



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

October 11, 2010
Second Floor Conference Room, Andrew Johnson Tower

The Tennessee Real Estate Appraiser Commission met October 11, 2010 at 9:30 a.m. in Nashville, Tennessee, at the Andrew Johnson Tower in the second floor conference room. Vice-Chairman, Dr. Edward A. Baryla, called the meeting to order and the following business was transacted.

COMMISSION MEMBERS PRESENT

Dr. Edward A. Baryla
Herbert Phillips
James E. Wade, Jr.
William R. Flowers, Jr.
Marc Headden
Nancy W. Point

COMMISSION MEMBERS ABSENT

Thomas R. Carter
Najanna Coleman
Erik Sanford

STAFF MEMBERS PRESENT

Nikole Avers, Administrative Director
Aminah Saunders, Staff Attorney

ADOPT AGENDA

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

MINUTES

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

GENERAL BUSINESS

Education Committee Report

Dr. Baryla reviewed the education and submitted his recommendations to the Real Estate Appraiser Commission, as seen below. Mr. Headden made a motion to accept Dr. Baryla's recommendations. Mr. Phillips seconded the motion. Mr. Wade recused from vote. The motion carried unopposed.

October 2010 Education Committee Report

Course Provider	Course #	Course Name	Instructors	Hrs.	Type	Recommendation
Appraisal Institute	1437	Advanced Concepts & Case Studies	Kerry Jorgensen, Larry Wright	35 +3	CE	For
McKissock	1438	On-line Introduction to Legal Descriptions	Richard McKissock	2	CE	For
Appraisal Institute	1440	Analyzing Tenant Credit Risk + Commercial Lease Analysis	Jeffrey Miller	7	CE	For
LIA Administrators & Insurance Services	1441	Loss Prevention Program for Real Estate Appraisers	Peter Christensen Robert A. Wiley	4	CE	For

Individual Course Approval

Name	File #	Provider	Course Name	Hrs	Type	Rec. from Dr. Baryla
James Wade	198	The Appraisal Foundation & AARO	Level 2 State Investigator Training	17.5	CE	For

Applicant Conference

- **Phillips Theodore Thompson** submitted an application to become a certified residential real estate appraiser through reciprocity on September 17, 2010.
- **Tennessee Licensure History** – State Licensed Real Estate Appraiser (Reciprocal) 8/3/2006 to 8/31/2010. Expired currently.
- **Arkansas Licensure History** – Certified Residential 6/30/2010 to Present. State Licensed 4/24/2003 to 6/30/2010. Probation 1/1/2005 – 7/1/2005 and forty-five (45) hours of required courses as part of a consent order agreement.
- The **Character Page** of the initial application had all questions on the character page marked “no”; however, when the applicant’s credential was checked on the Appraisal Subcommittee website (www.asc.gov) there was an indicated disciplinary history. This was confirmed through a follow-up phone call and e-mail from the Arkansas Board.
- The application was denied on September 20, 2010 for failing to disclose disciplinary history and the applicant was contacted to inform him of the denial.
- On September 22, 2010 the applicant submitted a letter of response and revised application which indicated the disciplinary history on the character page. The information in the letter of response was deemed insufficient for a determination of the application reconsideration and the applicant was contacted to provide additional information.
- On September 24, 2010 a letter of response along with a copy of the consent order from Arkansas was received.
- On September 29, 2010 a letter was sent to the applicant indicating that his application had been selected for review by the Commission during the October 11, 2010 Commission meeting. His presence at the meeting was encouraged, but not required in this letter.

Note: After some discussion regarding the application and the failure to disclose a disciplinary history, Mr. Wade made a motion to approve the application. Mr. Flowers seconded that motion. The motion carried unopposed.

LEGAL REPORT

1. 2010007661 Danny Wiley was the Reviewer.

This complaint was filed by a consumer who alleged that the Respondent communicated a grossly negligent appraisal to the Department of Veteran's Affairs. The Complainant also alleged that the Respondent used inappropriate comparable sales because the sales were of interior lots, while the subject property is located fronting a golf course. The complainant also alleges that the Respondent failed to make adjustments for the renovated condition of the subject property.

The Respondent denied that his appraisal was grossly negligent or that inappropriate comparable sales were used. Respondent states that he is on the VA panel but does not work for the Department of Veteran's Affairs.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The report contains no analysis of the listing of the subject property.
- A prior sale of the subject occurred in the 3 years prior to the effective date of the appraisal. The sale price and date are reported, but there is no analysis of the prior sale.
- The home is located on a lot that adjoins a golf course. The report does not address the golf course location. The work file contains no data to indicate that there was any objective analysis to support the conclusion that no adjustment should be applied for the golf course location.

