



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

November 10th, 2014
Minutes
First Floor Conference Room (1-A)
Davy Crockett Tower

The Tennessee Real Estate Appraiser Commission met on November 10th, 2014, in Nashville, Tennessee, at the Davy Crockett Tower in the first floor conference room. Mr. Walton called the meeting to order at 10:08 a.m. and the following business was transacted.

COMMISSION MEMBERS PRESENT

Tim Walton
Norman Hall
Gary Standifer
Rosemary Johnson
Nancy Point
Randall Thomas
Dr. Warren F. Mackara

COMMISSION MEMBERS ABSENT

Mark Johnstone
Eric Collinsworth

STAFF MEMBERS PRESENT

Nikole Avers, Keeling Gamber, Jennaca Smith, Cody Kemmer, Dennis O'Brien

Mr. Walton read the public meeting statement into the record which indicated the agenda was posted to the Tennessee Real Estate Appraiser Commission website on October 27th, 2014.

ADOPT AGENDA

Mr. Standifer made a motion to adopt the agenda. It was seconded by Mr. Hall. The motion carried unopposed.

MINUTES

The October 13th, 2014 minutes were reviewed. Mr. Hall made the motion to accept the minutes as written. It was seconded by Dr. Mackara. The motion carried unopposed.

REPORT OF EXPERIENCE INTERVIEWS

Joshua D. Stewart made an application to upgrade from a registered trainee to a certified residential real estate appraiser. Ms. Avers was the reviewer and recommended that his experience request be granted. Ms. Johnson made a motion to accept this recommendation. This was seconded by Mr. Hall. The motion carried unopposed.

Shawn M. Workman made an application to upgrade from a registered trainee to a certified residential real estate appraiser. Ms. Avers was the reviewer and recommended that his experience request be granted. Dr. Mackara made a motion to approve the recommendation. This was seconded by Ms. Point. The motion carried unopposed.

Timothy B. Adkins made an application to upgrade from a registered trainee to a certified residential real estate appraiser. Ms. Avers was the reviewer and recommended that his experience request be granted. Mr. Standifer made a motion to approve the request. This was seconded by Ms. Point. The motion carried unopposed.

Christine R. Adkins made an application to upgrade from a registered trainee to a certified residential real estate appraiser. Ms. Avers was the reviewer and recommended that her experience request be granted. Mr. Standifer made a motion to approve the request. This was seconded by Ms. Point. The motion carried unopposed.

Lori A. Vest made an application to upgrade from a registered trainee to a certified residential real estate appraiser. Ms. Avers was the reviewer and recommended that her experience request be granted. Mr. Thomas made a motion to approve the request. This was seconded by Mr. Standifer. The motion carried unopposed.

James R. Whittington made an application to upgrade from a registered trainee to a certified residential real estate appraiser. Ms. Avers was the reviewer and recommended that his experience request be granted. Dr. Mackara made a motion to approve the request. This was seconded by Ms. Johnson. The motion carried unopposed.

Mary ‘Cate’ Scott requested an experience interview having completed 500 hours of appraisal experience. After reviewing her appraisals, Ms. Avers stated that they had had some best practices discussion on summarizing analysis; however, her reports were well written and supported and she had made a strong start towards licensure or certification.

NOVEMBER 2014 - EDUCATION COMMITTEE REPORT

Dr. Mackara reviewed the education submissions and read his recommendations into the record as below:

Course Provider	Course Number	Course Name	Instructor(s)	Hours	Type	Recommendation
NAIFA	1792	Today’s FHA & VA	Mike Orman	8	CE	Approve
NAIFA	1793	Defensible Appraisal Practices	Mike Orman	8	CE	Approve
ASFMRA	1798	Introduction to Vineyard and Winery Valuation	JoAnn Wall	8	CE	Approve
ASFMRA	1799	Best Practices for Rural Appraisal	JoAnn Wall	8	CE	Approve
Appraisal Institute	1800	Supervisory Appraiser / Trainee Appraiser Course	Sandy Adomatis	4	CE	Approve

Individual Course Approvals

Licensee	Course Provider	Course Name	Hours	Type	Recommendation
Eric D. Collinsworth (CR 3502)	AARO / ASB	AARO Conference and ASB meeting	11	CE	Approve

Ms. Point made a motion to accept the recommendations. This was seconded by Mr. Standifer. The motion carried unopposed.

