does not address key aspects of the subject site.
- It appears that the Respondent relied on data sources other than those reported for the comparable sales.
- Information regarding the basement area in the subject and the comparables is not complete, and it has not been properly analyzed.
- There was no apparent consideration given to personal property included in the comparable sales.
- The site value is not supported by the workfile documents.
- There is no support for the rent or the GRM used in the income approach

SUBJECT PROPERTY

The appraisal report indicates that the subject property has been offered for sale in the past year, but there is no analysis of the offering(s) for sale. There is no indication as to whether or not the subject was currently offered for sale as of the effective date of the appraisal. [SCOPE OF WORK RULE: Problem Identification section, SR 1-5(a), SR 2-2(b)(viii)]

NEIGHBORHOOD

The report indicates that land use in the area is 100% one-unit housing. The field review report and the additional appraisal report supplied by the Respondent (prepared by another appraiser) both indicate that this is not accurate. The zoning map included in the Respondent's appraisal report indicates commercially zoned property located very near the subject property. [SR 1-2(e)(i), SR 2-2(b)(iii)]

SITE DESCRIPTION

Most of the information in this section of the report appears to be boilerplate designed to be sufficient for a typical traditional lot. The subject is located on a "footprint" lot in a resort community. This is not discussed. The site size is not reported. The shape of the site is described as "IRREGULAR," but the site plan in the report shows that it is rectangular. [SR 2-2(b)(iii)]

COMPARISON APPROACH

Data Sources: The report indicates that the data for sales 1 and 2 was obtained from courthouse records. However, it appears that other data sources were used, but not disclosed. The data presented regarding the size of these homes is not consistent with public records. Workfile documents include data from other

unidentified sources. The report indicates that data for sale 3 is from the MLS. Workfile documents submitted by the Respondent include data from public records as well, but that is not indicated as a data source. [SR 2-2(b)(vii)]

Basement Area: The subject is reported to have a full finished basement. The report indicates the same for all the comparables. The report indicates that the lower level of the subject has 760 square feet. A floor plan included in the workfile documents indicates that Sale 1 has 864 square feet of finished basement (14% difference). The MLS listing for sale 3 indicates that it has 1,050 square feet of finished basement (38%) difference. The difference in the amount of basement area is not disclosed, and no adjustments are applied. [SR 1-1(a), SR 1-1(b), SR 1-4(a), SR 2-1(a)]

Prior Transfers: The report indicates that there were no prior transfers of any of the comparables in the year prior to the sales reported in the adjustment grid. Public records indicate a prior transfer of Sale 3 on 1/31/2006. [SCOPE OF WORK RULE: Problem Identification section]

Personal Property: The subject is located in a resort community. Many properties in the area are used as rental homes, and sales often include furnishings and/or other personal property. It appears that this was not considered. Public records indicate that all three of the comparable sales included personal property as part of the sale. The MLS listing for sale 3 indicates that the sale includes the furnishings. If a comparable sale includes furnishings and/or other personal property, adjustments should be applied to the comparables in order to derive the value of the real property that is the subject of the appraisal. The workfile documents submitted by the Respondent include nothing to indicate that the Respondent confirmed whether or not the sales included personal property. No adjustments were made to any of the comparables. [SR 1-1(a), SR 1-1(b), SR 1-4(a), SR 2-1(a)]

COST APPROACH

The appraisal report indicates a site value of \$90,000, and the report states, "ESTIMATED SITE VALUE FROM LAND SALES IN MARKET AREA." The workfile documents submitted by the Respondent include no support for the reported site value. There is a price list for lots in Covered Bridge Resorts, but there is no indication as to whether the lots actually sold at the prices indicated on that list. Furthermore, the price reported for the subject site is \$74,900. If other data was used but not retained, then record keeping requirements have not been met. [ETHICS RULE: Record Keeping section] If no land sales data was analyzed, the report is inaccurate and misleading. [SR 2-1(a)]

INCOME APPROACH

The report indicates a market rent, a gross rent multiplier, and an indicated value derived from the income approach. However, there is no summary of the analysis that led to the market rent or the GRM. [SR 2-2(b)(viii)] The workfile documents submitted by the Respondent include no supporting data. If the rental data and GRM data was obtained but not retained, then record keeping requirements have not been met. [ETHICS RULE: Record Keeping section] If no rental or GRM data was analyzed, then recognized methods and techniques have not been employed. [SR 1-1(a)]

Prior Complaint / Disciplinary History: 200801884 (Closed with Consent Order \$3,000 & 15 hour Site/Cost course); 200902376 (*SEE NEXT*)

Recommendation and Reasoning: The Respondent has been a certified residential appraiser since 2001. Respondent was disciplined in 2008 for a 2007 appraisal. The current appraisal predates that

education. Counsel and the Administrative Director recommend that the Respondent be offered a **CONSENT ORDER** imposing a \$1,000 civil penalty for the identified violations and that Respondent be required to successfully complete a fifteen (15) hour Residential Report Writing course, with no continuing education granted. If the Respondent does not accept this proposal, a formal proceeding should be commenced.

Note: The Commission was informed that the Respondent is the same for items numbered ten (10) and eleven (11) on the legal report. The Commission decided to make one recommendation for both complaint matters. See summary at end of item eleven (11).

11. 200902376 Danny Wiley was the Reviewer.

This complaint was filed by a mortgage lender and included allegations that the Respondent communicated a misleading appraisal report by indicating a value opinion of \$400,000 on March 13, 2007. Specifically the Complainant alleged the Respondent misreport the square footage of comparable sale one (1), identified the wrong location on a comparable sale map of comparable sale one (1), misreported the distances of the comparable sales from the subject property, and omitted from analysis comparable sales within the subject's subdivision and instead used comparables sale some five miles east of the development which indicated a higher market value opinion (sale prices ranged from \$188,000 to \$305,000 within the subdivision).

In response to the complaint, Respondent's counsel submitted an appraisal review and URAR (6/93) form report on the subject property. The Respondent's reviewer opined that the comparable sales the Respondent used were comparable in terms of quality and location, but that "other sales could have been used". Respondent's review appraiser indicated that Respondent had misreported the square footage of comparable sale one and the distances of the sales from the subject property. Respondent's reviewer indicated that in his opinion these were errors and not fraudulent. Respondent's appraiser indicated that only one of the sales used by the Complainants review appraiser appeared to be comparable to the subject property and further stated that the other sales were not in a resort development similar to the subject with similar resort amenities. He indicated that the review appraiser used by the Complainant failed to meet the requirements of the Competency Rule. The Respondent's review appraiser found the indicated value was \$340,000.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- It appears that the value was intentionally inflated and the report is intentionally misleading.
- The report indicates that the subject property has been offered for sale, but there is no analysis of the offering(s).
- The site description does not address key aspects of the subject site.
- It appears that the Respondent relied on data sources other than those reported for the comparable sales.
- The reported distances to the comparable sales are not accurate.
- There was no apparent consideration given to personal property included in the comparable sales.
- There is no support for the rent or the GRM used in the income approach.

