



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

**March 14, 2011**  
**Second Floor Conference Room, Andrew Johnson Tower**

The Tennessee Real Estate Appraiser Commission met March 14, 2011 at 8:35 a.m. in Nashville, Tennessee, at the Andrew Johnson Tower in the second floor conference room. Chairman, Thomas Carter, called the meeting to order and the following business was transacted.

**COMMISSION MEMBERS PRESENT**

Herbert Phillips  
James E. Wade, Jr.  
Thomas R. Carter  
William R. Flowers, Jr.  
Marc Headden  
Nancy Point

**COMMISSION MEMBERS ABSENT**

Erik Sanford  
Dr. Edward A. Baryla

**STAFF MEMBERS PRESENT**

Steven Majchrzak  
Nikole Avers, Administrative Director  
Aminah Saunders, Staff Attorney  
Jesse Joseph  
Wayne Pugh  
Eman Youssef

**ADOPT AGENDA**

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

**MINUTES**

The February 2011 minutes were reviewed. Mr. Flowers made the motion to accept the minutes as written. It was seconded by Mr. Phillips. The motion carried unopposed.

## GENERAL BUSINESS

### Experience Interviews

**Nancy Jan Heiser** made application to upgrade from a licensed real estate appraiser to become a certified residential real estate appraiser. Mr. Phillips was the reviewer and recommended approval of her experience request. Mr. Wade made the motion to accept the recommendation and Mr. Flowers seconded the motion. The motion carried unopposed.

**Jeffery Thomas Neblett** made application to upgrade from a registered trainee to become a licensed real estate appraiser. Mr. Wade was the reviewer and he recommended approval of his experience request. Mr. Headden made the motion to accept the recommendation and Flowers seconded the motion. The motion carried unopposed.

**Bradley Young Davis** made application to upgrade from a registered trainee to become a licensed real estate appraiser. Ms. Point was the reviewer and she recommended approval of his experience request. Mr. Wade made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

**Michael Johnson:** Mr. Johnson attended an experience interview in early 2010 and had his experience approved and was granted approval to take the certified residential examination. He did not pass the examination within the 12 months allowed due to difficulties in his personal life. His prior application expired; a new application was submitted by Mr. Johnson which included a request to waive a second experience interview. Mr. Wade made a motion to approve the request to waive the experience interview. Mr. Phillips seconded that motion. The motion carried unopposed.

### Education Committee Report

Dr. Baryla reviewed the education and submitted his recommendations to the Real Estate Appraiser Commission by e-mail to Ms. Avers, as seen below. Mr. Phillips made a motion to accept Dr. Baryla's recommendations. Mr. Wade seconded the motion. The motion carried unopposed.

#### March, 2011 Education Committee Report

Name	File #	Provider	Course Name	Hrs	Type	Dr. Baryla
Career WebSchool, a dba of Cengage Learning	1464	On-line Advanced Residential Applications and Case Studies	Bud Black, Mark Munizzo, Lisa Musial	14	CE	For
Northern Michigan University	1459	On-line First Look: The New Fannie Mae & Freddie Mac Appraisal Data Program	Dawn M. Molitor-Gennrich, Richard Heyn	2	CE	For
McKissock, LP	1465	On-line Residential Report Writing: More Than Forms	Dan Bradley	7	CE	For
McKissock, LP	1466	On-line Residential Appraisal Review	Alan Simmons	7	CE	For
Appraisal	1467	Appraising The Appraisal: Appraisal	Stephanie Coleman	7	CE	For

Institute		Review				
Appraisal Institute	1468	Residential Applications: Using Technology to Measure & Support Assignment Results	James Atwood	7	CE	For

**Individual Course Approval**

Name	File #	Provider	Course Name	Hrs	Type	Rec. from Dr. Barylka
Kelly Crull	n/a	St. Cloud State University	Real Estate Appraisal – (Appraisal Procedures)	45+2	QE	Approve for 30 hours Procedures QE
Kelly Crull	n/a	St. Cloud State University	Real Estate Principles- (Appraisal Principles)	45+2	QE	Approve for 30 hours Principles QE
David C. Horner	4242	International Association of Assessing Officers	Commercial/Industrial Modeling Concepts	30+3	CE	For 21 hours maximum

**LEGAL REPORT**

**1. 2011003281      No reviewer in this matter**

This complaint was filed by a fellow practitioner and alleged that the Respondent communicated a misleading appraisal which misreported the comparable sales data and contained numerous errors. The appraisal report was signed by the Respondent May 20, 2008. The Respondent's Certified Residential credential was REVOKED per agreed order on July 31, 2008.