The report states that the subject property sold in 2008 for \$205,000. Public records indicate that the home sold on 2/29/2008 for \$205,000. The appraisal report contains no analysis of that sale. [SR 1-5(a), SR 1-5(b), SR 2-2(b) (viii)]

The market conditions have not been reported in compliance with applicable assignment conditions. The data on the form 1004MC is not consistent with the data presented on the top of page 2 of the URAR. [SCOPE OF WORK RULE: Problem Identification section]

The site adjoins a golf course. That fact is not addressed in the appraisal report. The view is reported to be "housesAv." [SR 1-2(e) (i), SR 2-1(a), SR 2-2(b) (iii)]

The MLS listing for the subject notes that the home is on a golf course. The listing includes photos showing the view of the golf course. Tax maps also show that the home is on the golf course. The location of the home on a golf course lot was not addressed in the comparison approach. There are no lot sales in the workfile. There are no tax maps in the workfile. There are no sales of homes fronting the golf course in the workfile. In sum, there is no evidence in the workfile that the Respondent conducted any objective analysis of market data to decide whether or not the golf course location was a factor in the value of the subject property. The MLS system contains many lot sales and home sales in the area that could have been analyzed to provide objective support for the effect of the golf course location. [SR 1-1(b), SR 1-2(e) (i), 1-4(a), SR 2-1(a), SR 2-2(b) (iii), SR 2-2(b) (viii)]

The report did not contain a cost approach or an income approach. Neither of these approaches would be required for the appraisal assignment. However, USPAP requirements state that the report must contain an explanation for the omission of these approaches, even in assignments where they are not required. [SR 2-2(b) (viii)]

In a response to TREAC that was received on April 1, 2010, the Respondent stated, "This is a copy of my file except for the contract, which I do not have." Failure to maintain a copy of the sale contract is inconsistent with record keeping requirements. [ETHICS RULE: Record Keeping section]

License History: Licensed Residential RE Appraiser 10/31/1991 to Present

Prior Complaint / Disciplinary History: None.

Reasoning and Recommendation: Counsel and the Administrative Director recommend authorization of a consent order imposing a seven hundred and fifty dollar (\$750.00) civil penalty and fifteen (15) hour Site Valuation and Cost Approach course. The corrective education should assist the Respondent with the analysis and reporting of issues related to the external influences of site value.

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

2. 201000883 Danny Wiley was the Reviewer

This complaint was filed by a consumer and alleged that the Respondent under-valued a residential property by communicating a value opinion of \$660,000 on March 18, 2010 when the property was under contract for \$730,000. The Complainant also alleges that the comparable sales were too far from the subject property and outdated, when closure comparable sales were available and the basement was not properly reconciled in the square footage.

The Respondent states that he believes the Complainant is disappointed in the value conclusion because the basement area of the subject was not included in the gross living area calculation. Respondent states that the comparable sales the complainant wanted used had more than 4000 square feet gross living area which is almost double the GLA of the subject.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The report appears to provide credible support for the assignment results. The reviewer found no significant issues.
- The allegation that the gross living area was not accurately reported is without merit.
- The gross living area and the finished basement area were reported in accordance with applicable appraisal guidelines. It appears that the complainant is not familiar with the requirements that appraisers must follow in reporting finished basement area.
- There is no support for the allegation that the home was under valued due to the use of improper comparable sales. The sales provided by the complainant are not similar to the subject property. The sales included in the appraisal report appear to be the best available as of the effective date of the appraisal.

License History: Registered Trainee 8/9/1999 to 5/21/2007
License RE Appraisers 5/21/07 to 11/18/2009
Certified Residential RE Appraiser 11/18/2009 to Present

Prior Complaint / Disciplinary History: None

Reasoning and Recommendation: Counsel and the Administrative Director recommend that this complaint be DISMISSED as the reviewer did not identify any violations of USPAP.

Vote: Mr. Wade made a motion to accept the recommendation. Mr. Phillips seconded that motion. The motion carried unopposed.

3. 201001097 Danny Wiley was the Reviewer.

This complaint was filed by an Appraisal Management Company and alleges that the Respondent violated USPAP, Scope of Work Rule, Ethics Rule and Competency Rule by failing to provide three (3) comparable listings as required on an REO assignment and failing to have MLS access in the subject area.