SUBJECT PROPERTY

The appraisal report indicates that the subject property has been offered for sale in the past year, but there is no analysis of the offering(s) for sale. There is no indication as to whether or not the subject was currently offered for sale as of the effective date of the appraisal. [SCOPE OF WORK RULE: Problem Identification section, SR 1-5(a), SR 2-2(b)(viii)]

NEIGHBORHOOD

The report indicates that land use in the area is 100% one-unit housing. The additional appraisal report supplied by the Respondent (prepared by another appraiser) indicates that this is not accurate. A zoning map included in the Respondent's appraisal report indicates commercially zoned property located very near the subject property. [SR 1-2(e)(i), SR 2-2(b)(iii)]

SITE DESCRIPTION

Most of the information in this section of the report appears to be boilerplate designed to be sufficient for a typical traditional lot. The subject is located on a "footprint" lot in a resort community. This is not discussed. The site size is not reported. The shape of the site is described as "IRREGULAR," but the site plan in the report shows that it is rectangular. [SR 2-2(b)(iii)]

COMPARISON APPROACH

Data Sources: The report indicates that data for sale 1 is from the MLS. Workfile documents submitted by the Respondent include data from public records as well as data from some other unidentified source. The report indicates that the data for sales 2 and 3 was obtained from courthouse records. It appears that other data sources were used, but not disclosed. Workfile documents include data from other unidentified sources. [SR 2-2(b)(vii)]

Distance to Comparable Sales: The reported distances to the comparable sales are 0.50 miles ESE, 1 Miles E, and 1 Miles E. The reviewer located the subject and the comparable sales using online tax maps. The three comparable sales are all located over 5 miles from the subject. The second appraisal report (prepared by another appraiser) provided by the Respondent also indicates that the distances reported in the Respondent's report are inaccurate. If the Respondent inspected the comparables, then it should have been obvious that the distances reported were not accurate. Hence, this appears to be intentional. The client was further misled by statements made in an email sent on 10/22/2009. In that email (a copy of which was provided with the complaint), The Respondent stated, "As for the proximity to the comps, this would be approximately 1 – 1.5 miles as a bird would fly from the subject..." This is an additional indication that the distances were intentionally misstated. [ETHICS RULE: Conduct section, SR 2-1(a)]

Sale 1 – Gross Living Area: The appraisal report states that comparable 1 has 1,200 square feet of gross living area. The MLS listing (the only cited data source) states that it has 1,568 square feet. Assessment data indicates that it has 1,680 square feet. This is a significant error that affects the value indication provided by this comparable. [SR 1-1(b), SR 1-4(a), SR 2-1(a)]

Personal Property

The subject is located in a resort community. Many properties in the area are used as rental homes, and sales often include furnishings and/or other personal property. It appears that this was not considered.

Assessment records indicate that sale 1 and sale 3 included personal property as part of the sale. The MLS listing for sale 1 indicates that the sale includes the furnishings. If a comparable sale includes furnishings and/or other personal property, adjustments should be applied to the comparables in order to

derive the value of the real property that is the subject of the appraisal. The workfile documents submitted by the Respondent include nothing to indicate that the Respondent confirmed whether or not the sales included personal property. No adjustments for furnishings were made to any of the comparables. [SR 1-1(a), SR 1-1(b), SR 1-4(a), SR 2-1(a)]

Selection of Sales

None of the comparable sales included in the comparison approach were located within the subject's immediate area. The second report provided by the Respondent (the report prepared by another appraiser) includes three sales of homes that are very similar in size. They are all located within one mile of the subject. The appraisal report prepared by the Respondent contains a certification in which the Respondent certified (Item 7) that she, "...selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property." However, it appears that the most similar sales were not used. [SR 2-1(a)]

In an email to the client dated 10/22/2009, the Respondent stated that the contract was reviewed, and "This was the reason for the comps used. A market value is what a willing buyer and willing seller agree upon. Market value is usually not the price the property could have been sold for, but is the price the property is sold for." It appears the Respondent intentionally attempted to justify the contract price rather than providing an objective analysis. The statement that market value is the price a property actually sold for, rather than what it would most probably sell for, contradicts the most fundamental market value principles. If the sale price defines market value, then there would be no need for an appraisal of any property that was under contract. [ETHICS RULE: Conduct section]

COST APPROACH

The appraisal report indicates a site value of \$90,000, and the report states, "ESTIMATED SITE VALUE FROM LAND SALES IN MARKET AREA." The workfile documents submitted by the Respondent include no support for the reported site value. The workfile for another appraisal assignment performed by the Respondent on the same day (property at 1721 Summit View Way) includes a pricing list for lots in Covered Bridge Resorts, but there is no indication as to whether the lots actually sold at the prices indicated on that list. The price indicated for the subject site is \$69,900. If other data was used but not retained, then record keeping requirements have not been met. [ETHICS RULE: Record Keeping section] If no land sales data was analyzed, the report is inaccurate and misleading. [SR 2-1(a)]

INCOME APPROACH

The report indicates a market rent, a gross rent multiplier, and an indicated value derived from the income approach. However, there is no summary of the analysis that led to the market rent or the GRM. [SR 2-2(b)(viii)] The workfile documents submitted by the Respondent include no supporting data. If the rental data and GRM data was obtained but not retained, then record keeping requirements have not been met. [ETHICS RULE: Record Keeping section] If no supporting data was analyzed, then recognized methods and techniques have not been employed. [SR 1-1(a)]

BIAS

The report is misleading in many ways. The most significant misleading information is the assertion made that the sales used were the best available, and the indication that they were all within 1 mile of the subject. The follow up communication that asserts that the sales were actually 1 to 1.5 miles from the subject is also inaccurate and misleading. Similar sales of homes located within one mile were available, but they were not reported. Rather, the report contains sales that are several miles away and very

different in size. Based on the Respondent's follow up communication with the client, the use of non-similar sales in order to justify the contracted sale price appears to have been an intentional act. An appraiser with the education and experience required to obtain a state certification would know that the statement that market value is a property's actual sale price rather than it's most probable price is fundamentally wrong. It appears that the value was intentionally inflated and the report was intentionally misleading. [ETHICS RULE: Conduct section]

Prior Complaint / Disciplinary History: 200801884 (Closed with Consent Order \$3,000 & 15 hour Site/Cost course); 200902335 (Open)

Recommendation and Reasoning: The Respondent has been a certified residential appraiser since 2001. Respondent was disciplined in 2008 for an appraisal performed in 2007. Counsel and the Administrative Director recognize that since the corrective education in 2008 Respondent has not had a complaint dealing with an appraisal performed after the corrective education. However, in the three (3) complaints involving appraisals performed in 2007 there appear to be significant USPAP violations. In the instant complaint, Counsel and the Administrative Director note that the Respondent's conduct appears egregious. In the interest of immediate action to protect the public Counsel and the Administrative Director recommend that the Respondent be offered a **CONSENT ORDER** imposing an immediate one (1) year suspension and a \$2000 civil penalty for the identified violations. If the Respondent does not accept this proposal, a formal proceeding should be commenced.

Vote: There was discussion on if there were a possible discovery option to determine who the Respondent's review appraiser was and if the reports could be obtained. Legal counsel indicated that did not seem possible at this time. Mr. Carter made an alternate recommendation and motion to consolidate the two complaints into one offered consent order which would include a one (1) year suspension of the Respondents certification and a \$3,000 civil penalty. Mr. Wade seconded the motion. Mr. Flowers and Dr. Baryla voted "no"; Mr. Wade, Mr. Phillips, Mr. Woodford, Ms. Coleman and Mr. Carter voted "yes". The motion passed.

12. 2009010901 Danny Wiley was the Reviewer.