**License History:**      Certified Residential      07/23/2002 to 07/31/2008

**Prior Complaint / Disciplinary History:** 200603018, 200604154, 200706869, 200707124 – all closed by agreed order imposing Revocation.

**Reasoning and Recommendation:** As the Respondent's appraisal credential is currently **REVOKED** Counsel recommends this complaint be **CLOSED** and **FLAGGED** should the Respondent reapply for licensure.

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

**2. 2010031541 Commissioner Headden was the reviewer in this matter**

This complaint was filed by a consumer and alleged that the Respondent under valued a residential property and communicating a misleading appraisal report by misreporting comparable sales data, square footage and the value of the square footage.

The Respondent states that the appraisal report was a fair and accurate assessment of value based on the current market and in compliance with USPAP guidelines. The Respondent further states that he treated the Complainant with respect and courtesy.

**REVIEWER CONCLUSIONS [alleged violations included within brackets]:**

Information as to why the Income Approach was not applicable was omitted from the appraisal report. The Reconciliation section should account for all three (3) recognized approaches to value. The comparables selected accurately bracket the subject property in size and bath count.

<b>License History:</b>	Registered Trainee	09/14/1998 – 12/06/2000
	Certified Residential	12/07/2000 – present

**Prior Complaint / Disciplinary History:** None.

**Reasoning and Recommendation:** Commissioner Headden finds no significant violations which would warrant discipline and recommends the **DISMISSAL** of the complaint.

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

**3. 2010035021 Commissioner Headden was the reviewer in this matter**

This complaint was filed by a consumer and alleged that the Respondent under valued a residential property by communicating a misleading appraisal report by using distressed sales as comparables.

The Respondents states that the appraisal report is compliant with the guidelines and requirements of HUD/FDA, USPAP and the lender.

**REVIEWER CONCLUSIONS [alleged violations included within brackets]:** No significant violations were noted.

<b>License History:</b>	Registered Trainee	04/05/2002 – 07/23/2004
	Certified Residential	07/24/2004 – present

**Prior Complaint / Disciplinary History:** None.

**Reasoning and Recommendation:** Commissioner Headden finds no significant violations and recommends the **DISMISSAL** of the complaint.

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

**4. 2010025791 Commissioner Headden was the reviewer in this matter.**

This complaint was filed by a mortgage lender and alleged that the Respondent over valued a residential property by indicating a value opinion of \$478,000.00. The Complainant further alleges that the Respondent failed to analyze the listing history, failed to support the adjustments applied in the sales comparison approach, used disqualified sales as comparables, failed to summarize support for the comparables used and value opinion indicated and omitted relevant sales data from the report.

The Respondent states that the value opinion was determined from the available data and appropriately reported. The Respondent states that the adjustments are all supported and that any abnormal adjustment would be explained however the Respondent indicates that it is not normal procedure to explain every adjustment. The Respondent states that there was limited comparable sales data available and that although courthouse data is less desirable there was no other data available.

**REVIEWER CONCLUSIONS [alleged violations included within brackets]:**

- The appraisal report is misleading and there are at least fourteen (14) violations of USPAP. It appears that the Respondent lacks adequate knowledge or data to competently perform the assignment. The errors noted all tend towards over valuing the subject property and suggest possible intentional misconduct.

The site description is limited and actual zoning is not provided. The improvement description does not provide enough information on bedroom count and the effect of limited bedrooms. The limited bedroom area could have potential negative market factors. [1-2 (e)(i)(iv), 2-2 (iii), 1-4(b)(iii)]

Site value is not justified review appraiser found land sales that indicate a lower value for site. Cost figures can not be determined from published sources or market participants in the range stated in report. The depreciation may not be enough because no functional adjustment was made subject has one bedroom and a loft. [ 1-4(b)(i)(ii) (iii), 2-2(viii)(x)]

