



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

February 8, 2010
Third Floor Conference Room, Andrew Johnson Tower

The Tennessee Real Estate Appraiser Commission met February 8, 2010, at 9:10 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
Marc Headden
Thomas R. Carter
William R. Flowers, Jr.
Erik Sanford

COMMISSION MEMBERS ABSENT

Najanna Coleman
Dr. Edward A. Baryla

STAFF MEMBERS PRESENT

Nikole Avers, Administrative Director
Aminah Saunders, Staff Attorney

ADOPT AGENDA

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

MINUTES

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

GENERAL BUSINESS

Experience Interviews

No trainee experience interviews were held for the month of February.

Education Committee Report

Dr. Baryla reviewed the education and submitted his recommendations by e-mail to the Real Estate Appraiser Commission. Dr. Baryla recommended approval of the entire included education request. Mr. Headden made a motion to accept Dr. Baryla's recommendations. Mr. Woodford seconded the motion. The motion carried unopposed.

February Education Committee Report

Provider	Course #	Course Name	Instructors	Hrs.	Type	Rec. from Dr. Baryla
The Columbia Institute	1358	2010 7-hour National USPAP Update Course, No. 831	George R. Harrison	7	CE	Approved
NAIFA	1359	Understanding Highest & Best Use	Mike Orman	7	CE	Approved
NAIFA	1360	5.0A 2010-11 USPAP	Mike Orman	7	CE	Approved
McKissock, Inc.	1361	ERC: Techniques for Relocation Appraisals	Kenneth Guilfoyle	7	CE	Approved
McKissock, Inc.	1362	Risky Business: Ways to Minimize Liability	Kenneth Guilfoyle	7	CE	Approved
McKissock, Inc.	1363	Sales Verification: Policies, Procedures & Case Studies	Kenneth Guilfoyle	7	CE	Approved
McKissock, Inc.	1364	The Changing World of FHA Appraising	Kenneth Guilfoyle	7	CE	Approved
Danny Wiley	1365	Hot Topics in Residential Appraisal	Danny Wiley	4	CE	Approved

Individual Course Approval

Name	File#	Provider	Course Name	Hrs	Type	Rec. from Dr. Baryla
James E. Wade Jr.	198	The Appraisal Foundation	Investigator Training Course	17	CE	Approved
Nikole Avers	3345	The Appraisal Foundation	Investigator Training Course	17	CE	Approved

LEGAL REPORT - Staff Attorney Aminah Saunders presented the following legal report:

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

Daniel Witt (approved 12/09) – signed Consent Order requiring a \$500.00 civil penalty and completion of a fifteen (15) hour Residential Report Writing course, a thirty (30) hour Basic Appraisal Procedures course and a fifteen (15) hour Site Valuation and Cost Approach course. In an appraisal report there were significant errors in the comparison approach, the appraisal report contained no analysis of the sales contract and there was no analysis of prior sales that occurred in the three years prior to the effective date of the appraisal. 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)(viii) & 2-2(b)(3) of the Uniform Standards of Professional Appraisal Practice.

Thomas P. Lynch, Sr. (approved 11/09) – signed Consent Order imposing a 1 year period of probation (with conditions) and a \$3,000 civil penalty (\$1,000 upon execution of the order, and \$2,000 by the end of the probationary period) wherein Respondent is not permitted to add any new Registered Trainees during this period. Respondent was negligent and displayed a lack of diligence in his measurements of the subject property and committed several errors in the sales comparison approach in this assignment. Respondent has received prior discipline from the Commission. Respondent violated Standards Rules (SR's) 1-1(a), (b), & (c), 1-2(e) (i), 1-4(a), 2-1(a) & 2-2(b)(viii) of USPAP.

Michael E. Williamson (approved 12/09) – signed Consent Order imposing a certificate restriction in that Respondent is required to successfully complete the following corrective education course by September of 2010: Advanced Applications (40 hours) or a course of equivalent content, to be followed by submission to the Administrative Director of a commercial leased fee appraisal logged after completion of the course but not later than January 3, 2011. Respondent's failure to identify the proposed estate (leased fee) and the methods used in his appraisal of the subject, pointed to a lack of understanding by Respondent in developing and reporting this appraisal. Respondent has presented data in a misleading fashion and has committed a substantial error that significantly affected his appraisal by inclusion of certain components of the property in some approaches but not in others. However, the misleading nature of the Respondent's appraisal is not considered intentional but rather, goes to the issue of competency. The report is extensive as to data and reporting but misses key elements of analysis. Respondent violated Standards Rules (SR's) 1-1(a) & (b), 1-2(e)(ii), and 2-1(a) of USPAP.

1. 2009027121 There was no Reviewer

This complaint was filed by a consumer and alleged that the Respondent acted unprofessionally when he laughed at the Complainants request for him to send another copy of the appraisal report to the lender client because the client had misplaced the report. In a letter dated, January, 2010 the complainant states, that he believes there is nothing to gain in escalating the complaint.

The Respondent stated in his response letter that he did not laugh at the Complainants request. He submitted a phone log of calls received. He wrote that the client requested he appraise the subject property on December 2, 2009 for a property that was under construction. He was asked to wait until construction was completed, and therefore did not inspect the property until December 19, 2009. He wrote that the appraisal was completed and communicated to the client on December 21, 2009. He indicated he was called the following day by the Complainant regarding the "missing" report. He told the Complainant that the report had been sent the previous day. When requested to send it to the Realtor,

the Respondent indicated he could not because the credit union was his client. He further added that when he contacted the underwriter regarding the allegedly missing report, she told him that they had been hit by a winter storm on December 21, and they were 81 appraisals behind in underwriting. He added that the client requested he not communicate further with the Complainant. He concluded his response letter that the matter was just a misinterpretation by the Complainant that the report had not been sent, when it actually just hadn't been processed on the day he called.