This complaint was filed by a fellow practitioner and included allegations that the Respondent communicated a misleading appraisal report by over-valuing a residential lake front property on March 14, 2008 by communicating a value opinion of \$3,400,000. The Complainant further alleged that the Respondent failed to analyze the listings of the subject property; over-valued the site of the property in the cost approach and included misleading or fraudulent replacement cost data in that the Respondent reported this cost to be \$500 per square foot and cited Marshall and Swift as the source of the cost data. In the sales comparison approach, the Respondent was alleged to have used all comparable sales that have Lake Frontage, while the subject only has a lake view, and also to have made only a minimal and unsupported negative adjustment of \$10,000 to all comparables. The Respondent is also alleged to have included an unsupported adjustment for a site adjustment from the comparable site of 20.72 acres to the subject 1.41 acres of only \$57,930. The Respondent also included comments regarding adjustments that were misleading and failed to report that the subject was listed within the previous twelve (12) months and report the summary of that analysis within the appraisal report.

The Respondent stated in her response letter that she did analyze the listing and "mentioned it on the Subject Report data sources with the off market date and MLS number". She wrote that she does have both listings, but only included the listing that was within 12 months of the report date. She further added

that she did nothing misleading or fraudulent in her appraisal and that her cost data was obtained from Marshall & Swift and builder information. She wrote that she does not feel her frontage adjustment was “a minimal adjustment since they are all the same and in balance with my opinion.” She indicated her adjustments were supported. She added that she has comparable data that supports her value opinion. She concluded this sale did not close because of IRS paperwork issues on the buyer’s side, and it was not related to the appraisal report.

The Complainant submitted sales within the subdivision as rebuttal to the Respondent’s response to the complaint.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The assignment results are not credible. The appraisal report is misleading.
- The report does not contain adequate analysis of the prior listing of the subject property.
- The report does not contain adequate analysis of the sale agreement.
- The neighborhood description is inaccurate and misleading.
- The site value for the subject property is not appropriately supported.
- The sales used in the comparison approach are not appropriate, and appropriate adjustments were not applied.
- The estimated cost new was not based on Marshall & Swift as indicated in the appraisal report.
- Multiple reports were submitted to the client, but only one report was submitted for review.
- There appear to be gross violations of the COMPETENCY RULE and/or the ETHICS RULE.

SUBJECT PROPERTY

The appraisal report indicates that the owner of public record is (omitted). Public records indicate that the property has been owned by (name omitted) since July 2001. There is no indication that (omitted) has ever been the owner of public record. [SR 1-1(b), SR 2-1(a)]

ANALYSIS OF LISTING

The appraisal report indicates that the subject property has been offered for sale in the past year, but the report contains no analysis of the listing. The report contains only the listing number and the off market date. Workfile documents submitted by the Respondent include two prior MLS listings for the subject property. Listing number 569394 indicates that the home was listed with an asking price of \$2,499,900. That listing expired with no sale on December 2, 2007. Days on market is reported as 109. The asking price was increased to \$3,650,000 during the marketing period. [SCOPE OF WORK RULE, Problem Identification section]

The workfile documents also include listing 440477, which indicates that the subject property was on the market for 643 days with an asking price of \$1,995,000. That listing was withdrawn November 9, 2006. Hence, the subject property was exposed to the market for approximately 21 months with an asking price over \$1,000,000 less than the appraised value. [SR 1-1(b), SR 2-1(a)]

ANALYSIS OF SALES CONTRACT

The appraisal report indicates that the subject property is under contract for \$3,600,000. A copy of a Purchase and Sale Agreement was included in the workfile documents submitted by the Respondent. The Purchase and Sale Agreement indicates that the seller is LMT Development. As noted above, there is no

record of the property being owned by this entity. The Purchase and Sale Agreement indicates that it is a nonexclusive agreement, with the seller retaining the right to continue to market and sell the property.

The copy of the Purchase and Sale Agreement provided by the Respondent is signed only by the seller. It is not signed by a buyer, and it is not dated. These items were not addressed in the appraisal report. [SR 2-1(a), SR 2-2(b)(viii)]

NEIGHBORHOOD

The report states that prices in the area range from \$1,000,000 to \$3,700,000 with a predominant price of \$3,000,000. This is not supported by any data found by the reviewer. [SR 1-2(e)(i), SR 2-2(b)(iii)]

SITE DESCRIPTION

The site size is consistent with data found by the reviewer. The report states that the view is AVERAGE. The MLS listing indicates that the site offers views of (name omitted) Lake. [SR 2-2(b)(iii)]

PROPERTY DESCRIPTION

The property description is consistent with information found in the MLS listings.

COMPARISON APPROACH

Selection of Sales: The sales used are not appropriate for comparison to the subject property. The comparables are waterfront homes. The subject is located on an interior lot with no water frontage. Those who purchase lakefront homes typically do not consider off-lake homes as competing properties. [SR 1-1(a), SR 1-1(b), SR 1-2(e)(iii), SR 1-4(a)]

It appears that the sales used in the comparison approach were not selected because of their similar market appeal. Rather, it appears that the Respondent was searching specifically for sales that could be used to justify the highest possible price.[ETHICS RULE, Conduct section]

SITE VALUE/SITE ADJUSTMENTS

In developing a sales comparison analysis, site adjustments are applied to reflect differences in site values between the subject property and the comparable sales. The value of the subject site was reported to be \$675,000. The report contains no support for the subject's estimated site value. Workfile documents submitted by the Respondent include three sales purported to be "Lot Comps." These sales are not comparable to the subject property.

The first "lot comp" in the workfile involves 15.9 acres purchased by a land conservancy. The tax map indicates that this sale actually involved the streets within a subdivision; it was not a sale of a building site, and it is not appropriate as a comparable sale. The other two "lot comps" involves waterfront sites. The subject is an interior site with no water frontage. Supporting documents submitted by the complainant include seven sales of similar non-waterfront lots in (omitted). Those lots sold at prices ranging from \$100,000 to \$139,000. Hence, it appears that the value of the subject site has been dramatically overstated. It also appears that the site adjustments applied to the comparables are inappropriate. [SR 1-1(a), SR 1-1(b), SR 1-4(a), SR 2-1(a)]

Failure to recognize the inappropriate nature of the "lot comps," failure to analyze sales of similar lots, and the failure to develop a credible site value opinion are all very significant errors. There appears to have

been a gross violation of either the COMPETENCY RULE (if unintentional) or the ETHICS RULE, Conduct section (if intentional).

COST APPROACH

Site Value: See previous comments regarding estimated value of subject site and the sales used to develop the estimated site value. [SR 1-1(a), SR 1-1(b)]

Estimated Replacement Cost

The report indicates that the estimated replacement cost is based on data from the Marshall & Swift Handbook. The workfile documents submitted by the Respondent include a cost breakdown provided by (omitted) Company. The workfile documents also include the cost report that appears to have been developed using the Marshall & Swift Cost Estimator. However, the cost figures presented on the Marshall & Swift Cost Estimator form are not supported by Marshall & Swift data. It appears that the Respondent overrode the Marshall & Swift data with the data provided by LMT Development. The reviewer prepared a cost estimate (based on the data in the appraisal report) using the SwiftEstimator from Marshall & Swift. The estimated cost was much lower than the cost reported in the appraisal report. It appears that the statement in the appraisal report that the cost was from Marshall & Swift is not accurate. [SR 2-1(a)]

RECORD KEEPING

The Respondent was directed by the TREAC to provide copies of all appraisal reports prepared for the subject property. It appears that the Respondent did not comply with this request. The appraisal report submitted by the Respondent contains comments indicating that an earlier report was provided to the client. Specifically, on page 9 of the appraisal report one finds the following comments, "*Error on comparable 1 land adjustment has aulter (sic) the Estimated (sic) land value. Comparable 5 is correct which should (sic).*" The report also contains a Supplemental Addendum (page 29) with comments indicating that significant errors were made in a previous report with regard to the square footage of the comparable sales. [ETHICS RULE, Record Keeping section]

Prior Complaint / Disciplinary History: None.