Several errors were evident in the sales comparison approach which included poor comparable selection and improper adjustments as well as erroneous factual data. Comparable One (1) is a newer sale which the site actually adjoins the subject property. It is newer and no age adjustment is made. Basement adjustment is made at \$78/sf and above grade area is only adjusted at \$70/sf. Comparable Two (2) was a foreclosure in February of 2007 this transfer is not noted in report. Comparable Two (2) has a four (4) car detached garage built in 1998 that was not adjusted for in report. Comparable Two (2) does not appear to be a qualified sale; it is adjusted at \$78/sf for basement and only \$70/sf for above grade. Comparable Three (3) is in a trust and is believed to be a non arms length transaction. Appraiser indicates Comparable Three (3) as being found in MLS records no MLS record were found by reviewer. No adjustment is made to any comparable for bedroom /design or functional for the subject only having one bedroom. Comparables Three (3) and Four (4) appear to be lake view lots and no explanation for large adjustments is given. [1-4(a), 2-2(viii)]

The appraisal does not appropriately analyze the prior sale of the property. The sale of which is referenced 11/02/05 for \$335,000 included two parcels. These parcels were the subject 104-266 and 104-265 which was not mentioned in the report and contains an additional 4.2 acres. This report has

numerous errors and is considered unreliable. In addition to USPAP violations noted above it is believed by the reviewer that the ethics rule conduct section and record keeping section has been violated. The competency rule may have also been violated because it appears the appraiser did not adequate knowledge or resources to properly determine market area and obtain appropriate data from that area.

[1-5(b), 2-2(viii), 1-6(a)(b), 2-1(b), Ethics Rule: Conduct Section]

**License History:** Certified Residential 06/18/2002 – present

**Prior Complaint / Disciplinary History:** 200312444 closed w/ LOW, 200501672 closed, 200706851 dismissed.

**Reasoning and Recommendation:** Given the numerous USPAP violations noted above and the indication of a possible Conduct Section violation Commissioner Headden recommends the disposition of the complaint by Consent Order imposing a civil penalty of four thousand dollars (\$4,000.00) and successful completion of a fifteen (15) hour USPAP course and thirty (30) hours of Residential Case Study coursework with no credit given for continuing education. *The civil penalty should serve as a sufficient economic deterrent while the education requirements should assist the Respondent in becoming a more competent appraiser thereby protecting the interest of the public.*

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

**5. 2010031801 Commissioner Point was the reviewer in this matter.**

This complaint was filed by a consumer and alleged that the Respondent misreported the GLA and failed to properly account for the nearly two (2) acre lot. The Complainant further states that as a result of the faulty appraisal, additional funds were required at closing. The Complainant also alleges that the Respondent is not qualified to perform appraisals.

The Respondent states that she has twenty (20) years of experience appraising in middle Tennessee. The Respondent states that she conducted a thorough search and review of all recent, pertinent comparable sales and those used in the report were locationally, physically and functionally most similar to the subject property. The Respondent further states that the adjustments made are complete, accurate and reasonable and that good appraisal practices were utilized and the report was completed in a competent manner.

**REVIEWER CONCLUSIONS [alleged violations included within brackets]:**

- Reconciliation of sales approach lacks a full explanation of comparable sales.
- The Cost Approach does not have supporting land sales data.

**License History:** Registered Trainee 07/15/1993 – 01/31/1995  
Licensed Appraiser 02/01/1995 - present

**Prior Complaint / Disciplinary History:** None.

**Reasoning and Recommendation:** Commissioner Point recommends the disposition of this complaint by Letter of Warning regarding the issues noted above.

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

**6. 2010034981/ 2010033921 Commissioner Phillips was the reviewer.**

Both complaint matters involve the same residential property and were filed by a listing agent/ fellow practitioner and home seller. The home seller alleged that the Respondent under valued the residential property by using incomparable homes, incorrectly identifying the neighborhood and using two (2) bedroom homes. The home seller further alleges that the Respondent was rushing and did not do his job.

The agent/ fellow practitioner alleges that the Respondent communicated a misleading appraisal by misreporting the comparable sales data.

The Respondent states that the comparables used in the report are considered the most comparable recent sales available and that the comps had been recently renovated or rehabilitated and were superior to the subject property and that there was little available in the same condition as the subject. The Respondent states that he has been an appraiser for thirty five (35) years in the subject neighborhood and is confident that a review of the report will find that the market value opinion was well supported.