DIRECTOR’S REPORT

Director Avers presented the appraiser commission budget, licensing numbers and complaint status summary, followed by a report on the three conferences she had attended in the past month. These were The ASC Advisory Committee meeting in Arlington, Virginia on October 15th-16th, The Appraisal Standards Board (ASB) of the Appraisal Foundation (TAF) who met on the morning of October 17th. The AARO conference, which started Friday afternoon, October 17, 2014 during which Director Avers was

sworn in as the president of AARO. In closing she reminded the board members that the AARO spring conference would be held in Nashville in May of 2015.

PROPOSED RULES FOR EMERGENCY RULEMAKING

Ms. Gamber informed the board that since the proposed making hearing could not be held and effective before the end of the year, the rulemaking hearing will be on January 12, 2015. The TREAC would be filing emergency rules which would become effective January 1, 2015 and will remain in place until the final rules go into effect. The proposed rules on distance (on-line) education were not included in the emergency rules draft, but would only be considered in the final rulemaking hearing as this has been a controversial topic and not specifically required under the minimum AQB requirements. Ms. Gamber then presented the emergency rules for the board to consider for approval. **Vote:** Mr. Hall made the motion to accept the emergency rules as written. This was seconded by Mr. Standifer. The vote carried unanimously. Ms. Gamber then read the emergency ruling statement of necessity into the record for consideration of approval. **Vote:** Mr. Thomas made the motion to accept the statement as written. This was seconded by Mr. Hall. The vote carried unanimously.

LEGAL REPORT

1. 2014014951, 2014014952

RE-PRESENTATION

This complaint is a re-presentation from the October 2014 Commission meeting, during which the Commission voted to defer the matter until the November meeting and allow Commissioner Standifer to review the file and make a recommendation as to proper discipline, if any. The facts of the matter as presented are as follows:

This complaint was filed by a consumer and alleged that Respondent supervisor and trainee over-valued a property and said that the Respondent supervisor was on vacation at the time of the appraisal, and the trainee was not supervised.

Respondent sent a response to the complaint, indicating that the Complainant attempted to influence his value opinion, indicating the contract price was too high and told him that the Complainant was a licensed appraiser in Texas. The subject property is a mixed-use property which consists of an older three-bay strip center on the front of the tract with multiple storage improvements situated on the rear of the tract. He indicated the prior owner had passed away and the property was under managed and underperforming. The supervisor appraiser indicated he did not discuss or disclose any of the conversations with the buyer or the client with his trainee, as he did not want him to be influenced by Complainant's attempts to influence value. He indicated when the appraisal was delivered the Complainant was unhappy with the appraised value and was totally unfamiliar with a DCF and did not seem to know that the income approach is based on the current value of future earnings. The value at stabilization which we provided was, of course, even higher. He wanted the property valued based on the current occupancy, which we did not consider appropriate. The Respondent indicated he was at a total loss as to how the Complainant being in Texas during this entire process, could ascertain that Respondent was on vacation for 10 days. On May 20, 2014, the registered trainee appraiser met a representative of the owner at the property. The representative unlocked the property and left immediately afterwards. The Respondent-supervisor met the Respondent-trainee shortly after the representative left and they spent approximately two hours inspecting the property. He indicated the Complainant's statement is totally untrue and he questions how he would have any knowledge as to the extent of the inspection, as he was not present. After assisting in the overall preparation of the report and reviewing the final product, the Respondent-supervisor placed his signature on the report. He questioned how the Complainant would have any knowledge of my whereabouts or activities while this report was being prepared or when it was signed.