The Respondent stated in his response letter that when he initially accepted the appraisal order, he didn't understand the instructions to put comparable listings in the appraisal. He subsequently was requested by the client to add those listings. He told him it would cost an additional one hundred dollar (\$100) fee for the listings as he would have to go back to the subject area (150 + miles from his office) and meet with local realtors to get the listings. The lender told him that he should have read the instructions and they would not pay an additional fee. The Respondent indicated that they should reassign the appraisal assignment and he would not charge them for the appraisal because he does not have MLS access in that area. He indicated he used courthouse records to verify his sales data.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- It appears that the Respondent did not have access to adequate data sources to complete the assignment. It appears that lack of MLS access resulted in errors/omissions in the appraisal and the report.
- The Respondent accepted an assignment but did not meet all of the assignment conditions.
- Specifically, a supplemental REO addendum including comparable listings was not included in the appraisal report.
- The distances to the comparables were understated.
- Prior transfers of the subject were reported, but there was no analysis of those transfers.
- Prior transfers of Sale three (3) were not reported.

In a response to TREAC dated April 14, 2010 the Respondent indicated that the subject property is in an area that is covered by two different MLS systems, and that he only subscribed to one of them. No public records data was included in the workfile documents submitted for review. It appears that the Respondent did not access the data sources that would be used by appraisers' peers and would be expected by intended users. [SCOPE OF WORK RULE, Problem Identification section, SCOPE OF WORK RULE: Scope of Work Acceptability section, SR 1-2(h), SR 1-4(a)]

The report states, "NO INFORMATION WAS PROVIDED AS TO THE SUBJECT PROPERTY BEING UNDER CONTRACT." However, the MLS listing indicates that the status of the listing was changed to PENDING on March 2, 2010, approximately three (3) weeks prior to the effective date of the appraisal. The workfile documents submitted by the Respondent contain a listing sheet that was prepared by Realty Company but they do not contain any MLS listings for the subject. [SCOPE OF WORK RULE, Scope of Work Acceptability section, SR 1-5(a), SR 2-2(b) (viii)]

The report contains contradictory information. The 1004MC was not completed properly. The top of page 2 of the URAR indicates that there are no sales of similar homes in the subject neighborhood in the past year. The 1004MC form indicates 3 sales of similar homes in the subject neighborhood in the past year. The report indicates that prices are stable, supply and demand is in balance and marketing times are 3-6 months, but there is no support for those findings in the report. There is no support for those findings in the workfile documents. The 1004 MC reports that foreclosures are not a factor in the market. The subject was a foreclosure property, and there was a recent foreclosure of the home used as sale three (3). [SCOPE OF WORK RULE: Problem Identification section, SR 1-2(e) (i), SR 2-1(a), SR 2- 2(b) (iii)]

The distances from the subject property to the comparables sales are reported to be "FIVE MILES SOUTHEAST," "SIX MILES SOUTHEAST," and "THIRTEEN MILES SOUTHEAST." The reviewer located the subject and the comparable sales using online tax maps and measured the distance from the subject to the comparables using the measurement tool in DeLorme Street Atlas USA. The actual distances to the comparables (measured on a straight line) are approximately 9.6 miles, 14.2 miles and 19.7 miles. The map in the appraisal report appears to have been generated manually; it does not appear to be from an integrated mapping application that automatically posts the distances to the comparables. [SR 2-1(a)]

The report indicates two prior transfers of the subject property in the 3 years prior to the effective date of the appraisal. Sales prices and dates are provided, but the report contains no analysis of those prior transfers. The sale of the subject in January 2009 was reported in the MLS. The listing states that this is a sale out of foreclosure. The transaction in September 2008 was a foreclosure action. [SR 1-5(b), SR 2-2(b) (viii)]

No sales history is provided for the comparable sales. The report states, "COMPARABLES SOLD ONLY ONCE IN THE PAST YEAR." The workfile documents submitted by the Respondent contain no data that could be used to verify the sales history of the comparable sales. Sales data is readily available in online assessment records. Available data indicates that there were transfers involving sale three (3) in the year prior to the sale reported in the adjustment grid. A sale in 02/2009 (4 months prior to the sale reported in the adjustment grid) was reported in the MLS. This was not reported in the appraisal report. [SCOPE OF WORK RULE: Scope of Work Acceptability section, SCOPE OF WORK RULE: Problem Identification section, SR 1-1(b), SR 2-1(a)]