**REVIEWER CONCLUSIONS [alleged violations included within brackets]:**

- Sales contract was not completely analyzed.
- Improved Sales were not completely analyzed.
- There is no explanation for the exclusion of the cost or income approach.
- There is no support for the lot value of twenty thousand dollars (\$20,000).
- The appraiser did not provide an adequate description of the present condition and needed repairs for the subject.

The Respondent listed the contract sales price and the fact that the seller would pay five thousand dollars (\$5,000.00) towards the buyers closing cost, but failed to mention that the seller is required to remove all radiators and install a new HVAC system. In addition, the contract stated that the seller is also required to ensure that all windows are in proper working condition. [SR 1-5(a)]

The improved sales were not completely analyzed. Improved Sale No. 1 and No. 3 were both foreclosure properties that were purchased, rehabilitated and resold. There were four (4) other sales submitted by the practitioner of which two were more recent than the ones used by the respondent. All four sales are within six blocks of the subject. [SR 1-4(a); SR 1-1(b)]

The Respondent did not process the cost or the income approach. There is no explanation as to the omission of these approaches. The only statement in the report to this effect, reads "The sales comparison approach is considered most reliable for the subject property and the cost and income approach were not developed." [SR 1-1(h); SR 2-2(c) (viii)]

The only support for the land value is a statement that reads, "The site value estimate of twenty thousand dollars (\$20,000.00) was made by the allocation method. There is no analysis in the report or the workfile to support this value. [SR 1-4(b)(i)]

In the Improvements Section, the Respondent checked "no" in the block to indicate that there are no physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property. In his amended response to this complaint he outlined that, "The overall condition of the subject property was considered only average. Interior walls show minor damage and are in need of repair and fresh paint. The eighty three (83) year old wood windows show significant signs of deferred maintenance and most do not open and close properly. The wood flooring would show much better if refinished. The kitchen has received modest updating through the years; however, the property would show better if the piles of *rat feces* were removed from around the water heater also located in the kitchen." This information was not outlined in the appraisal report. [SR 1-1(b)]

**License History:** Certified Residential 12/31/1991- present

**Prior Complaint / Disciplinary History:** None.

**Reasoning and Recommendation:** Commissioner Phillips recommends the imposition of a Consent Order imposing a five hundred dollar (\$500.00) civil penalty and the successful completion of a (15) hour Residential Report Writing course. It appears that the Respondent failed to adequately research the market area for the most appropriate sales. The intent of the civil penalty is to encourage the respondent to give greater attention to his sales research. The coursework will hopefully assist the Respondent in appropriately providing appraisal services in the future thereby protecting the interests of the public.

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

**7. 201002659/ 201002292 Commissioner Phillips was the reviewer.**

This complaint was filed by a fellow practitioner and alleged that the Respondent used his company name and e-mail address while performing an appraisal assignment. The Respondent signed the report and left the Complainant's e-mail address on the report. It should be noted that the Respondent worked for the Complainant approximately six months prior to this assignment. This appraisal assignment was reviewed as a result of a foreclosure and deemed that the property was over-valued. The lender contacted the Complainant and alleged that the property was over-valued by \$120,000. The lender demanded that Complainant pay them \$129,839.57, plus interest accruing daily within 10 days of their dated letter. The Complainant stated that the Respondent left his company on July 12, 2005 and the date of the appraisal is five months after she departed.

The Respondent stated in a lengthy letter that the e-mail address was inadvertently embedded in the software which was obtained from a bootleg copy of the software installed on her computer by



Complainant's technician when she was under his employment. The Respondent indicated that her name and address was on the cover of the appraisal and she did not intend to cite Complainant as participating in the assignment.

A review appraiser presented three (3) recent sales in reasonable proximity of the subject that indicated a lower value of \$250,000 as compared to Respondent's reported value of \$370,000. Prior to the appraisal, the property sold for \$362,000 on March 21, 2005 and \$217,000 on June 27, 2004. The date of the respondent's appraisal was December 20, 2005.