Recommendation and Reasoning: The Respondent has been a State Certified Residential Appraiser since 2006 and was State Licensed from 2003-2006. Counsel and the Administrative Director feel that this appraisal, at best indicates significant gross incompetency or at worst intentionally misleading conduct. The Respondent has been a Certified Residential appraiser for 3 1/2 years, and at the time of the appraisal Respondent had been Certified Residential for about twenty-one (21) months. Counsel and the Administrative Director recognize the possibility that this appraisal assignment may have been too complex in nature for this appraiser to perform competently. Counsel and the Administrative Director feel that this level of gross incompetency and lack of self awareness should be handled in a manner best suited to immediately protect the public. Therefore, Counsel and the Administrative Director recommend a **CONSENT ORDER** imposing a \$2,000 civil penalty. The Respondent's credential would be **RESTRICTED** for a period of six (6) months by down grading the credential to Licensed Real Estate Appraiser. During this period the Respondent should be on **PROBATION**, and not be allowed to have any new trainees (she currently has two trainees). During the six (6) month period of **PROBATION** Respondent will be required to submit her work log and one appraisal review will be selected at random and reviewed for USPAP violations. Prior to Respondent's reinstatement as State Certified and within six (6) months of the execution of this order, Respondent will be required to successfully complete the following courses: Residential Appraiser Site Valuation and Cost Approach (15 hours); Course on

Residential Report Writing and Case Studies (15 hours); Course on Advanced Residential Applications and Case Studies (15 hours); and a USPAP Course (15 hours). If the Respondent does not accept this proposal, a formal proceeding should be commenced.

Vote: Mr. Flowers made a motion to accept Legal's recommendation. Mr. Wade seconded the motion. The motion carried unopposed.

13. 200901246 Commissioner Wade was the Reviewer.

This complaint was filed by an outside agency and involved the condemnation appraisal of a tract of 19.6 acres of land. The complainant alleged that the Respondent over valued the property and communicated a misleading appraisal report that was "flawed beyond any reasonable explanation." The Complainant further alleged that this was due to the use of comparable sales that were inappropriate or lacked identification of value influencing characteristics and adjustments.

The Respondent wrote in his response letter that the purpose of the assignment was condemnation to acquire property rights for the expansion of the city airport. Part of this assignment was to determine the value of the property rights which were taken, and also the amount of incidental damages, if any. He wrote that the comparable and market data was obtained relevant to F.A.A. restrictions. He asserted that it is his belief that he did not over value the subject property. The location of the property directly adjacent to the airport was critical to the formation of the opinion of value. He submitted additional comparables which were located in the work file, but not used in the appraiser report as additional support for his value indication. He stated that the Complainant's characterization of this appraisal as "bogus" and "flawed beyond reasonable expectation" are false and the result of complainant's dissatisfaction with the legal process.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The appraiser report is incomplete due to substantial errors or omissions or commission that significantly affects 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 affect the value conclusion.

IDENTIFICATION OF THE APPRAISAL PROBLEMS

The appraiser failed to properly develop the real property appraisal by identifying the problem to be solved, determining the apparent scope of work necessary to solve the appraisal problems, and correctly complete research and analysis necessary to produce a credible appraisal. [SR-1]

REPORTING THE RESULTS

The appraiser failed to communicate each analysis, opinion and conclusion in a manner that was not misleading. [SR-2]

INTENDED USE OF THE REPORT

On page nine (9) of the report, the appraiser suggests that the intended use of the appraisal report is to aid the client in negotiating a fair price for the property. This statement does not indicate the appraisers meaning, definition or source of fair price. This term is not shown in the Dictionary of Real Estate Appraisal, Fourth Edition. [SR 1-2(b), SR 2-2 (b) (ii)]

PROPOSED ROAD PROJECT

On page four (4) of the report, the appraiser(s) state in the Hypothetical Condition section that the appraisal is being performed under the extraordinary assumption that the proposed road project will be constructed according to the plans and specifications provided to the property owner or his/her agent prior to the construction of the project. The appraiser(s) incorrectly discusses the extraordinary assumption in the hypothetical condition and state that this is a PROPOSED ROAD PROJECT when it is an appraisal of undeveloped agricultural land. On page nine (9), the appraiser(s) state that there are no Hypothetical Conditions. [SR1-1 (b), (c); SR2-2, SR2-2b (iii)]

HIGHEST AND BEST USE

On page four (4), the appraiser(s) incorrectly identifies the highest and best use as if vacant and as if improved, due to the FAA restrictions the subject is now a special use property. It is apparent that the highest and best use of the property is the existing use as vacant, agricultural property with an existing aviation rights easement (see warranty deed). On this page, the appraiser(s) did not explain the FAA restrictions or the meaning of their statement. Due to FAA restrictions the subject is now a special use property. Also, the appraiser(s) failed to identify, discuss or analyze any existing aviation easements on the property. [SR1-1 (b); SR2-1 (b) SR 2-2 (b) (viii)]

OWNERSHIP INTEREST APPRAISED

On pages five (5) and nine (9), the appraiser(s) fail to explain that the subject property is not a fee simple estate, but that it is subject to existing easements of record. The real property rights are not clearly described since the existing easements are not discussed. Property rights are of the utmost importance to the valuation of the property. [SR 1-1 (b), (c), (e); SR2-1 (b), SR 2-2 (b)(iv)]

COMPLETE / LIMITED APPRAISAL ANALYSIS

On page eight (8) of the report, the appraiser(s) state the appraisal has been prepared as a Complete Appraisal Analysis presented in a Summary Report Format. Because the appraiser(s) incorrectly called this a Limited Summary Appraisal on page two (2), the statement is confusing, as to their understanding and meaning of the terms Limited and Complete in a 2008-2009 USPAP report. [SR2-1(a)]

SCOPE OF WORK

The Scope of Work indicated is not indicative of the work that is actually provided in the report. The Scope of Work does not meet the appraisal standards for this type of report. Also, it does not describe other information such as geographic area and the time span of the research pertinent to arriving at a value as of the effective date of the report. The exclusive use of sworn statements that are provided on deed affidavits do not provide the information that is required for this type of report. The reader is not properly informed and can be misled by the Scope of Work provided in this report. [SR1-2(h); SR2 (b) (vii)]

FAA RESTRICTIONS

On pages ten (10) and twelve (12), the appraiser(s) again reference the FAA Restrictions without providing any information that would describe the restrictions or analyze their effect on the subject property value. The appraiser(s) just make the statement that this is a special use property due to the FAA Restrictions. [SR1-1 (b); SR2-1 (b)]

DEFINITION OF MARKET VALUE

On page ten (10) of the report the appraiser(s) do not provide the source of their definition of Fair Market Value. [SR2-2b (v)]

MARKETING TIME AND MARKETING CONDITIONS

In the next to last paragraph on page twelve (12), the appraiser(s) define and discuss the difference in marketing time and exposure time, but fail to develop an opinion of reasonable exposure time linked to the value opinion as required in USPAP. [SR1-2 (iv)]

TAX INFORMATION

On page thirteen (13), the appraiser(s) mention the Tax Map and Parcel Number of the property, but give no information on the current taxes, the tax rate, if the taxes are typical for the area, and if the current taxes have any effect on the market value. [SR 2-2 (b) (iii)]

The analysis of the General Area Data is limited at best and does not address many of the factors that are pertinent to the valuation of the subject property. [SR1-1 (b)]