REVEIWER CONCLUSIONS [alleged violations included within brackets]:

- **Scope of Work:** The report fails to properly identify the problem to be solved. The property was appraised Fee Simple, while encumbered by a twenty month lease at below market rates identified in the report as below market, creating both Leased Fee and Leasehold considerations. Neither Leased Fee nor Leasehold positions were addressed in the report and there were no stated

extraordinary assumptions or hypothetical conditions employed regarding the leases in force at the time of the appraisal. [SR 1-1(a)(b)(c); 1-2(h); 1-4(d); 2-2(a)(iv)]

- **Improved Sales Comparison Approach:** The comparison of improved sales was not included as an approach to value in this report. The reasoning behind this decision was based on the limited amount of comparable sales and the inability to verify an adequate number of sales with at least 1 principal participant. The omission of the sales comparison approach on this basis would not meet the expectations of parties who are regularly intended users for similar assignments and is not what an appraiser's peer's actions would do in performing the same or similar assignment. The scope of work should have been expanded to allow normal verification of sales, the sales presented in the appraisal report and the completion of the sales comparison approach. There was no evidence in the workfile of improved sales research. [SR 1-1(a)(b)(c); SR 1-2(h); SR 1-4(a); SR 1-6; SR 2-1(a)(b); SR 2-2(a)(vii)(viii); Record Keeping Rule, Lines 321-323]
- **Land Sales Comparison Approach:** The report includes a sales comparison approach for land sales used for developing the opinion of site value used in the cost approach. However, there is no discussion or support in the report or workfile for the development or application of comparable land sale adjustments – only statements regarding adjustment amounts and the feature. [SR 1-4(a); SR 2-2(a)(viii)]
- **Cost Approach:** Cost approach narrative refers to reproduction cost, but the cost analysis appears to use replacement cost. Also, given the significant difference in the value indication yielded by the cost approach versus the income approach indicates that there is likely some functional and/or external obsolescence present that might be accounted for in the as-is value of the cost approach. [SR 1-1(c)]
- **Income Approach:** On page 46, six comparables were provided with a rental range from \$6.72 to \$10.56 per square foot and an average rent of \$8.90 per square foot. The analysis lacked comparative support as there was no comparison of physical similarity, building tenant mix or age of construction in the development of estimated market rent produces. The report indicated a market rent of \$6.75 per square foot which is substantially higher than current contract rent of \$4.00 per square foot creating a positive leasehold position for the tenant of \$2.75 per square foot for the remainder of the lease. During this period, the value of the landlords leased fee estate combined with the tenant's positive leasehold position produces the indicated fee simple market value for the subject property. These values are not addressed in the report. The rent adjustment to \$5.40 per square foot remains below market rents and perpetuates the leased fee/leasehold positions in the subject property. There is no explanation as to why the subject does not negotiate to market rent. The hypothetical conditions applied to the property in order to raise income levels are not actually present at the time of inspection and directly impact the as-is estimate of value. In taking this approach, a timeline detailing the cost of implementing these improvements and when they took effect should be reflected in the discounted cash flow model. [SR 1-1(a)(b)(c); SR 1-6; SR 2-1(a)(b); SR 2-2(a)(viii)]
- **Market Rate Indication:** The expense ratio is ignored as a crucial unit of comparison for the subject property. The subject buildings are significantly older than the comparables and as a result have a higher expense ratio (exceeding 50%) which directly impacts the cap rate for the property. Rather than using a blended cap rate, the lower cap rate was used in the discounted cash flow model which would produce higher values. [SR 1-1(a)(b)(c); SR 1-6; SR 2-1(a)(b); SR 2-2(a)(viii)]
- **Debt Coverage Ratio Method:** The debt coverage ratios listed on page 51 for the average retail and self-storage market range from 1.41 to 1.67. The history and condition of the subject property indicates the property would struggle to be average and as a result, how the local lenders would view this property in regard to the debt recovery margins. The mean debt coverage ratio for the retail and self-storage average markets indicated by the data source is 1.55. Employing this figure in the DCR formula would elevate the cap rate to 13.37% as compared to the 10.79% rate used in the report. [SR 1-1(a)(b)(c); SR 1-6; SR 2-1(a)(b); SR 2-2(a)(viii)]
- **Discounted Cash Flow Analysis "As-Is":** The retail income in year 1 for this two tenant building is presented as \$28,800. There is an inadequate explanation in the report as to the

origin/development of this figure and it could not be substantiated using the information provided in the report.