**REVIEWER CONCLUSIONS [alleged violations included within brackets]:**

- The neighborhood boundaries are incorrectly identified; the subject is not located within these boundaries.
- The three sales are located outside the indicated boundaries.
- Sale No. 1 was purchased for land value based on the fact that it was demolished and replaced with a million dollar home.
- Cost Approach was not processed.
- The Income Approach was not processed; there is no clear explanation why this approach was not used.
- The Respondent left the e-mail address of her former employer on the appraisal report. Observation of the location map provided in the appraisal and review of a google map displayed that the three sales used are outside of the boundaries identified by the Respondent. It is debatable that the boundaries used are appropriate. There were other recent sales in proximity to the subject property. In fact several are located on the same street. [SR 1-1(b) & (c)]

An interview with the selling agent and a subsequent listing of the million-dollar home indicated that Sale No. 1 was indeed purchased for land value. After purchase, the existing home was demolished and the site is now improved with a million-dollar home. It appears that the respondent did not verify the sales transaction. [SR 1-1(b) & (c); SR 1-5(b)]

Even though the client may not have requested the cost approach, it is the appraiser responsibility to determine the scope of work that is consistent with the expectations of his peers and market participants. The Respondent should give adequate support and explanation for the omission of this approach. The Respondent estimated the lot value at \$150,000, but mentioned on Page 2 that the lot would command \$200,000 to \$250,000 if it was vacant. The Respondent did not give adequate support for the lot value or an explanation for the exclusion of the cost approach. Likewise, there was no explanation for the exclusion of the income approach. [SR 1-1(c), SR 1-2(f)]

There is no clear evidence that the Respondent intentional left her former employer's e-mail address on the appraisal report, but it is the responsibility of the Respondent to make sure that the report is accurate. This information led the client to contact her former employer demanding compensation for an allegedly negligent appraisal. [SR 2-1(a)]

**201002292/ Commissioner Phillips was the reviewer in this matter.**

This complaint was filed by a consumer and included allegations that the Respondent under-valued a residential property by communicating a value opinion of \$85,000 on June 18, 2010. The Complainant indicated a prior appraisal had been at \$110,000; however, the report the Complainant submitted with the complaint indicated a value of \$100,000 on August 31, 2004. Only the cost approach of that report indicated \$110,000.

The Respondent stated in the response letter that the allegations of under-valuing the subject are without merit. Respondent submitted the appraisal and workfile documents in support of the opinion. Respondent wrote that the owner was unhappy with the value because the subject had appraised for more in the past. Respondent made an effort to explain to the owner the influence of foreclosures, high traffic and commercial/industrial property as well as a declining market on the value of the home. The Respondent alleged the Complainant was not an unknowledgeable market participant as Complainant owns five (5) other rental properties as well as the subject.

**REVIEWER CONCLUSIONS [alleged violations included within brackets]:**

- No adjustments applied for sales concessions.
- No support for land value.
- Most of the improved sales appeared inappropriate.

It is typically a general practice to deduct sales concessions from the sales price; the effective consideration is the amount net to the seller. The Respondent indicated that sales concessions are typical for this market and it does not affect the consideration. All six improved sales had sales concessions but one, ranging from \$2,425 to \$5,874. [SR 1-1(a) & (b)]

The Respondent failed to provide adequate support for the lot value; stating “a reasonable value for the lot appears to be \$15,000.” [SR 1-1(c), SR 1-4(b)(i)]

The Respondent presented six (6) improved sales with one (Sale No. 1) being located close (0.52 mile) to the subject. The other five sales, respectively, were located 2.08, +/- 3.0, 3.77, 3.74, and 4.35 miles from the subject. Sale No. 3 which indicated a distance of 0.35 from the subject was marked wrong on the sales map. The actual distance is estimated at approximately 3.0 miles from the subject. Since the location is a metropolitan area it would seem that market sales would not be these distances from the subject. They appear to be in a difference neighborhood which was identified by the respondent. The boundaries presented by the respondent are inconsistent. [SR 1-1 (b)(c); SR 1-4(a)]

**License History:** Certified Residential 01/14/1992 - present

**Prior Complaint / Disciplinary History:** 200705061 Dismissed, 200902126 (Consent Order imposing 2500.00 civil penalty and seventy five (75) hours of corrective education)