NEIGHBORHOOD DATA

The neighborhood data does not identify and analyze market trends that are relevant in the neighborhood. A discussion of pertinent trends in the neighborhood is basic to the highest and best use in the appraisal of the real estate. [SR1-1 (b)]

ZONING

On page sixteen (16), the appraiser(s) indicate that the zoning of the property was originally agricultural, currently because of FFA Restrictions it is a Special Use Property. This comment does not pertain to zoning. The term special use deals with highest and best use. Zoning is related to the public regulation of the property. The appraiser(s) fail to discuss the current agricultural zoning classification, what is allowed under the regulations of the zoning classifications, any official change in the zoning, or the effects that the zoning has on value. Again the statement about FAA Restrictions is made without an explanation or discussion. This appears to be an important issue to the appraiser(s) in this report. The appraiser(s) make the same basic statements without explanation or support on page seventeen (17) under the Zoning Information paragraph. Also, on page seventeen (17), the appraiser(s) state the subject was zoned agricultural. The appraiser(s) do not explain if the zoning has been changed or could be changed in the near future. The zoning is inadequately described. [SR1-1 (b); SR1-2 (e); SR 2-1(a), (b)]

HIGHEST AND BEST USE

In the first table on page eighteen (18), the appraiser(s) make the statement that the Highest and Best use of the property "as vacant" is for activity related to the airport expansion. This opinion has no basis. The appraiser(s) did not provide or discuss any information that would support this conclusion.

In the second table on page eighteen (18) in Legally Permissible, the appraiser(s) suggests that the subject site is a special use property due to FFA restrictions. Again, this is unsupported and unexplained. The appraiser(s) make the statements: (1) the 46.5 acres that is the subject of this report is vacant land and (2) that the uses for this zoning are shown in the zoning information. The latter is misleading; it is not shown in the zoning information on page seventeen (17).

On page seventeen (17), the appraiser state that the Highest and Best Use of the property "as improved" requires the appraisers to consider the property in its current condition, but then on the same page and on

page nineteen (19) the information indicates that the property is vacant. In the conclusion of the second table on page nineteen (19), the appraiser(s) make the statement the conclusion is the Highest and Best Use of the subject property “as improved” and for activity related to airport expansion. This statement is both confusing and unsupported; since the property is vacant. [SR1-2 (e); SR1-3(a); SR2-1 (a), (b); SR 2-1 (b) (iii)]

SUMMARY OF SITE VALUE

In the table summary of Site Data on page nineteen (19), the appraiser(s) mention utility easements that they have observed, but do not discuss Aviation Easements that are mentioned in the deeds provided in the Addenda. The Aviation Easements are pertinent to the appraisal of this report. The appraiser(s) do not mention if the property has crops or merchantable timber. The appraiser(s) do not mention or analyze the benefits or detriments of the subject property’s location near the airport. [SR1-1 (b)(c); SR 1-4 (a), SR2-1(a), (b); SR2-2 (b)(iii)].

METHODOLOGY APPLICABLE TO THE SUBJECT

The appraiser(s) discuss the three (3) basic approaches to value on page 21, but make the statement that there are also occasions when it is desirable to use portions of an approach and/or to combine approaches. The necessity for partial and/or combination approaches generally arises because of unique or unusual properties or situations, or the inadequacy of market information, either in quality or quantity. These statements appear to be flawed, confusing, and misleading in that the subject property is a vacant, agricultural parcel that the appraiser(s) indicate only requires the sales comparison approach. [SR-2-1 (a)]

SALES COMPARISON APPROACH

Again the appraiser(s) comments are confusing and misleading on page 22, when they state the appraisers have utilized the Sales Comparison Approach to estimate the value of the land for the Market Approach. The Sales Comparison Approach and the Market (Data) Approach are the same approach. [SR-2-1 (a)]

The sales comparison approach is flawed in several ways. The appraiser(s) provide no sales of land in Giles County in the sales comparison approach nor do they discuss other sales in the area in any section of the report. Sales from Lawrence, Sumner, Robertson, and Rutherford are used in the analysis. The sales in Sumner and Rutherford Counties tend to have higher land values due to their proximity to Nashville. The sales used are a considerable distance from the subject property. The appraiser(s) do not provide the proximity of the comparable sales to the subject. Using distant out of county sales from superior locations instead of local sales agricultural sales indicates that the opinion of value is unreliable and suggests bias and advocacy on the part of the appraiser(s); i.e., going out of county to find higher value vacant land sales. [Ethics Rule: Conduct Section]

The sales in the report are verified using only information obtained from Courthouse Retrieval Systems, public records, and/or Tennessee Property Data. According to the comparable land sales sheets, the appraiser(s) did not verify the sales with anyone that was a party to the transactions or had knowledge of the transactions. The reviewer verified that comparable land sales one (1) and four (4) had residential improvements on the properties on the dates of the sales. The appraiser(s) indicated that the properties were vacant at the time of the sale. The value of the improvements could not be determined by the reviewer, but one of the primary complaints of this report is the lack of verification and incorrect reporting of the factual data. [SR 2-1 (a), SR 1-1(b) (c), SR 1-4 (a)]

Sale 2 is a sale that occurred over five (5) months after the effective date of the appraisal report. The sale should not be used as a comparable since it occurred subsequent to the effective date of the report. [SR 1-4 (a)]

Sale 3 occurred approximately 7 years and 4 months prior to the effective date of the report. Sale 4 occurred over 9 years and 6 months prior to the effective date of the report. The adjustments indicate that the appraiser(s) apply a 6% per year time adjustment is to sales 1, 3, and 4. The time adjustment is arbitrary and unsupported by comparable market sale data. [SR 1-4 (a)]

The subject information in the sales grid on page 28 of the report is incomplete. The omission of the information from the grid makes the reasoning for the adjustments of similar, superior, or inferior difficult to follow. [SR 2-1 (b)]

In the adjustment analysis on page 29, the appraiser(s) in the paragraph labeled Arms Length Transaction, the appraiser(s) state that they believe that the sales are arms length transactions and that there is no known relationship between the buyers and sellers. This is obviously due to the lack of verification on the part of the appraiser(s). [Scope of Work Rule: Problem Identification]

The appraiser(s) do not address the question: could the sales be affected by the treat of condemnation? The appraiser(s) failed to verify the sales with any of the parties to determine the answer to this question. Based on information provided by the complainant for this review, it is questionable if all of the sales were purchased for airport purposes as indicated by the appraiser(s).

The appraiser(s) indicate the sales were cash equivalent transactions or were financed at a market rate at the date of the sale. This appears to be a boiler plate comment without support. If the appraiser(s) had properly verified the transactions with one of the parties, they would have support for their position that the sales are arms-length and cash equivalent transactions. [SR 2-1 (a)]

The appraiser(s) did not describe, explain, or adjust for the existing aviation easements that are mentioned in the deeds to the subject property. The easements will have an adverse effect on the before value of the property and should be discussed in detail. [SR 2-2 (b)(viii)]

The appraiser(s) did not support or discuss market condition adjustments. [SR 2-2 (b) (viii)]

In the net adjustment line of the table on page 28, the appraiser(s) make unsupported and unexplained quantitative net adjustments to sales 2, 3, and 4 in their qualitative analysis. Also, the adjusted indicated values are not supported or explained. [SR 2-2 (b) (viii)]

DESCRIPTION OF REMAINDER

On page 31 of the report, the appraiser(s) fails to describe and analyze the effects of the FAA restrictions on the remainder property. The acquisition is a fee taking. The appraiser(s) do not discuss the effects on the remainder. There is no support for the opinion that the taking of the 19.6 acre fee acquisition will have additional site height and use restrictions on the 26.90 acre remainder. [SR1-2 (e); SR2-1 (a), (b); SR2-2 (b) (iii)]

CERTIFICATION

On page 33 of the report, the appraiser(s) do not certify that the analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice or advised the reader if anyone had provided significant real property appraisal assistance as required by USPAP. [SR 2-3]

Prior Complaint / Disciplinary History: Respondent One (1): 948976 (Consent Order – USPAP course), 200418231 (Consent Order - \$2,000 Civil Penalty, 20040342 – Dismissed)

Prior Complaint / Disciplinary History: Respondent Two (2): None.