The report states that cost data was based on information from local contractors. The workfile documents include no cost data. [ETHICS RULE: Record Keeping section]

License History: Certified Residential RE Appraiser 9/15/1993 to Present

Prior Complaint / Disciplinary History: None

Reasoning and Recommendation: Counsel and the Administrative Director recommend the authorization of a consent order imposing a civil penalty of seven hundred and fifty dollars (\$750.00) and completion of a fifteen (15) hour Residential Report Writing course, a fifteen (15) hour USPAP course, and a fifteen (15) hour Residential Site Valuation and Cost Approach course within six (6) months (or 180 days) of the execution of the order.

Note: Mr. Headden indicated that he felt that a civil penalty of seven hundred and fifty dollars (\$750.00) and made a motion to increase the civil penalty to \$1,500 and accept the rest of the recommendation. Mr. Flowers seconded that motion. The motion carried unopposed.

4. 2010011101 Danny Wiley was the Reviewer.

This complaint was filed by a consumer and alleged that the Respondent under-valued a residential property by communicating a value opinion of \$220,000 on March 22, 2010. The complainant states that the Respondent used inappropriate comparable sales and performing the appraisal with bias.

The Respondent states that he used the best comparable sales that were available at the time and even asked the listing agent if she were aware of any additional comparable sales he could review. Respondent states that there were no comparable sales within the subdivision within the previous year therefore he used comparables from nearby subdivisions with similar amenities. Respondent denies any bias in performing this appraisal.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The report contains conflicting information regarding market conditions. Prices are described as both stable and decreasing. The 1004MC form was not completed correctly.
- A sale within the subject's subdivision was omitted from the sales comparison analysis, but there is not clear evidence that this omission affected the assignment results.

The report contains inadequate and conflicting information regarding market conditions. The 1004MC form that was included in the report has not been completed properly. Page one (1) of the URAR indicates that prices in the area are stable. However, the 1004MC form indicates that prices are declining. Furthermore, a market condition adjustment in the amount of -\$10,000 was applied to sale three (3). If prices were stable, then the market condition adjustment was not appropriate. If the adjustment is appropriate, then the report must address the declining prices.

At the top of page 2 of the URAR, the report states that there have been no comparable sales in the subject neighborhood in the past year. However, the 1004MC form states that there have been six (6) sales of comparable properties in the neighborhood in the past year. The number of sales reported at the top of page two (2) must be consistent with the total number of sales reported on the first line of the grid at the top of the 1004MC form. Several cells in the form 1004MC were left blank, and no explanation was provided. The directions for completing this form state that if any of the cells are left blank, the appraiser must provide an explanation of why the data was omitted.

The grid on the 1004MC form indicates only 2 sales in each reporting period. This would not be sufficient data from which to make any conclusions about price trends. In such cases the appraiser is required to supplement the data in the 1004MC grid with additional data to support the appraiser's conclusions regarding trends. No such data was included in the appraisal report. This is a particularly critical omission given that a market condition adjustment was applied to one of the comparables. Anytime a market condition adjustment is applied the appraisal report must contain support for that adjustment. [SCOPE OF WORK RULE: Problem Identification section, SR 1-2(e) (i), SR 2-2(b) (iii)]

License History: Licensed RE Appraiser 1/31/1995 to 8/10/1998
Certified Residential RE Appraiser 8/10/1998 to Present

Prior Complaint / Disciplinary History: None

Reasoning and Recommendation: Counsel and the Administrative Director recommend that given the nature of the violations and the Respondent's disciplinary history that this matter be closed with a Letter of Instruction or warning regarding the cited violations.

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

5. 201000266 Danny Wiley was the Reviewer.

This complaint was filed by a trainee against his former supervisor and included allegations that the sponsor failed to directly supervise and change appraisal reports without discussing the changes with him. He alleged further that the supervisor misreported the size on a specific property and changed the comparable sales despite the trainee advising the sponsor of the size of the dwelling.