**Reasoning and Recommendation:** The Respondent signed a Consent Order in September 2010 to resolve two complaint matters involving appraisal assignments performed in October and December of 2007. The Consent Order required the Respondent to pay a \$2500.00 civil penalty, successfully

complete seventy five (75) hours of corrective education and a one (1) year probation which requires the Respondent to submit the work log at six (6) month intervals for review. The current complaint matters pre date the September 2010 Consent Order - they involve a 2005 and 2010 appraisal report. Commissioner Phillips recommends the imposition of a Consent Order to resolve both complaint matters which would require additional one (1) year probation to run concurrently with the Respondent's current probation. The Respondent would not be allowed to have any trainees during the one (1) year probationary period. *Commissioner Phillips is of the opinion that the seventy five (75) hours of corrective education, two thousand five hundred dollars (\$2500.00) civil penalty and probation previously ordered is sufficient to address the deficits noted in the appraisal reports.*

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

Complaint Update: Ms. Avers was asked by the chairman to provide information on the 2010 and 2011 complaint numbers. See below table.

REAL ESTATE APPRAISERS - March 14, 2011													
PROFESSION	CONSUMER	FELLOW PRACTITIONER	CONCERNED CITIZEN	LEGAL	INVESTIGATIONS	OUTSIDE AGENCY	STAFF	ANONY-MOUS	BOARD	TOTALS	Over 180 Days	Over 1 Year	
1501	18	2				19		1	3	43	10	3	
1502										0	0	0	
										0	0	0	
										<b>TOTAL COMPLAINTS =</b>	43	10	3
										<b>PERCENTAGE OVER 180 DAYS =</b>	0.232558		
REAL ESTATE APPRAISERS - February 5, 2010													
PROFESSION	CONSUMER	FELLOW PRACTITIONER	CONCERNED CITIZEN	LEGAL	INVESTIGATIONS	OUTSIDE AGENCY	STAFF	ANONY-MOUS	BOARD	TOTALS	Over 180 Days		
1501	27	14	2	1		45		5	5	99	58		
1502										0	0		
										0	0		
										<b>TOTAL COMPLAINTS =</b>	99	58	
										<b>PERCENTAGE OVER 180 DAYS =</b>	0.585859		

**New Business:**

Mr. Wade brought to the attention of the Commission that the Appraisal Subcommittee had submitted their compliance audit letter to the Commission and indicated that there were no violations of policy statements identified. Ms. Avers indicated she believe this may be the first time the Commission had a perfect compliance audit.

Mr. Carter opened new business that was not on the agenda. He communicated a letter on the complaint investigation process to the Commission members on the afternoon of Friday, March 11. Ms. Saunders and Ms. Avers had not seen this letter prior to the Commission meeting. Mr. Carter asked if everyone had had a chance to read the letter and passed out copies. Mr. Phillips asked if this was the same procedure we have now. Mr. Carter responded that he didn't know if this was the current procedure and was part of the reason he wrote the letter. Mr. Phillips asked Ms. Avers and Ms.