Recommendation and Reasoning: Respondent One (1) has been a State Certified General Appraiser since 1992. The reviewer is of the opinion that given the reviewer's scope of work, the report by the complainant 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. Due to errors in the above mentioned report and having prior complaints filed against the appraiser and for the protection of the public, the recommendation is that the appraiser be offered a **CONSENT ORDER for VOLUNTARY SURRENDER** of the Tennessee Certified General Appraisal License. If the Respondent does not accept this proposal, a formal proceeding should be commenced.

Respondent two (2) was Certified Residential from 2000 -2003 and has been Certified General since 2003. The reviewer is of the opinion that given the reviewer's scope of work, the report by the complainant 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. Due to errors in the above mentioned report and the lack of prior discipline against the complainant, the recommendation is that the Respondent be offered a **CONSENT ORDER** imposing a \$1000 civil penalty and requiring the following courses be completed within 180 days of execution of the Consent Order: a 15-hour national USPAP class, a 30-hour General Appraiser Sales Comparison Approach and a 22-hour Condemnation Appraising: Principles & Applications Class is appropriate. No continuing education credit should be allowed for the classes. If the Respondent does not accept this proposal, a formal proceeding should be commenced.

Vote: Dr. Baryla made a motion to accept Mr. Wade's recommendation. Mr. Carter seconded the motion. The motion carried by a vote of four to two (4-2). [Voting "yes" were Ms. Coleman, Mr. Woodford, Mr. Phillips, and Dr. Baryla. Mr. Carter and Mr. Flowers voted "no."]

14. 200902250 Commissioner Wade was the Reviewer.

This complaint was filed by a fellow practitioner and included allegations that the Respondent communicated a misleading appraisal report that was not credible given its intended use and intended user(s) in a condemnation appraisal. Further allegations included a lack of competency or application of recognized appraisal methods and techniques.

The Respondents wrote in his response letter that the comparable sales the Complainant alleged should have been used were not market value transactions but were influenced by the conditions of sale by the heirs to the parcels of property. He wrote that he used 30 acres of commercial land in the report because this would generate State Highway frontage lots of 2 to 4 acres each; consistent with highest and best use

of this land. He wrote that the Complainant's assumption on lot size would have required a density change in the zoning. The Respondent included hard costs and infrastructure for the subdivision development with response to the complaint. He further added that the discount rate (15%) applied was derived from: 1) base rate plus add on for risk and no-liquidity, 2) Realtyrates Discount Rate, 3) Local investors. The Respondent also included paired sales to show diminution of values because of TVA easements and proximity to these easements. Respondent conceded that he should have included the Court in the intended users to this appraisal report. He concluded that his appraisal report was not misleading and was credible.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- In the opinion of the reviewer given the reviewer's scope of work, the report that is the subject of this review is incomplete due to substantial errors of omission or commission that significantly affects the appraisal.
- The sales selected by the appraiser and used in the report are not comparable to the 105.90 acre subject the property.
- The methods and techniques used in the report do not reflect those used by appraisers competent and knowledgeable of the appraisal industry standards in the valuation of property for eminent domain purposes.
- The analyses are not appropriate within the context of the requirements applicable to the work.
- The appraiser failed to communicate each analysis, opinion, and conclusion in a manner that was not misleading.
- In the opinion of the reviewer, the quality of the appraisal report is poor. The report is misleading, not credible, and in violation of numerous USPAP standards.

CERTIFICATION

In the combined transmittal letter and certificate on pages two (2) and three (3) of the report, the appraiser does not certify that the appraiser made a personal inspection of the property that is the subject of this report. [SR 2-3]

On page five (5) of the report, the appraiser provides what is described as a Summary of Important Conclusions. The appraiser does not provide a summary of **Important Conclusions**. The appraiser summarizes some basic facts about the subject property, provides the opinion of the value of the land before the take and the opinion of damages, but fails to provide a summary of highest and best use before and after, the values from the approaches used, the extraordinary assumptions and/or hypothetical conditions, the easement acquisition(s) and the remainder value(s). This is an omission of pertinent conclusions. [SR1-1 (b), SR2-1 (b)]

SCOPE OF WORK

The Scope of Work does not meet appraisal standards for an eminent domain report. The appraiser provides a short paragraph to describe the scope of work performed omitting pertinent information. The scope of work does not describe information, such as the time span of the research. He uses dated sales and sales subsequent to the effective date of the report, and doesn't inform the reader if the information was verified by parties to the sales of the subject property. This information is important in the scope of work, in order to arrive at a credible value as of the effective date of the report. The reader is not properly informed and can be misled by the Scope of Work provided in this report. [SR1-2(h); SR2 (b) (vii)]

IDENTIFICATION OF SUBJECT PROPERTY:

On page nine (9), the appraiser does not properly identify the improvements on the property in this section or any other section of the report. The appraiser only describes the improvements as a **small single family home and a class S shop**. In the last paragraph on page 23, the appraiser states that **the current improvements contribute no overall value to the parcels**. By only mentioning the improvements the appraiser fails to provide an adequate description. [SR1-1 (b); SR2-1 (b)]

HISTORY OF SUBJECT:

On page nine (9) of the report, the appraiser mentions that there were a transfer of parcel 032.02 of the property on September 22, 2005, but doesn't discuss the details of the transaction, if it was arms length or if the transfer had any relevance to the valuation of the property. [SR1-1 (b); SR1-5 (b); SR2-1 (b)]

NEIGHBORHOOD AND MARKET DATA:

The appraiser does not give the source of the neighborhood and market data used on page nine (9). He discussed data that was relevant in years 2002 and 2005, but does not discuss the market data that is pertinent to year 2007. He does not discuss other information that would provide the reader with an understanding of the current supply and demand for the different types of property in the neighborhood and area. In the comments on page 14, he indicates that values have increased from 2003 to 2007 with no data support for years 2006 and 2007. In paragraph three (3) on page ten (10), the appraiser states that *(Location Omitted) economic data, population data and other demographics are shown in the addenda*, but fails to analyze the information or its relevance to the valuation of the subject property. In the following paragraph on page 10, the appraiser states *the immediate neighborhood of the subject property consists mostly of commercial, industrial and residential property*, but fails to provide any analysis. On pages 13 and 14, the appraiser provides additional information, but fails to provide a meaningful analysis on page 14 in the paragraph noted **Comments**: The neighborhood information is inadequate in general and more specifically to the determination of highest and best use and as a basis for comparable sale selection. [SR1-1 (b), SR1-3 (a); SR2-1 (a), (b), (c)]

IMPROVEMENTS:

Typically, a description of the improvements would follow the description of the site. The appraiser fails to provide a description or an analysis of his opinion that they have no overall contributing value (page 23). [SR1-1 (b); SR1-2 (e); SR2-1 (a), (b)]

HIGHEST AND BEST USE:

Legally Permissible: On page 22, the appraiser indicates that the current zoning is agricultural, that it is in a commercial and medium density residential land use area, and that the site is only limited by the commercial and medium density residential uses. The appraiser indicates that the property can be used for residential subdivision and commercial uses and appraises it accordingly. The appraiser does not expand on the legal requirements that must be met to change the zoning to commercial or residential. The appraiser did not make a hypothetical assumption to this effect. Since this information is not provided and analyzed, the report is misleading. [SR1-1 (b); SR1-2 (e)(i); SR1-2 (g); SR1-3 (a), (b); SR2-1 (a), (b), (c); SR2-2 (b)(viii)]

Financially Feasible: On page 23, the appraiser provides no support for his opinion that 30 acres of the 52.90 acres can be divided into 2 to 4 acre sites. He indicates that the highway frontage is the most financially feasible for commercial use, but provides no plot, no support or analysis for his opinion for the

strong demand for commercial lots. [SR1-1 (a), (b); SR1-2 (g); SR1-3 (a), (b); SR2-1 (a), (b), (c); SR2-2 (b) (viii)]

Most Profitable Use: On page 23, when the appraiser mentions the 75.90 acre portion of the 105.9 acre subject parcel, he states that the subject property allows for medium density residential (2 to 3 units per acres) and restricts the use of the tract. Based on the information provided earlier that the property is zoned agricultural; this statement appears to be false and misleading. The appraiser does not explain if the zoning could be changed in the near future. It would appear that any change in zoning and a 140 lot subdivision would have to be approved by the zoning authority. The opinion is speculative. [SR1-1 (b); SR1-2 (e)(i); SR1-2 (g); SR1-3 (a), (b); SR2-1 (a), (b), (c); SR2-2 (b)(viii)]

In the following paragraph on page 23, the appraiser makes the statement regarding his opinion for the development of 30 acres of the subject property that the 30.0 acres of commercial land borders enough road frontages to allow for subdivision into 2-4 acre sites. There are no subdivision costs other than survey costs. Again, this statement is unsupported and speculative. The appraiser provides no plat that would enable the reader to understand this statement. The portion of the statement that indicates that the only subdivision costs would be survey costs is not credible. [SR1-1 (a), (b), (c); SR1-3a); SR 2-1(a), (b), (c); SR2-2 (b)(iii)]

SALES COMPARISON APPROACH

On pages 24-26 of the report, the appraiser utilizes the Sales Comparison Approach. The appraiser's comments choice of comparable sales is confusing and misleading. The appraiser has broken 105.9 acre, agriculture-zoned property into a 75.9 acre (140 lots) residential property and a 30 acre commercial property without support as previously discussed in this review. He does not provide or mention a copy of a proposed subdivision plat in the report. In the sales that are used, the appraiser doesn't provide pertinent information about the sales in the report or on separate sale sheets. The only information provided by the appraiser is the address and tax map and parcel numbers, which he provides in the two grids. In the commercial breakdown, the appraiser fails to communicate to the reader that the property is located out of county (see below). Also, the appraiser provides no support for a 5% annual time adjustment. He applies the same 5% annual time adjustment to both the residential and commercial land types, which is highly questionable.

For the 75.9 acre residential tract, the appraiser uses lot sales that range from 0.5 acres to 0.7 acres in size. This calculates to a size difference that varies from 108 times to 152 times smaller than the 75.9 acre subject parcel. The appraiser then uses the lots sales to value the unsupported 140 lot breakdown of his arbitrary 75.9 acre residential parcel. The appraiser applies an unsupported time adjustment to sales 1 and 2 and an unsupported/unexplained adjustment for "Other" (golf course) to sale 2. The appraiser makes no adjustments for size to the comparable sales. Even the appraiser states that the sales comparison approach utilizes sales of similar properties as the basis for an indication of market value. In the reviewer's opinion, the sales comparison approach is flawed. The use of these sales indicates bias in favor of the client by using the much smaller lot sales as comparables for the 75.9 acre portion of the 105.9 acre subject property.

The lot sales used by the appraiser as comparables in an appraisal of the 75.9 acre portion of the property is inappropriate, given that larger acreage, more recent sales are located in close proximity and available for analysis. The most appropriate comparable sales that are available for analysis are sales of a 116.04 acre property on North Broadway that sold for \$1,000,000 on March 6, 2006, a 42.44 acre sale

that sold for \$432,888.00 on March 6, 2006, and a 37.64 acre sale that sold for \$325,673.00 on January 6, 2006. The latter two (2) sales are located on Hwy 109N and surround the subject property. The indicated per acre values of these 3 sales are approximately \$8,618.00, \$10,200.00 and \$8,652.00, respectively. The appraiser provides an estimated average per acre value for the 105.9 acres of \$39,282.34, which is a considerably greater than the values indicated by the 3 larger sales.

On page 26, for the 30 acre tract that the appraiser has used in his unsupported land-type breakdown, the appraiser uses sales that range in size from 1.58 acres to 3.82 acres. The appraiser makes no adjustment for size in this grid. He arbitrarily and incorrectly uses 1-4 acres/lots/average as the size of the 30 acre tract. Again, this is unsupported and misleading. The sales used in this grid are dated. Sale 1 and 3 are properties that sold in 2005. Sale 2 sold in January 2003. Sale 4 sold in April 2006. Comparable sale 4 is a sale of a property located in Robertson County. The appraiser failed to communicate this information. If there is a strong demand for commercial property in the subject neighborhood as the appraiser suggests, it is not reasonable that the appraiser would use dated sales and a sale that is located in an adjoining county. He would use more recent sales and would not need to leave the neighborhood for comparable data. The sales used are not comparable to the 30 acre commercial property. As previously stated in, the use of smaller, dated lot sales, when larger acreage-more similar sales are available for analysis is inappropriate. USPAP violations for the **Sales Comparison Approach**: [SR1-1 (a), (b), (c); SR1-2 (e)(i), (e)(iv); SR1-3(a); SR 1-4 (a), (b), (c), (e); SR2-1(a), (b), (c); SR 2-2 (b) (iii), (viii)]

COST APPROACH:

In the opinion of the reviewer, the appraiser did not utilize the cost approach. The appraiser on page 28 indicated that he obtained Marshall and Swift and local contractors to arrive at his overall cost of development of which a breakdown was not provided in the report. The appraiser did not value and depreciate the improvements that are located on the property. [SR1-1(a), (b), (c); SR1-4 (b), (c); SR2-1 (a), (b); SR2-2 (b)(viii)]

INCOME APPROACH:

In the income approach, the appraiser attempts to use the subdivision development technique. He uses a discounted cash flow analysis, where the components of this method are unsupported. He references IGWT performance from 2003 to 2007, but does not explain. He does not support the annual revenue estimate (absorption rate/number of lots sold per year) or selling expenses. The development costs are not considered. He uses a 15% discount rate, where he fails to break the rate down for reader analysis or support the rate from the market. [SR1-1(a), (b), (c); SR1-4 (c), (e); SR2-1 (a), (b); SR2-2 (b)(viii)]

Application of approaches to value to subject property:

The appraiser indicates on page 31 that he utilizes the cost approach, when in reality he did not utilize the approach. [SR1-1 (a), (b), (c); SR2-1 (a)]

Reconciliation:

The reconciliation comments on page 31 are misleading for the reason discussed in the preceding 3 paragraphs. [SR1-6]

Description of Take:

For the considerable dollar amount of damages that the appraiser attributes to the property, the description of the remainder is lacking. The appraiser does not provide detailed information regarding the

location of the easements, the width and shape of the 3 easements, and the rights affected by the easements. The report does not inform the reader of pertinent information regarding the easements. [SR1-1 (a), (b), (c); SR1-2 (e)(iv); sR1-4(f); SR2-1 (a), (b); SR2-2 (b) (iii)]