In the discounted cash flow analysis on page 57, retail market rent indicated by the comparable rent analysis was never achieved in years 2, 3, and 4. The highest annual income for the retail space appears in year 3 as \$38,604 which remains below market rents. If the subject is not leased at market rents then by definition the interest appraised is an as-is leased fee estate with a leasehold position, not fee simple estate.

Historical data supporting vacancy analysis is lacking in the workfile. Data supporting narration regarding expenses, maintenance, management, etc. is missing from the workfile. [SR 1-1(a)(b)(c); SR 1-6; SR 2-1(a)(b); SR 2-2(a)(viii)]

- Reconciliation: The application of stringent data verification requirements on the sales comparison approach only resulted in its omission. The omission of the sales comparison approach based on sale verification is not considered acceptable when a lower verification was used to develop the income approach.

There is a very significant variation between the value indicated by the cost approach and the income approach that is not accounted for in either approach or the reconciliation. Given the weakness of the data in the income approach and the omission of the sales comparison approach the opinion of value may have been compromised. [SR 1-1(c); SR 1-2(h); SR 1-4(a); SR 1-6; SR 2-2(a)(viii)]

Respondent's Response to Reviewer's Conclusions:

The Respondents indicated in response to the reviewer's conclusions that they believed the scope of work was properly defined for the assignment considering the uniqueness of the property which is 24,990 square foot property of which 6,510 was a mostly vacant strip center and the remainder a mix of storage buildings. They indicated that they attempted to get a written lease multiple times, but according to the response the lease was verbal. They indicated the leases were typically month to month or almost always less than a year and that mini warehouse appraisals are almost always developed as fee simple. They further indicated that any attempt to provide a leased fee estate on a property in which the overwhelming amount of income steam is typically based on fee simple is not considered appropriate and that they never use this approach when appraising mini warehouse properties.

In response to the allegation that the Respondents failed to include the sales comparison approach which may have been necessary for credible assignment results, the Respondents indicated that because of the uniqueness of the property they just could not find sales of properties similar enough to the subject to compare for a credible analysis. They indicated they would have verified the sales if there had been any, but responded there had been none that were similar.

In the response to the allegation that they failed to analyze such land sales necessary to support adjustments made in their site value opinion, they indicated that there were no nearby land sales. The most proximate land sales were 1.23 miles to 10.53 miles from the subject. They indicated that adjustments were subjectively applied to sales based on market experience, not pair sales. They indicated that they made an error in the report by referring to reproduction cost; it should have read replacement costs new. They admitted they should have applied some form of obsolescence in the cost approach, but indicated the cost approach was given no weight in the final analysis.

They disagreed with the reviewer's conclusions about the income approach because of the subject being a unique property mixed use improvement which was neglected and underperforming. They stated with no similar rents in the immediate area, they were forced to use comparable rents of properties that could be rationally considered a reflection of market rents. They disagree that the subject's \$4.00 per square foot contract rent could be considered as they could not verify it in writing. They indicated that the rent was low due to the deceased seller's neglecting the property for three year's due to declining health prior to his death. They provided additional support from their workfile for the indicated \$5.40 per square foot and adjustment for unfinished area which was inadvertently not sent previously. The Respondents indicated they didn't know what they reviewer was alluding to with regards to the hypothetical conditions applied to the property. They indicated in their response that they considered this essentially as a new facility with market rents and expenses developed from admittedly limited and marginally representative

data. They indicated the market rated was a “blended” cap rated developed from a lender survey. They disagreed with the reviewer’s conclusion that the subject property would struggle to be considered “average” and they said they reflected the subject in their choice of market rents and expenses they developed.