Saunders to give an overview of the current complaint process. A break was called to allow the staff time to read the letter. Ms. Avers invited the Assistant Commissioner, Steve Majchrzak and chief general counsel, Wayne Pugh, to the meeting to participate in the discussion of the letter Mr. Carter wrote. When the meeting commenced again, Mr. Carter indicated this letter is just a rough draft of what he feels the complaint process should be. He said some of this is already in place, but he didn't know how his plan coincides with the existing plan because (the Commission) doesn't really know what the process is. He said he feels like (the Commission) should know the process, which is why he wrote this document. Mr. Carter indicated he spoke to the contract officer, Dan Birdwell, about the current request for proposal (RFP) for expert witness services and complaint reviews. He indicated there has already been some contracts sent out and he said, "that will have to be dealt with in conjunction with this" if the Commission adopts his proposals. Ms. Point asked if this (process indicated in the letter) the same as other states use? Mr. Carter indicated he contacted the North Carolina Appraisal Board and he got some input from them and that he and Mr. Wade went to the investigator training courses put on by AARO and the Appraisal Foundation. He indicated that North Carolina uses something similar to what he has laid out and that "he has to get back with me in regards to what other states there are that have a similar process". Mr. Flowers said he read it over and he said he liked the format and that he also talked to the "folks" at North Carolina and he likes the way Chairman Carter has this set up. Mr. Phillips asked Ms. Saunders how much of this is already in place. Ms. Saunders said that she has looked through it and some of it is already in place, but she wasn't in a position at this moment to comment on it fully. Mr. Carter asked Ms. Avers what rights does the Commission have and how far can we go as far as having some say in the (the complaint) process, who the investigators are, what their criteria (to be an expert reviewer). Ms. Avers indicated that choosing "investigators" or in this case the expert contracts is an administrative function of the State. She said that because the Commission acts as the jury in an administrative formal hearing it is not the State procedure that the jury selects the experts. Mr. Carter said that "we are talking about reviewing the complaints we're not talking about a hearing...which is what we do." Ms. Avers said that the persons reviewing the complaints will also be the one's called upon to testify should the matter go to a formal hearing. Mr. Carter said he didn't think that is necessarily what we have to do. He said "we review the complaints now and these duties are being delegated out to the contractors". If and when that happens to end up in trial that is a whole other case. He asked what percent of the complaints actually go to formal hearing? Ms. Saunders asked if he meant that there would be a separate investigator and then an additional expert who would testify. He said if the matter gets to the point where the person isn't going to sign a consent order and we're going to have a hearing, then we should get a second opinion. He felt that before a matter goes to hearing the Commission should get a second opinion. Mr. Wade said that that is similar to what we do now in that a Commission member does an initial review and if there is a hearing this member would recuse from the hearing. Then the matter is reviewed by an expert before hearing. Mr. Carter indicated the second opinion could be a Commission member. Ms. Saunders then asked then who would testify. He said it depends on the outcome of that second opinion; you need to be trying to settle the case with negotiation. Ms. Saunders said then if there are violations, you would have to have a third opinion. My recommendation is that we have a second opinion from a second reviewer, said Mr. Carter. Ms. Avers replied that it was her understanding that part of the reasoning for having expert contracts was to eliminate some of the duplicity of having one person review it, and then another person review it again that would be testifying. For example one issue would be if two people didn't observe the same deficiencies, if something were missed, it could create a problem in formal hearing. Also, with having only one expert reviewer if a consent order is rejected, then a matter is immediately ready to go to formal hearing because the review is already complete. If at that point a second opinion is requested, it could be six months before another review is completed. The process can already be very lengthy. We

have a six month guideline by the State and a one year requirement by the federal oversight. As it is we are having a hard time meeting these time limits. If the Commission were to change the process to involve second and third opinions, then the process would be very lengthy. Certainly, the Respondent is entitled to hire their own expert, have legal counsel and defend their appraisal in a formal hearing. Mr. Flowers said in the past the Commission did the reviews and the State decided to have an expert, one expert, witness that is a certified USPAP instructor and the new experts were going to have to be USPAP instructors. Ms. Avers said that requirement was removed (from the RFP) when the Commission requested it. Mr. Flowers said that the result of what happened was that the expert witness was an academian and the testimony was always the same. He admitted himself that the testimony wasn't whether or not it was a good or bad appraisal, but whether it complied with USPAP. Ms. Avers said that is the standard the Commission is held to, to review for USPAP compliance. Mr. Flowers said that Mr. Carters plan would start the process over at the beginning as to whether or not the complaint has validity. Ms. Saunders asked if he meant that a Commission member would review the complaint initially and if there were violations, then it would be sent to a reviewer. Mr. Carter went over the letter he wrote, including the complaint process, the expert contract qualifications, and the type of reports used for complaint processing. He said in the past the Commission members reviewed the complaints and now the State is contracting that work out, and if it is going to be contracted out then the Commission should have some say in the qualifications of the contract holders and the types of reports the experts will write. Aminah described the qualifications identified in the RFP. Mr. Carter and Mr. Phillips indicated that they felt the Commission was left out of the loop pertaining to the rfp contractor qualifications. Ms. Saunders said that part of the problem is there are certain rules pertaining to the RFP process and we cannot talk about the RFP in a public forum because everyone has to have the same opportunity for the contract and the RFP isn't public information until it is released. The Commission can't have private meetings to discuss business, so the RFP can't be discussed until it is released. Mr. Carter also indicated that there was a list of people that received notification of the RFP and the RFP was posted on the website, but people don't regularly visit the State website. He said that the administrative office put together a list of potential candidates and the Commission should have been given the opportunity to make recommendations of who should be on that list. Mr. Headden and Ms. Point asked if there was a complaint process already in place. Ms. Avers answered that there is a complaint process in place for all of regulatory boards, but there is some flexibility in the process. She described the complaint process currently in place. Mr. Flowers asked if the new contracted expert witnesses are USPAP instructors. Ms. Avers answered the two are and two are not. Mr. Carter indicated that he also felt Respondent should be granted the opportunity to respond to the review before the matter is presented to the Commission. Ms. Saunders indicated she thought that was a good idea. Mr. Carter also said the Respondent should be also invited to attend the Commission meeting when the matter is presented. Ms. Saunders indicated that would be problematic because the legal report presents the matters anonymously and if the Respondents are present, then that removes their anonymity. Mr. Carter said that they should be invited and if they didn't want to say anything they could just sit the in back of the meeting room. Ms. Saunders indicated that Respondents would have a hard time not speaking up and then if the matter did go to a formal hearing, it would create problems because the Commission members would have prior knowledge and testimony, unless the Commission wanted formal hearings to be heard by an ALJ (Administrative Law Judge). Mr. Carter indicated he felt they should be notified when the Commission is going to vote on their matter. Mr. Phillips said that the Respondent's presence at the meeting will disqualify them for hearing the matter at a formal hearing. Ms. Saunders indicated there would also be difficulties with situation described if the Respondent's have retained counsel also. Ms. Point indicated the main difference in the expert witness contract requirements is the experience. Mr. Carter confirmed and said that he felt the experts should be