Damages to Remainder:

The appraiser does not describe the remainder. The report is unclear as to which areas of the remainder are damaged. On page 31 of the report, the appraiser in the **Description of Take** states that *it is the opinion of the appraiser that the easement will directly damage several commercial and residential lots and will result in proximity damage to the remainder of the property.* The appraiser fails to provide a detailed description of these areas. On pages 31 and 32, the appraiser mentions various studies on exposure to electronic magnetic fields, but fails to provide the names of the studies and source of his information. In paragraph 6 of page 32, the appraiser states that *our studies, which surveyed the effects of such power lines and their corresponding easements have on property values, indicate a definite devaluation effect.* Again, the appraiser does not provide or reference the studies. In the 7th paragraph, the appraiser states that *typical damages range from about 20% to 60% of the vacant land value depending on the severity of the take.* The appraiser's opinion of 20% to 60% damages of the vacant land is unsupported and misleading. In the last paragraph of page 32 and the top of page 33, the appraiser continues with his unsupported opinion of damages arbitrarily assigning damages to different sections of the property in the amount of \$980,388.00. The damages estimate is unsupported and misleading. [SR1-1 (a), (b), (c); SR1-3(a), (b); [SR1-4 (f); SR2-1 (a), (b), (c); SR2-2 (b)(viii)]

Addenda:

The information in the addenda consists of an undated, small-scale copy of a **draft** of a Future Land Use Map, a copy of a 2007 (Location Omitted) Community Data Profile sheet, a flood map, and a glossary of terms with no reference as to the source for the glossary information, no maps, no plot plans, or other items that would assist the reader in understanding the report. [SR1-1 (a), (b), (c); SR2-1(b)]

Prior Complaint / Disciplinary History: None.

Recommendation and Reasoning: The Respondent was a Certified Residential Appraiser from 1995-2008 and a Certified General Real Estate Appraiser since 2008, the appraisal at issue was conducted one year after Respondent received the Certified General upgrade. The reviewer is of the opinion that given the reviewer's scope of work, the report by the appraiser is incomplete due to substantial errors of omission or commission that significantly affect the appraisals. The accuracy of the data and techniques used in the report are 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. Due to the grievous errors in the above mentioned report and the bias reflected in the report and for the protection of the citizens of the State of Tennessee, the Respondent should be offered a **CONSENT ORDER for VOLUNTARY SURRENDER** of the Tennessee Certified General Appraisal License. If the Respondent does not accept this proposal, a formal proceeding should be commenced. Mr. Wade indicated that he felt the property was intentionally over-valued by using small lots to support a higher site value. Carter made a comment regarding the Respondent's failure to analyze the damages on the small part of the property.

Vote: Dr. Baryla made a motion to accept Mr. Wade's recommendation. Mr. Carter seconded the motion. The motion carried by a vote of five to one (5-1). [Voting "yes" were Ms. Coleman, Mr. Woodford, Mr. Phillips, Mr. Carter and Dr. Baryla. Mr. Flowers voted "no."]

15. 200901326 Danny Wiley was the Reviewer.

The Complainant alleged that the Respondent under-valued a six (6) acre residential property on February 19, 2009 by rendering a value opinion of \$308,000. The Complainant submitted an appraisal completed by a different appraiser with an effective date of February 10, 2009 that indicated a value of \$395,000 as support for this allegation as well as a previous listing of this property at \$545,900 from a year prior to this appraisal and a recent listing of a nearby property for \$239,900 which is on 2.8 acres. He also submitted the assessor's record card for the subject property which indicates a total tax appraisal of \$368,900.

The Respondent stated in his response letter that the appraisal submitted by the Complainant was similar in many ways to the conclusions in his own appraisal, but that the appraiser had omitted a guest house that comparable sale one (1) had on the property and that the remaining comparable sales were less similar to the subject in site size, location, design, and quality. Pertaining to the previous listing of the subject he wrote that the subject was listed for \$545,900, but then it was lowered to \$535,900 before being removed from the market. He indicated that the subject was listed again for \$509,900, but it never sold, and was removed again from the market approximately five months later. The Respondent indicated that it was his opinion that the subject was listed too high. He wrote pertaining to the active listing submitted by the Complainant that it was listed after the effective date of the appraisal. He indicated the assessed value of the property was also after the effective date of the appraisal and that it does not necessarily reflect the market value of the property. He concluded that he gave the assessed value no weight in his value opinion in the appraisal report.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The report contains incorrect information regarding the flood map and flood zone.
- The report contains no reconciliation of the value indication reported for the sales comparison approach. There is also no reconciliation between the comparison approach and the cost approach.

SITE DESCRIPTION

The flood map number and the flood zone indicated in the report are not accurate. See attached information obtained from the FEMA website. A portion of the site is in a designated flood hazard area. Even if the home itself is outside the flood zone, the fact that part of the site is in a flood zone could affect the lender's processing of the loan. [1-2(e)(i), SR 2-2(b)(iii)]

PROPERTY DESCRIPTION

The room count includes rooms on the basement level. This is contrary to the reporting requirements of HUD. [SCOPE OF WORK RULE, Problem Identification section]

COMPARISON APPROACH

Sale 3 – Basement - Finished basement area in Sale 3 has been double counted. The finished basement was included in the gross living area, and it was also reported in the basement area.

The reported data sources are MLS and tax records. The MLS listing reports that the home has 1,793 square feet on the main level and 650 square feet on the second level. However, the area reported to be on the second level is actually finished basement area. There is also a large unfinished basement area that was not reported. Correction of these errors would result in a positive effect on the gross living area

adjustment and a negative effect on the basement adjustment. It appears that the overall effect on the assignment results would be minimal.

Sale 4 - The report addresses the finished basement area, but does not address the unfinished basement area. The report states that there is no garage, and a positive adjustment was applied. The home has a two car garage. Correction of these errors would result in a lower value indication from the sale. However, the overall effect on the assigned results would be minimal.

RECONCILIATION

The comparable sales provide an indicated value range from \$258,750 to \$361,050. There is no explanation as to how the sales were reconciled to an indicated value (from the comparison approach) of \$308,000. Furthermore, there is no reconciliation between the comparison approach and the cost approach. [SR 1-6(a), SR 1-6(b), SR 2-2(b)(viii)]

Prior Complaint / Disciplinary History: 200602835 – Closed with no further action.

Recommendation and Reasoning: The Respondent has been a Certified Residential appraiser since 2005. Due to Respondents lack of disciplinary history and the relatively minor issues noted by the reviewer, Counsel and the Administrative Director recommend that this matter be closed with a **LETTER OF WARNING** regarding the issues noted in the Site Description, Property Description and Reconciliation sections.

Vote: Mr. Flowers made a motion to approve Legal’s recommendation. Mr. Wade seconded the motion. The motion carried unopposed.

Ms. Avers presented a report to the Commission indicating that the total number of complaints received since 2004 have increased. She also presented a report indicating that there are ninety (90) complaints currently open including those previously addressed and fifty-seven (57) of them have been opened for more than one hundred eighty (180) days.

THE APPRAISAL FOUNDATION – VOLUNTARY DISCIPLINARY ACTION MATRIX

Ms. Avers presented a copy of The Appraisal Foundation’s Voluntary Disciplinary Action Matrix to the Commission. The Commission discussed the advantages and disadvantages of adopting a discipline matrix. The Commission decided not to adopt any matrix at this time.

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Being no further business, the meeting was adjourned at 12:00 p.m.

Chairman, Herbert E. Phillips

Nikole Avers, Administrative Director