They concur with the reviewer conclusion that they income from the retail building should not have been reported as \$28,800. They indicated the correct number should have been \$33,204. They said this changed would not have significantly affected the value opinion.

The Respondents dispute that the retail market rents would not be achieved in years 2, 3, and 4. They admitted that the reviewer was correct that historical data regarding expenses was missing from the workfile as they just do not exist. They said they data was developed from scratch based on verbal information and market data.

Licensing History (Supervisor): Certified General 9/18/1991-Present
Disciplinary History: (199901754-Closed with no further action)

Licensing History (Trainee): Registered Trainee 5/4/2011-Present
Certified General 9/23/2014-Present
Disciplinary History: None

Reasoning and Recommendation (from October 2014 Commission meeting): The reviewer found several significant deficiencies within the report prepared by Respondent, including multiple development and reporting violations. Neither the supervisor nor the second Respondent has been disciplined in the past; however, there were numerous violations noted especially in the development of the approaches to value. As such, Counsel recommends the authorization of Consent Orders, which require each Respondent to complete a thirty (30) hour General Appraiser Sales Comparison Approach course **OR** a thirty (30) hour General Appraiser Income Comparison Approach course to be completed within one-hundred eight (180) days of execution of the Consent Order. Such terms are to be settled by Consent Order or Formal Hearing.

New Reasoning and Recommendation: To be deferred to the next meeting since the Mr. Standifer had not completed a review of the complaint materials.

Vote: Mr. Hall made a motion to accept counsel’s recommendation. This was seconded by Dr. Mackara. The motion carried unanimously.

2. 2014018351

This complaint was filed by an Appraisal Management Company and alleged that Respondent misreported that the basement was 100% finished and over-valued the subject property. The complaint alleged that the house went into default, and the secondary market participant required the AMC to repurchase the loan. The AMC had the matter reviewed and found that not only was the basement misreported, but that the value opinion was overstated by approximately \$100,000 per their field review. The original value opinion was \$440,000. The field review opinion of value was \$346,000.

The Respondent indicated that her appraisal was conducted in accordance with USPAP and she was not privy to any correspondence between the AMC and the GSE or the alleged repurchase of the subject property. Respondent indicated correcting the indicated finish to 68% would not affect the opinion of value. Respondent disagrees with the field reviewer’s opinions and conclusion.

REVIEWER CONCLUSIONS [alleged violations included within brackets]:

- The neighborhood as described on page 2 contains multiple neighborhoods. It probably describes the subject’s entire market area. [SR 1-1(a)(Lines 464-466)]

- The basement is listed as 68% finished on the form and used in the sales comparison approach. However, both the rough and finished sketches show the basement to be entirely unfinished. [SR 1-1(b)(Lines 479-484)]
- Highest and best use is stated on page 2. However, the support and rationale for that opinion was not summarized as required by USPAP. No analysis was found in the appraiser's workfile. This indicates that no analysis was performed. [SR 2-2(b)(ix)(Lines 799-800); SR 1-3(b)(Lines 556-558)]
- Land value is stated. However, the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analysis, opinions, and conclusions were stated, but not summarized adequately. [SR 2-2(b)(viii)(Lines 782-783)]
- Physical depreciation is supported by the age-life method. Functional obsolescence was identified on page 3, but not assessed in this approach. It is likely that no sales are available to extract this amount. [SR 1-1(b)(Lines 479-484)]
- The appraiser stated the adjustment amounts for most of the line-item adjustments. However, the appraiser gave no explanation or support for any of the adjustments. [SR 2-1(b)(Lines 630-631); SR 2-2(b)(viii)(Lines 782-784)]
- The adjustment for land size in sale 2 is in the wrong direction. The lot in sale 3 is twice as large as the subject, but no adjustment is made. The line-item adjustment rate for GLA is \$25.00 per square foot, but in the cost approach the square footage is valued at over \$100 after depreciation. [SR 1-1(a)(Lines 465-466)]
- The "quantity" of the data was not addressed. [SR 1-6(a)(Line 615)]
- The "applicability and relevance" was not addressed. [SR 1-6(b)(Lines 617-618)]
- No explanation was provided for the omission of the income approach. [SR 2-2(b)(Lines 783-784)]
- The appraiser stated the "previous service" on page 4; however, it is not clear, and it is not in the certification. [SR 2-3(Lines 877-878)]
- The information implies that the report under review is a "corrected" version. However, no copy of the original report was found in the workfile. [RECORD KEEPING RULE (Lines 294-296)]