The Respondent stated in his response letter that he stopped using the Complainant as his trainee after "his repeatedly handing in sloppy appraisals". He alleged the trainee favored a client friend of his by submitting reports that had an estimated value at whatever the client indicated on the request in refinance matters. He indicated he spoke with the trainee about this and for a time he would improve, but then revert back to the practice. He also alleged he had received complaints from lender about the trainee's unprofessional conduct during appraisal inspections. He indicated that he has submitted the workfile with building sketch done by the trainee which was identified in the complaint. He said he did not change the building sketch in the appraisal. The Respondent's office assistant sent in an e-mail indicated she had sent the trainee pdf files of all the appraisals he had worked on.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The report states that prices were declining, but no market condition adjustments were made. The 1004MC form was not completed properly.
- The sizes reported for two of the comparable sales are not consistent with the sizes reported in the cited data sources.
- There site value and estimated cost are not supported. The value from the cost approach is not adequately reconciled with the value from the comparison approach.

The report states that prices in the subject's market are declining. This is supported by data on the 1004MC form. The 1004MC form was not completed in compliance with the requirements of Fannie Mae. The first line in the 1004MC grid indicates that there have been 28 sales of similar homes in the subject's area in the past year (16+6+6). However, page 2 of the URAR indicates that there have been 20 sales of comparable homes in the subject area in the past year. These numbers should be consistent. The grid on 1004MC form contains several cells with the response "N/A." Such responses are allowable, but they must be accompanied by an explanation. This requirement is stated on the 1004MC form itself.

[SCOPE OF WORK RULE: Problem Identification section, (failed to comply with applicable assignment conditions)]

There are multiple references in the appraisal report to the fact that prices in the area are declining (NEIGHBORHOOD section, comments on ADDENDUM, 1004MC form). However, no market condition

adjustments were applied to the comparable sales, and they were all over six months old. Application of market condition adjustments would result in lower value indications.

[SR 1-1(a), SR 1-1(b), SR 1-4(a)]

The appraisal report indicates that the data sources were MLS and tax data. Sale 2 is reported to have 2,300. The MLS and the online public records indicate that the home has 2,435 square feet. The appraisal report states that sale 3 has 2,250 square feet. The MLS and tax data both indicate that it has 2,722 square feet. Hence, the sizes reported for sales 2 and 3 are much lower than the sizes reported in the cited data sources. Use of the sizes reported in the MLS and tax records would result in a lower value indication for both of these sales. [SR 1-1(b), SR 2-1(a)]

Neither the workfile nor the report contains support for the estimated site value. [ETHICS RULE: Record Keeping section, SR 1-1(a)]

The replacement cost is estimated at \$110.73 per square foot, and the source is reported to be Marshall & Swift. The dollar amount used is not consistent with the data from Marshall Valuation Service that is included in the workfile. [SR 1-1(a)]

The indicated value from the comparison approach is \$230,000. The indicated value from the cost approach is \$312,800. The RECONCILIATION comments state, "The cost approach establishes a similar limit to value..." The meaning of this statement is unknown. The value indications are not similar, and there is no explanation of how such a wide variance was reconciled to the final value conclusion. [SR 1-6(b), SR 2-2(b) (viii)]

License History: Certified Residential 07/30/2004 to Present

Prior Complaint / Disciplinary History: 20070622 (Closed with no further action due to insufficient evidence); 200901055 (Closed with a Letter of Warning regarding adequately reporting relevant information)

Reasoning and Recommendation: Counsel and the Administrative Director recommend authorization of a Consent Order imposing a five hundred dollar (\$500.00) civil penalty and requiring the completion a fifteen (15) hour Site Valuation and Cost Approach course, a fifteen (15) hour Residential Report Writing Course, and a fifteen (15) hour Residential Market Analysis and Highest and Best Use course.

Vote: Mr. Phillips made a motion increase the civil penalty to seven hundred fifty dollars (\$750) and to accept the remainder of the recommendation. Mr. Wade seconded that motion. The motion carried unopposed.

Discussion of Rule Making Proposals

Legal Counsel, Aminah Saunders, submitted to the Commission an Interpretation of the Real Property Appraiser Qualification Criteria for Changing a Credential dated November 7, 2006. It was discussed that while not all of the courses specified in the interpretation exist, such as a ten hour qualifying education course, the interpretation to allow specified approved qualifying education to meet the 2008 requirements for those who were licensed or certified prior to the 2008 education changes is felt to be a reasonable interpretation that could be incorporated into the proposed changes. Commission members indicated that counsel should proceed in drafting those rules and those for the foreign degree interpretation. The

Commission asked if AMC Rules would be ready for the November meeting. Counsel indicated she was working to complete the rules for consideration.

Being no further business, the meeting was adjourned at 10:55 a.m.

Chairman, Thomas Carter

Nikole Avers, Administrative Director