Prior Complaint / Disciplinary History: None

Recommendation and Reasoning: Counsel and the Administrative Director recommend that this matter be **Dismissed** as no violation has occurred.

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

2. 200901055 Danny Wiley was the Reviewer.

This complaint was filed by a mortgage lender and included allegations that the Respondent over-valued two residential properties in February 2009. In the first appraisal, the Complainant alleged that the comparable sale two (2) and active listing comparable five (5) did not support the value conclusion and the range of adjusted sale/listing prices was very large without adequate reconciliation. Further they alleged the reconciliation of the cost and sales comparison approaches were without substance or significance. In the second appraisal report, the complainant alleged that the Respondent ignored two sales on the subject's road which did not support the value conclusion indicated by the Respondent, and that the listing comparable four (4) did not support the Respondent's value conclusion.

The Respondent stated in his response letter that he consulted with a builder for the cost approach information. He indicated in the first appraisal that he chose comparables similar in gross living area, utility, age, site size, and condition. He added that the "goat barn" was not considered or given any value due to its poor condition. He wrote that no age adjustment was made to comparable three because it was similar in effective age. He stated in the letter that the neighborhood boundaries adequately describe the subject's rural area and that the basement adjustment made to comparable two is supported by the other comparable sales included in the report. In response to the second appraisal complaint, he indicated that the large range is due to the reviewer including the active listing. He indicated that comparable four was given little weight in the reconciliation and that the two sales on the subject's street were foreclosure sales and not arm's length transactions. He concluded that the subject's estimated site value was based on two sales and the assessed value of the subject site.

EXPERT CONCLUSIONS as to Appraisal (1) [alleged violations included within brackets]:

- The complaint alleges that improper sales were used in the sales comparison approach. That allegation does not have merit.
- A wide value range is indicated by the sales comparison analysis; there is no reconciliation or explanation of how the final value opinion was derived from the wide value range.

NEIGHBORHOOD

The neighborhood description is incomplete. Only three neighborhood boundaries are reported. [SR 2-1(a), SR 2-2(b)(iii)]

The report indicates that the lender is the only intended user. For FHA loans HUD must be identified as an intended user of the appraisal report. [SCOPE OF WORK RULE, Problem Identification section]

COMPARISON APPROACH

Selection of Sales

The comparable sales are all located several miles from the subject property. This is common for appraisals of homes in rural locations. The complaint alleges improper comparable sales were used. This allegation is without merit. The allegation is based in part on two sales on Ardmore Highway they were included in an appraisal report that was prepared by another appraiser.

One of the sales - involving a property at 1191 In Ardmore Hwy. - was reported in public records, but not in MLS records. While this sale may have been relevant, appraisers often exclude sales that cannot be verified using multiple data sources. The other sale - at 1964 Ardmore Hwy. - involved a home with more than 2800 square feet of gross living area. The sales used by the Respondent appeared to be better suited for use in the comparison approach.

Sale 3 is reported to have no covered parking. MLS data and public records indicate that there is a 2-car detached garage and a large detached garage (approximately 30 x 36 according to public records). Appropriate adjustments for these items would result in a narrower range of indicated value. [SR 1-1(b), SR 2-1(a)]

Value Range/Reconciliation

The sales comparison analysis provides an indicated value range from \$140,600 to \$200,500. The report contains no reconciliation or comments explaining how the final value opinion of \$180,000 was selected from this wide range. [SR 1-6(a), SR 2-2(b)(viii)]

EXPERT CONCLUSIONS as to Appraisal (2) [alleged violations included within brackets]:

- The neighborhood description is incomplete and contains contradictory statements.
- The analysis presented appears to be credible.

NEIGHBORHOOD

The neighborhood description is incomplete. The area description contains contradictory statements. Only two neighborhood boundaries are reported. Report states that the area is rural in nature with "spot" residential development. However, it also states that build-up is over 75%. "Present Land Use" is reported to be over 80% single-family development and only 10% vacant or agricultural land. Supply and demand are reported to be in balance on page 1 of the report. Page 2 of the report indicates that the number of current listings exceeds the number of sales in the past year. [SR 2-1(a), SR 2-2(b)(iii)]

INTENDED USER

The report indicates that the lender is the only intended user. For FHA loans HUD must be identified as an intended user of the appraisal report. [SCOPE OF WORK RULE, Problem Identification section]

COMPARISON APPROACH

The comparable sales are all located several miles from the subject property. This is common for appraisals of homes in rural locations. The reviewer used the local MLS system to analyze all sales

involving homes of similar size and age in the Lewisburg area. The sales used appear to be among the best available. The analysis presented in the comparison approach appears to be credible.

Prior Complaint / Disciplinary History: 20070622 (Closed due to insufficient evidence)

Recommendation and Reasoning: Counsel and the Administrative Director recommend that this matter be closed with a **Letter of Warning** pertaining to adequately summarizing the reconciliation of value opinions, adequately and consistently summarizing neighborhood information, and properly identifying intended users of the appraisal report.

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

3. 200900941 Danny Wiley was the Reviewer.

The Complainant, a mortgage lender, alleged the Respondent over-valued a residential property by indicating a value opinion of \$319,000 on October 31, 2007. The Complainant submitted a field review appraisal that indicated a value opinion of \$231,000 with the effective date of report of November 12, 2007 as support for the allegation. Further, the field review reported that the comparables used in the Respondent's appraisal were inappropriate in that the subject was 17 years old and all but one of the comparables used were 1 to 2 years old and superior to the subject and that the one older sale used was larger in living area and of superior quality. In addition, the Complainant's field review alleged that the adjustments made in the sales comparison approach were inconsistently applied and without adequate reconciliation or summary in the report. Finally, the field reviewer alleged that the Respondent failed to analyze and report the sale history of the comparable sales and misreported the site information of one of the comparables.