certified generals, not certified residential appraisers. Ms. Saunders said the expert contracts are for reviewing residential assignments. Mr. Carter replied that the certified general credential is the highest level credential and there are plenty of certified generals that do residential work. He continued that a certified residential appraiser shouldn't be testifying against a certified general appraiser. Mr. Flowers also concurred that he felt that a person should have a certified general credential if they are going to testify against a certified general. Mr. Carter indicated that the contracts should be from each of the grand divisions of the State. Ms. Saunders indicated that a diverse group from across the State. Mr. Wade indicated that the only problem he can see is if the reviewer was from the same region it could cause hard feelings. Mr. Flowers brought up the matter of the hearing of the last hearing meeting and a matter that was settle last week where he said the Respondent had to pay investigative costs of \$5,000. Ms. Avers indicated that was not the case, that the Respondent's order only contained language that he would pay no more than \$5,000 but the costs of the hearing had not yet been determined. He said that the matter that was a formal hearing from last month if a Commission member had been reviewed initially the matter would have been dismissed and saved the investigative costs. He continued that USPAP has changed many times since inception. He indicated that Standard 5 on Confidentiality was retired. He indicated that matter was a confidential report between the Respondent and his client. He said the state's expert witness said the report was used to turn down a loan. The client said "no" that I didn't use report to turn down a loan he just said it was my expert's opinion, but I just hired another appraiser and made the loan anyway. He said that is how 4 of the 5 Commission members saw it as working appraisers. He said for the entire life of this Commission the complaints have been reviewed by Commission members and we did not consent to the state's new process, it was done without our consent and we need to change it back with our consent. Assistant Commissioner, Steve Majchrzak, joined the meeting and Chairman Carter posed several questions to him. He first asked if the Commission could submit a list of names for the pool of names for the RFP because they hadn't had input on the list developed by staff and the reports developed by the experts. Mr. Majchrzak indicated he was a little confused about the Commission's statement that there was a lack of input because there was a prior RFP that he canceled on the advice of the Commission taking their concerns into consideration. He indicated that the RFP is a competitive bid process and anyone was free to bid on it. He gave an overview of the complaint Standard Operating Procedure for regulatory boards and the expert procurement process. Jesse Joseph, litigation counsel advised on the formal hearing requirements of the Commission. Randy Button, former Commission member and lobbyist for the Appraisal Institute, was present and gave his historical perspective on complaint processing and investigation of complaints.

Mr. Flowers made a motion to put the complaint process, qualification of the expert witness, and what type of reports should be submitted by the expert witness; on the next meeting agenda and Mr. Phillips seconded the motion. The motion carried unopposed.

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Being no further business, the meeting was adjourned at 10:35 a.m.

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Chairman, Thomas Carter

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Nikole Avers, Executive Director