The Respondent stated in his response letter that the Client had indicated on the engagement request that they estimated the value for the subject property was \$351,000; whereas, he ultimately appraised the subject for \$319,000. He indicated a primary difference between his appraisal and the review appraisal was that he appraised the property indicating a "suburban" location while the reviewer identified the subject as "rural". The Respondent indicated his comparable sales were within 3-5 miles of the subject while the reviewer used comparable sales 7-9 miles away. He indicated he felt the review appraiser was not geographically competent in this appraisal assignment and that the reviewer's cost approach was consistent with his cost approach and appraised value.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The age adjustments applied to the comparable sales are inconsistent and contrary to data presented in the cost approach.
- The site adjustments do not appear to be adequately supported.
- The comparison approach contains no consideration for furniture that was included in several of the sales.
- The report states that limited rental data was available. The workfile documents indicate that rental data was readily available.
- Multiple reports were prepared, but only one report was submitted by the Respondent.

The appraisal report indicates that demand and supply are in balance. This is not consistent with the information provided on page 2, which states that the number of comparable listings is twice the number of comparable sales in the past year.

[SR 1-2(e)(i), SR 2-1(a), SR 2-2(b)(iii)]

AGE ADJUSTMENTS

The age adjustments applied to the comparables are inconsistent with each other and inconsistent with the depreciation applied in the cost approach. The report indicates an effective age of 10 years for the subject property. The physical depreciation reported in the cost approach (\$37,883) is supposed to reflect the loss in value attributable to the subject's effective age. The age adjustments in the comparison approach are supposed to reflect the same thing. Therefore, the adjustments for age should be consistent with the reported physical depreciation. They are not; Sales 3 and 4 are reported to have effective ages of one year. The adjustment applied is only -\$9,000.

Sale 4 is reported to have an effective age of one year, but no adjustment is applied.

Sale 5 is reported to have an effective age of two years, but no adjustment is applied.

Sale 6 is a new home. The age adjustment is -\$10,000. This is not consistent with the depreciation applied in the cost approach. [SR 1-1(a), SR 1-1(b), SR 1-4(a)]

Sale 1

The MLS listing indicates that this home was sold "fully furnished." This was not addressed in the comparison approach. [SR 1-1(b), SR 1-4(a), SR 2-1(a)]

The report indicates that there have been no transfers of this property in the two years prior to the sale reported in the adjustment grid. Online public records for Sevier County indicate a transfer of the property in September 2006. [SCOPE OF WORK RULE, Problem Identification section, SR 2-1(a)]

Sale 2

The sale price of the home is reported as \$319,900; that is the sale price recorded on the deed. However, a subsequent deed with a price of \$303,905 was recorded on the same day. The tax assessor's office indicated that the revised sales price was to reflect personal property (furniture) included in the sale. The personal property included in the sale was not addressed in the comparison approach. [SR 1-1(b), SR 1-4(a), SR 2-1(a)]

INCOME APPROACH

The appraisal report states, "*The Income Approach is not applicable due to predominantly owner occupied properties with limited rent data available.*" The MLS listing for Sale 1 indicates that the home has been, "*On a rental program for just a few months and doing well...*" The MLS listing for Sale 3 states, "*This cabin has rental potential of well over \$100,000 annually.*" The MLS listing for Sale 4 indicates that the property had \$19,016 in rental income for 2006 and \$13,389 so far in 2007. Investment motives are present in the market, and rental data is readily available. [SR 2-1(a)]

RECORD KEEPING/RESPONSE TO COMPLAINT

In a letter dated May 21, 2009, the Respondent was directed to provide copies of all appraisal reports prepared on the subject property. It appears that the Respondent did not adequately comply with this

request. The Respondent submitted one appraisal report. The Respondent stated that multiple reports were prepared and submitted to the client.

The appraisal report submitted by the Respondent indicates an effective date of 10/31/2007 and a signature date of 12/07/2007. The appraisal report submitted with the complaint indicates an effective date of 10/31/2007 and a signature date of 11/12/2007.

The following differences between the appraisal report submitted by the Respondent and the appraisal report submitted with the complaint were noted:

1. The reported price range and predominant value are different.
2. The report submitted by the Respondent has six comparable sales; the report submitted with the complaint has five comparable sales.
3. The report submitted with the complaint contains a FIRREA/USPAP Addendum. This is not included in the report submitted by the Respondent.
4. The signature dates are different.

[ETHICS RULE, Record Keeping section]

Prior Complaint / Disciplinary History: None.

Recommendation and Reasoning: The Respondent has been an appraiser for twenty (20) years, twelve in Tennessee and has had no prior disciplinary history. Counsel and the Administrative Director recommend that Respondent be offered a **consent order** requiring a civil penalty of \$500, and completion of a 30 hour "Residential Sales Comparison and Income Approach" course, a 15 hour "Residential Market Analysis and Highest & Best Use" course, and a 15 hour "Residential Site Valuation and Cost Approach" course within 180 days (6 months) of execution of the order. No continuing education credit should be granted for this corrective education. If the Respondent rejects the consent order formal hearing proceedings should be commenced.

Vote: After some discussion on possibly increasing the civil penalty to \$2,000, Mr. Headden made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

4. 200901769 Danny Wiley was the Reviewer.

This complaint was filed by a consumer and included allegations that the Respondent did not conduct the inspection of her home but rather a trainee came to her home. The FIRREA addendum in the appraisal report identifies this trainee as contributing in every aspect of the appraisal assignment, but does not further describe the inspection differences between the appraiser and the trainee. The Complainant alleged significant differences in the appraisal of her house compared to one obtained on the neighboring house in the same time period. She alleged by comparison that her property was superior but that the Respondent appraised her property for less than the neighbor's property. She alleged that the trainee was not competent to appraise this property on his own. She further alleged that superior improvements made to her property were not adequately analyzed and reported within the appraisal and that inappropriate comparable sales were used that were unnecessarily far from the subject property.

The Respondent stated in his response letter that the property inspection was conducted by his registered trainee. Respondent states that he "only signed that way after I inquired about this

issue in 2007 and I was told that it was an acceptable way to sign it as long as the trainee's name was on the report stating they were involved in every aspect." He wrote that he did not inspect the interior of the subject property, but that he did drive by the exterior of the subject property. He added that the trainee is competent to appraise this type of property. He stated in his response letter that all of the improvements described by the Complainant were noted at the time of inspection, but he wrote that none of the special features translated into contributory value. He affirmed that the comparable sales used were appropriate and adequately analyzed. He concluded that her assertion that the subject property was superior to other houses competing in her neighborhood he alleged was exaggerating. He wrote that the condition and quality of her property was not superior.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The appraisal report is misleading. The appraiser who signed the report did not inspect the subject property.

The appraisal report is signed only by Supervisor. The report indicates that Trainee, a registered trainee at the time of the appraisal, participated in every aspect of the appraisal. The complaint alleges that Supervisor did not inspect the subject property. In a written response to the TREAC, Supervisor stated that he did not inspect the interior of the home and that he did not inspect the comparable sales until later. The report was communicated on the URAR form. Page 4 of that form describes the scope of work, and states, in part, "*The appraiser must, at a minimum; (1) perform a complete visual inspection of the interior and exterior areas of the subject property... (3) Inspect each of the comparable sales from at least the street...*" By not inspecting the interior of the home and the exterior of the comparables, Supervisor failed to comply with the required minimum scope of work for a person who signs the report as the appraiser. [Scope of Work Rule, Problem Identification Section]

By signing the certification in the URAR, Supervisor has certified that: he has developed the appraisal in accordance with the scope of work requirements stated in the report (Certification Statement 1); and that, he has performed a complete visual inspection of the interior of the subject property (Certification Statement 2). Since Supervisor has stated that he did not inspect the interior of the subject property, the statements made in the appraisal report are false. The report is misleading. [ETHICS RULE, Conduct section, SR 2-1(a)]

The report would not have been misleading if (1) Trainee, who inspected the property, had signed the report as the appraiser, and (2) Supervisor had signed the report as the Supervisory Appraiser and indicated that he had not inspected the subject or the comparables.

Prior Complaint / Disciplinary History: Trainee: None

Prior Complaint / Disciplinary History: Supervisor: 200706256 Closed by Consent Order requiring \$1000 civil penalty and education requirements.

Recommendation and Reasoning: The Respondent – Supervisor has been certified since 2007. This Respondent was disciplined in 2007 and paid a \$1000 civil penalty and completed three (3) courses. Counsel and the Administrative Director would recommend the supervisor be issued a consent order for \$1500 for communicating a misleading appraisal report and be required to complete a 15 hour USPAP course. No continuing education should be granted for this corrective education.

The trainee has been certified since August, 2009. Counsel and the Administrative Director recommend the trainee be sent a Letter of Warning regarding this issue.

Vote: Mr. Woodford made the motion to accept the recommendation with the amendment that the Respondent could have no new trainees for a one year probationary period. Mr. Wade seconded the motion. The motion carried unopposed.

5. 200901062 Danny Wiley was the Reviewer.

This complaint was submitted by a consumer and included allegations that the Respondent under-valued a residential log cabin property by rendering a value opinion of \$373,000 on April 15, 2009. The complainant submitted an appraisal dated January 10, 2008 that indicated a value of \$625,000. He further alleged that the Respondent misreport room totals, square footage, and amenities.

The Respondent indicated that she measured the subject property and made a detailed sketch of the dwelling, including rooms. She wrote that she believes that the Complainant may be including basement square footage and room totals in his description of the subject property, and that these figures are separated in her appraisal report to above and below grade living spaces. She indicated that the amenities of the subject property were considered and the comparable sales used had similar amenities. She indicated that two sales in the subject's immediate neighborhood were foreclosure sales and that she believes the subject is located in a market area of declining values. She indicated that her client did not require any additional comparable sales, but she did include an addendum reporting that the comparable sales used would be considered similar to the subject by potential buyers.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- Some errors were noted, but they do not appear to be significant enough to affect the assignment results.
- The complaint alleges that the room count is incorrect. It appears that the Complainant is not familiar with the conventions used for reporting the room count.
- Overall, the analysis presented appears credible.

PROPERTY DESCRIPTION

The complaint alleges that the room count is incorrect. It appears that the room count has been reported in accordance with the reporting conventions typically used in residential appraisal reports. The room count does not typically include rooms in below grade living area. The appraisal report indicates that the above grade living area is 1,740 square feet. The report includes a diagram that shows the dimensions of the home and the area calculations. A previous appraisal report submitted with the complaint indicates that the home has 1,978 square feet. However, that report did not include a diagram with dimensions and area calculations. Therefore, the gross living area reported by the Respondent appears to be more credible.

COMPARISON APPROACH

Many homes in the subject area are occupied on a seasonal basis and/or are used as vacation homes. Many homes are enrolled in overnight rental programs. It is common in the area for the sale of homes to include furnishings.

The MLS listings for sales 2 and 3 indicate that the sale of these homes included furnishings. This is not reported, and there are no adjustments for the personal property included in the sale prices.

The basement area in Sale 3 is significantly larger than the basement area in the subject property, but no adjustment was applied. The report indicates that values are declining, but no market condition adjustments were applied in the comparison approach.

Failure to address the furniture included in the sales, declining values, and the basement areas in sale 3 are considered errors. It appears that correction of these errors would not have affected the result of the appraisal. Therefore, these errors are not considered significant.

RECONCILIATION

The sales comparison approach provides an indicated value range from \$315,700 to \$481,200. This is a much larger range than typically found in a residential appraisal report. However, the large range is addressed by comments in the appraisal report. The work file contains several other sales that appear to support the conclusions. The indicated value range would be decreased somewhat by correction of the errors in the sales comparison analysis noted above. Overall, the analysis presented appears credible.

Prior Complaint / Disciplinary History: None.

Recommendation and Reasoning: The Administrative Director and Counsel would recommend the Respondent be sent a **Letter of Instruction** pertaining to the minor reporting errors noted by the expert witness in the comparison approach.

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

6. 200900792 Danny Wiley was the Reviewer.

The complaint was filed by an outside agency and included allegations that the Respondent communicated two misleading appraisal reports on the same property, with the same effective date and date of signature. The information between the two reports is very different and confusing to the intended users of the appraisal report. These misleading details included an acreage decrease of 20 acres, a site value decrease of \$10,000, comparable site values decreasing by different values, remaining economic life increasing by six years, and a decrease in value of the over all property of \$2,000.

In response to the complaint, the Respondent wrote that he received the complaint in January of 2009 and the appraisal order showed in the comment section the house was to be considered on five acres. In attempting to identify the property he wrote that the property was sitting on 25 acres. He stated he completed the report with 25 acres and in his research for similar comparables, he found none. He considered the land as surplus. He stated that the site has only one buildable site area and the remaining property consists of large gullies and overgrown kudzu. He then wrote that during the first week of March he received a call from the lender stating that the agreement between the buyer and seller had restructured providing for only five acres to be conveyed and that the same property as shown on the survey, and legal description was being sent. He stated that he revisited the site and in conversation with the seller he learned more about the property. He wrote that he then communicated a second appraisal

report. He stated that it was not until the complaint was filed that he realized he had left the effective date the same.

EXPERT CONCLUSIONS:

- Two reports were submitted for review. The analysis in the reports is not consistent.
- There is insufficient analysis of the sales contracts.
- There is insufficient reporting of the site characteristics.
- There is no support for the site values or site adjustments.
- There are apparent errors in reporting and adjusting for features of the comparable sale.

SUBJECT PROPERTY

Report 1 indicates that the owner of public record is J.D. JD was the borrower for the proposed loan, not the owner of public record. Both reports indicate that the subject property is identified as parcel 9.02 on tax map 61. The subject property for Report 2 was only part of this parcel. A legal description included in Report 2 describes a 5 acre tract that is part of parcel 9.02. Report 2 does not clearly communicate the fact that this 5 acre tract had not yet been legally subdivided from the parent parcel.

[SR 2-1(a), SR 202(b)(iii)]

ANALYSIS OF CONTRACT

Both Report 1 and Report 2 indicate that the subject property is under contract, and the date of the contract is reported to be January 9, 2009. In a response to TREAC dated May 12, 2009, the Respondent stated that the original appraisal request was received in January 2009, and that request included a copy of a contract. The Respondent further stated that in March 2009 he was informed by the client that the contract had been restructured to include the conveyance of only 5 acres. Workfile documents submitted by the Respondent include a document identified as a Real Estate Sales Contract. The sale price reported in this document is consistent with the information provided in Report 1. However, the Real Estate Sales Contract is not signed by the buyer or the seller. Hence, it is not a legally binding contract for sale, and there is no execution date. No other contracts are included in the workfile documents submitted. Having been informed that the contract had been restructured, the Respondent was obligated to obtain a copy of the revised contract, and a copy should be included in the workfile. If the revised contract was not available, the report must disclose that fact and the steps taken to obtain a copy.

[SR 1-5(a), SR 2-2(b)(viii)]

REPORT DATE

Report 1 and Report 2 have the same effective date and the same date of report. Report 2 was prepared several weeks after Report 1. Hence, the report date in Report 2 is not accurate. [SR 2-2(b)(vi)]

SITE DESCRIPTION

Report 1 indicates that the site size is 25 acres. The warranty deed included in the workfile documents indicates the site size is 26.03 acres. The Courthouse Retrieval data included in the workfile documents also indicates that the site size is 26 acres. It is not clear whether the small discrepancy would affect the assignment results.

In a letter to TREAC dated May 12, 2009 the Respondent stated, "*My analysis of the value question is based largely on the fact that the total property is a very rough terrain, consisting of large gullies over grown with kudzu. There's only one site suitable for building. The remaining land is unsuited for any*

known use, not even pasture, and therefore has very little value, except for the one ridge where the house sits, and the drive way is situated." Information regarding the terrain and utility of the site is not addressed in either report. It would be particularly relevant information in Report 1. [SR 2-2(b)(iii)]

COMPARISON APPROACH

Data Sources: In the comparison approach both reports indicate that the Data Source(s) is "closed sale." "Closed Sale" is not a data source. Workfile documents submitted by the Respondent included MLS sheets and printouts from the Courthouse Retrieval System. The photos of the comparables appear to have been taken from the MLS. Hence, it appears that the MLS was a primary data source, but this is not reported. [SR 2-1(a), SR 2-2(b)(vii)]

Site Adjustments/Support

Report 1 indicates that the site value for the 25 acres is \$30,000. Report 2 indicates that the site value for the 5 acres is \$20,000. Neither report includes support for the site value. Workfile documents submitted for review include no support for the site value. The site adjustments are inconsistent. In Report 1, a +\$10,000 adjustment was applied to all three comparable sales, indicating that the comparable sales all had site values of approximately \$20,000. In Report 2, sale 1 has a site adjustment of +\$5,000, indicating that sale 1 has a site value of \$15,000. Sales 2 and 3 have site adjustments of +\$7,500, indicating that they have site values of \$12,500. [SR 1-1(a), SR 1-1(b), SR 1-4(a)]

Characteristics of Comparable Sales

Some of the data reported in the sales comparison approach is not consistent with the workfile information provided for review. Sales 2 and 3 are both reported to have 3 bedrooms and 2 baths. The MLS listings for these homes indicate that they both have 4 bedrooms and 3 baths. Correction of the bathroom count would lead to lower indicated values. Sale 3 is reported to have 1,973 square feet of gross living area. The MLS listing indicates that the home has 2,149 square feet. (The CRS indicates over 3,000 square feet, but CRS data is often not accurate for 1.5 story homes.) Using the size reported in the MLS and applying the rate of \$25 per square foot that was used in analysis, the result would be lowering the value indication provided by this sale by approximately \$4,400.

The MLS listing for sale 2 also indicates that there is an in ground swimming pool. If the pool has value that would result in a lower value indication from this comparable. Even if the pool has no contributory value, it should be reported. [SR 1-4(a), SR 2-1(a)]

COST APPROACH

Report 1 indicates that the subject has an effective age of 21 years, and physical depreciation of \$35,608 is applied in the cost approach. Report 2 indicates that the home has an effective age of 15 years, and physical depreciation of \$26,380 is applied in the cost approach. The difference in site size between the two reports should have no effect on the effective age of the home or the physical depreciation applied in the cost approach. [SR 1-1(a), SR 1-1(b)]

RECONCILIATION

Report 2 states, "*Cost approach is used to set the upper limit of value.*" However, the final value conclusion exceeds the value indication of the cost approach by over \$10,000. [SR 1-6, SR 2-2(b)(viii)]

INTENDED USERS

Report 2 contains conflicting information regarding the intended users. Page 18 of the report indicates that the report is intended for the sole use of the client. However, it also states that the intended user is USDA. [SR 2-2(b)(i)]

BIAS

In Report 2 the site value was decreased by \$10,000, but the value opinion only decreased by \$2,000. The differences between the site values assigned to the comparable sales and the changes to the effective age indicate that in Report 2 the Respondent was attempting to push the appraised value to the contract price rather than providing an objective analysis. [ETHICS RULE, Conduct section]

Prior Complaint / Disciplinary History: 200421398 (Closed – advisory letter)

Recommendation and Reasoning: The Respondent has been certified since 1991. The Respondent has no prior disciplinary history; however, in 2005 he did receive a Letter of Warning pertaining to summarizing selection of comparable sales with information sufficient that the intended users understand the report. In this appraisal Respondent failed to support the opinions and conclusions in the two appraisal reports he communicated to the client pertaining to one (1) subject property and failed to meet record keeping requirements of USPAP. The change in the value indication in the second report suggests bias to conclude a value consistent with a contract price rather than independently developed. Counsel and the Administrative Director recommend the Respondent be offered a **consent order** requiring a civil penalty of \$1,000, and completion of a 15 hour "USPAP" course, a 15 hour "Residential Report Writing" course, and a 15 hour "Residential Site Valuation and Cost Approach" course within 180 days (6 months) of execution of the order. No continuing education credit should be granted for this corrective education. If the Respondent rejects the consent order formal hearing proceedings should be commenced.

Vote: Mr. Woodford made the motion to accept the recommendation with the amendment that the civil penalty be increased to \$2,000. Mr. Carter seconded the motion. The motion carried unopposed.

7 & 8 200902249/200901273 Chairman Phillips was the Reviewer.

The Complainant, a consumer, alleged that the Respondent under-valued his residential property, misreported bedroom totals, used inappropriate comparable sales, and possibly had some bias or financial interest in the property value being low.

The Respondent stated in his response letter that in the original report he sent to the client he reported three (3) bedrooms on the 1004 form and illustrated four (4) bedrooms on the building sketch. Subsequently, this was corrected and resubmitted to the client. He reported that his comparable sale analysis revealed nine comparables similar to the subject; six (6) three bedroom properties and three (3) four bedroom properties. He wrote that his market data indicated no adjustment necessary between 3 and 4 bedroom properties. He adjusted for size, car storage and porches. He denied the allegation that he had any bias or financial interest in the value being low.

EXPERT CONCLUSIONS –Appraisal 1 [alleged violations included within brackets]:

NEIGHBORHOOD

The price range reported in this section indicated a low of \$25,000 to a high of \$150,000 with the predominant price of \$75,000. Further, the age range was reported as a low of 25 to a high of 90 years and a predominant age of 60 years. The sales within proximity of the subject were reported from a low of \$209,900 to a high of \$304,000. This range is well above the reported neighborhood range of \$25,000-

\$150,000. The subject as well as eight of the nine comparable sales is new to one year. The ages of these properties are well below the reported age range of 25-90 years. [SR 1-1 (c)]

As submitted in the complaint, the appraisal report indicated the subject is improved with three bedrooms, when in fact, the home has four bedrooms; the sketch in the report submitted by the complainant and the one submitted by the appraiser indicated four bedrooms. The appraiser indicated that he corrected this error and resubmitted it to the lender. It is apparent that the homeowner did not receive the corrected report.

The homeowner indicated that he had the property appraised one year prior to the respondent appraiser which indicated a value of \$315,000 as compared to the recent appraisal of \$275,000. The prior appraisal was not submitted with the complaint, therefore it is considered hearsay and not relevant in this review. The appraiser presented (9) nine sales of which six are in proximity of the subject. All six are 1 year to new like the subject and indicated an unadjusted range of \$209,900 to \$304,000; the adjusted range was a low of \$254,985 to a high of \$307,765. The subject's reported value falls within this range. The appraiser performed the cost approach which indicated a value of \$290,500 which is appropriate since the home is only one year of age. He indicated that the primary weight was given to the sales comparison approach and "the cost approach is supportive of the market grid." The correlation is considered weak since there is no explanation addressing the spread in the cost approach of a new home and the sales comparison approach.

The reviewer noted that four other people provided assistance in preparing this appraisal. The respondent did not specify what contribution they provided. [SR 2-2(b) (vii)]

The complainant's allegation of the appraiser being bias or having financial interest in the property value being low is unfounded.

Prior Complaint / Disciplinary History: 941782 – Closed with a Letter of Warning, 199900871 – Dismissed, 200419455 – Closed with a Letter of Warning, 200901273 – Open.

RECOMMENDATION AND REASONING: Based on the two violations cited which the reviewer considers minor; it is the reviewer's recommendation that the Respondent be issued a stern Letter of Warning. The letter should cite SR 1-1(c) with reference to the neighborhood section and SR Rule2-2 (b)(vii) concerning providing names and their specific contribution to the appraisal assignment and report. Counsel and the Administrative Director concur with this recommendation.

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

200901273 Chairman Phillips was the Reviewer.

The Complainant, a consumer, alleged that the Respondent under-valued his residential acreage property on June 10, 2009 by rendering a value opinion of \$480,000. The Respondent allegedly used photos from six years prior to the effective date of the report. The Complainant alleged that the house has received over \$200,000 in upgrades since that time and the photos do not reflect the current condition of the dwelling. He further stated that comparable sale one previously sold with 27 acres and resold recently without the acreage and that to have failed to identify and analyze this was a significant omission on the part of the Respondent. He added that the other comparable sales are smaller in living area and have

much less land than the subject property. He stated the subject property has more amenities and is of higher quality than the comparables used.

The Respondent stated in his response letter that the photos were mistakenly included from a previous appraisal in 2003 but they were not relied upon to form the value opinion. He wrote that the additional square footage added and remodeling of the existing interior was noted in the conditions section of the appraisal report. He added that he was aware of the previous sale of comparable one which was a purchase made by an adjoining property owner. He stated that he did not use that previous sale in the report because of "drastic changes in market conditions" that occurred from July of 2007 to June of 2009. He concluded that he was very knowledgeable of all the comparable sales used and made adjustments for property differences.

EXPERT CONCLUSIONS –Appraisal 2 [alleged violations included within brackets]:

The photographs presented in the current report were from a previously appraisal report prepared approximately (6) six years ago. It should be noted that the appraiser indicated that four other people assisted in the preparation of the report; even though names were listed, there is no description of their specific contribution. [SR 2-1 (a)] & [SR 2-2(b) (vii)]

Relative to the six (6) sales the Respondent used in the appraisal report, it was indicated that Respondent had first hand knowledge of the each sale; he indicated the data source was from his files and supplemented with information from MLS and Courthouse Retrieval System. He presented from his work file a page from his appraisal of all six sales used in the subject report.

As the Respondent indicated, he mentioned the subject remodeling and major addition of a master bedroom, bath and walk-in closet on the first floor, plus a media room and walk-in closet on the second floor. In addition, he indicated that a 2-car detached carport and additional fencing had been installed.

The appraisal analysis and reporting appears to be adequate with the exception to the appraiser specifying what contribution the four other people provided and the use of six-year photographs which was misleading.

RECOMMENDATION AND REASONING: Based on the two violations cited, the reviewer recommends that the respondent be issued **consent order** imposing a civil penalty of \$500. The consent order should cite SR 2-1 (a) with reference to the inclusion of the wrong photographs and SR Rule 2-2(b) (vii) concerning providing names and their specific contribution to the appraisal assignment and report. If the Respondent rejects the consent order formal hearing proceedings should be commenced. Counsel and the Administrative Director concur with the recommendation.

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

9. 200901166 Danny Wiley was the Reviewer.

The Complainants alleged that the Respondent under-valued a residential property on April 18, 2009 by rendering a value opinion of \$90,500. Complainant submitted a prior listing price estimate completed by another certified appraiser, the MLS listing of their property, and the contract agreement they had with a potential purchaser which all indicated \$115,000 as support for their allegation. They further alleged that smaller homes were used as comparable sales and the indicated price per square foot was lower than

typical in the market. They indicated this caused them to sell the house for a 21% loss because they had not lived in the house in two years and needed to sell it.

The Respondent stated in his response letter that in the past two years “appraisers have seen an unusual high number of foreclosure sales and bank sales that can affect the outcome of an appraisal.” He indicated the county assessor’s office appraised the subject for \$115,000 and that happened to also be the list and contract price. He indicated recent sales he used indicated a lower market value than the assessor indicated.

The Complainant submitted a rebuttal letter indicating that the Respondent was wrong about the assessed value of the subject property. She indicated that shortly after listing her property she received a contract for the full list price for a non-related independent buyer. The Complainant again questioned the indicated price per square foot used by the Respondent. The Complainant submitted additional assessor’s data information, a re-appraisal completed by the assessor’s office, a newspaper article on housing values, and several location maps.

EXPERT CONCLUSIONS [alleged violations included within brackets]:

- The complaint alleges that the home has been undervalued. The reviewer found no support for that allegation.
- The analysis presented in the appraisal report appears to be credible and well supported.
- Memphis MLS records show that approximately one month after the effective date of the appraisal the home sold at a price equal to the appraised value.

ANALYSIS OF SALES CONTRACT

The appraisal report indicates that the seller will pay \$5,000 toward the buyer's closing costs. The sales contract states that the seller will pay 6% of the price (\$6,900) toward the buyer's closing costs. This is considered a relatively minor error. It appears the sales contract was analyzed, but the contract price was not used as a target. Rather, it appears that the Respondent has provided an objective, unbiased analysis.

NEIGHBORHOOD

The analysis presented appears to be complete and accurate. The appraisal report indicates that prices in the area are declining and that there is an oversupply of housing. These conclusions are supported by data in the report, data in the assignment work file, and data found by the reviewer.

PROPERTY DESCRIPTION

The property description appears to be adequate. The narrative description of the subject property is supplemented with interior photographs. The subject’s MLS listing indicates that part of the living area is converted garage space. It is probable that the conversion of the garage is the reason that the gross living area is higher than the gross living area of the comparables.

COMPARISON APPROACH

The reviewer used the Memphis MLS system and MAAR data to analyze sales in the subject area, including the comparables used in the appraisal report. Most of the data regarding the comparable sales is consistent with information found by the reviewer. The correct address for Comparable 3 is 3036 E. Drive. This is a minor typographical error. The sales used appear to be among the best available as of the

appraisal date. The adjustments applied appear reasonable. The Respondent submitted support for the adjustments applied. Market condition adjustments were applied to reflect declining prices in the area. Those adjustments are relatively large, but they are supported by data in the Respondent's workfile.

COST APPROACH

The cost approach is not required for FHA appraisals when the subject property is over 40 years old. The appraisal report includes a cost approach and notes that it has been used as a "supporting element." Workfile data submitted by the Respondent includes support for the estimated cost in the estimated site value.

Prior Complaint / Disciplinary History: None.

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

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

10. 200901807 Danny Wiley was the Reviewer.

On January 12, 2010, the Commission approved for issuance to Respondent in this complaint, a consent order imposing a civil penalty of \$3,000.00 due and payable immediately and sixty (60) hours of corrective education.

An informal conference was conducted with the Respondent on February 4, 2010. In that discussion it became the opinion of the Administrative Director and Counsel that the public can be protected and the Respondent adequately disciplined in this complaint matter by requiring a \$1,000 civil penalty and thirty (30) hours of corrective education: a fifteen (15) hour Residential Report Writing course and a fifteen (15) hour Residential Market Analysis and Highest and Best Use course. 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, Respondent attempted to conduct an evaluation of a property but used inappropriate forms and failed to understand the circumstances under which an evaluation can be conducted in lieu of a USPAP compliant appraisal. Respondent has been advised by the Administrative Director the circumstances in which an evaluation would be appropriate and Respondent will be sent a copy of the relevant statutory authority to ensure his compliance moving forward. The Respondent expressed regret for his conduct in this matter and acknowledges his mistakes and takes responsibility for his actions.

Respondent has been unable to secure substantial appraiser work since the opening of this complaint in August. Counsel and the Administrative Director feel that a one thousand (\$1,000) civil penalty would be an adequate economic deterrent. Furthermore, Counsel and the Administrative Director believe that requiring the Respondent to complete a fifteen (15) hour Residential Report Writing course and the fifteen (15) hour Residential Market Analysis and Best Use course would serve the dual purpose of assisting the Respondent in becoming a more competent appraiser and the interests of protecting the public.

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. Headden made the motion to accept the recommendation and Mr. Sanford seconded the motion. Mr. Phillips recused from vote. Mr. Wade voted "no" on this matter. All others voted "yes"; the motion passed.

11. 200901070 Danny Wiley was the Reviewer.

On January 12, 2010, the Commission approved for issuance to Respondent in this complaint, a consent order imposing a suspension of thirty (30) days and a \$1,000.00 civil penalty due and payable immediately.

An informal conference was conducted with the Respondent on January 20, 2010. In that discussion it became the opinion of the Administrative Director and Legal Counsel that the public can be protected and the Respondent adequately disciplined in this complaint matter by requiring a \$1,000 civil penalty and thirty six (36) hours of corrective education. 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, Respondent used an inappropriate form when appraising a manufactured home and used inappropriate comparable properties. After meeting with Respondent, Counsel and the Administrative Director believe that the issues in this matter are related to competency and can be adequately addressed by requiring education to address this deficit. Respondent would be required to successfully complete a seven (7) hour course in appraising manufactured homes, a seven (7) hour FHA course, a seven (7) hour Marshall & Swift course and a fifteen (15) hour Site Valuation and Cost Approach course. Counsel and the Administrative Director believe that the education component would serve the dual purpose of assisting in making Respondent a more competent appraiser and protecting the long term interests of the public.

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

12. 200902113 Danny Wiley was the Reviewer.

On December 14, 2010 the Commission approved for issuance to Respondent in this complaint, a consent order imposing a \$1,000.00 civil penalty due and payable immediately and sixty (60) hours of education requirements.

An informal conference was conducted with the Respondent on February 4, 2010. In that discussion it became the opinion of the Administrative Director and Legal Counsel that the public can be protected and the Respondent adequately disciplined in this complaint matter by requiring a \$1,000 civil penalty and thirty (30) hours of corrective education. In addition, the Respondent's credential will be **RESTRICTED** in that he shall be on **PROBATION** for a period of nine (9) months. In those nine (9) months, Respondent will be required to submit his monthly experience logs and at least one (1) appraisal report will be selected

by the Administrative Director for review for USPAP compliance. The Respondent agrees that if he fails to satisfy the terms of this agreement his certification may be suspended immediately.

The allegations in the Complaint are serious. The expert reviewer found that the report contains a series of errors that appear to be the result of careless or negligent action. In the aggregate, this series of errors affects the credibility of the assignment results. The Respondent did not take issue with any of the findings in the consent order and expressed his desire to resolve this matter. Respondent provided evidence that he completed the thirty (30) hour Residential Sales Approach and Income Approach course with examination on February 17, 2009. Although that predates the appraisal report at issue, Counsel and the Administrative Director believe that Respondent's competency issue can be adequately addressed with the thirty (30) hours of remaining education and as an additional assurance the Respondent will be on probation for nine months.

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 the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

Mr. Headden opened a discussion about out of State reviews. He indicated that appraisal reviews were not allowed in Georgia unless you have a license or certification. In Tennessee, if an opinion of value is given in the review, you must also be licensed or certified. There was brief discussion on the proposed AMC legislation. This was followed by a discussion on internal bank reviews as opposed to using outside appraisers and the differences between a technical review and an appraisal review as defined by USPAP.

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Being no further business, the meeting was adjourned at 10:30 a.m.

Chairman, Herbert E. Phillips

Nikole Avers, Administrative Director