Respondent's Response to Reviewer's Conclusions:

With regard to the first bullet point, the Respondent stated that the reviewer's finding appears to be more of a disagreement of opinion rather than a deficiency of USPAP. The neighborhood was clearly defined on page two with geographic boundaries which is a requirement. Those geographic boundaries include the subject property and the residential district in which it is located, as well as the comparable districts and complementary property type districts needed, in order for the subject property to function and have value. With regard to bullet two, Respondent stated that it is true that she originally described the subject as having a percentage finished in the basement area. In addition, at the request of the client she later revised the appraisal to include 0% finish in the basement. The reason for the two descriptions is the unique nature of the situation with regard to what actually existed in the basement. The basement had rough finish including heat and air conditioning, electrical and roughed out plumbing for another bath room as well as studded walls for room delineation. This would basically be described as roughed out finish or partial finished area. From a valuation perspective, Respondent stated she could value it as completely finished and give only limited contributing value to the finished area or could describe it as completely unfinished then add for any contributing value that the limited finish contributes. Either way, the value is the same. With regard to bullet three, Respondent stated the reviewer's findings are incorrect. The definitions of the highest and best are included in the appraisal. The subject property is a non-complex single family residential house in a restricted residential subdivision with all single family residential homes surrounding it as can be seen in the photographs and descriptions in the report. Respondent believes the analysis is sufficient given the obvious and simplistic nature of the subject property. With regard to land value, Respondent stated that under the cost approach to value section, a description indicating that sales of unimproved land were obtained, considered, analyzed, and comparisons were made. One of the two sales obtained was on the same street as the subject property. As a result, it is implied by those statements that I used the sales comparison approach, in order to develop an opinion of value for the subject site. In addition, Respondent stated in the same section that she used the extraction method as a second method and as a check for comparison with the value derived

by actual sales. With regard to physical depreciation and functional obsolescence, the subject dwelling had three bedrooms plus a bonus room which had a closet and a half bath. The bonus room could also be used as a 4th bedroom. However, if it was used as a bedroom, access to bathing would be somewhat of an issue. As a result, Respondent described it as having (potential) functional obsolescence and then plainly stated in the following sentence that it did not have functional obsolescence. The reason was that the property already had three other bedrooms without the use of that room as a bedroom. As a result, no deduction in the cost approach was made for functional issues. With regard to the adjustment amounts for line-item adjustments, Respondent stated that all the adjustments are comparatively small as compared to sales prices of the comparable sales. The level of explanations is reasonable and consistent with this fact as well as the intended use, intended user and with the level of complexity of the property. With regard to the adjustment for land size in sale 2, Respondent stated the adjustment direction is correct and what was intended. The site on sale 2 was superior to subject size. Therefore, a negative adjustment is appropriate. It is true that the size on the lot of sale 3 is twice as large as the subject; however, the adjustments for site in an appraisal would (and should) include many more factors other than size. Appropriately, Respondent stated her adjustments are based on the differences in value between the subject and the sale site. With regard to the line item adjustment for the GLA of \$25, the adjustment is made on a “bulk contributing value per square foot” for additional area. It differs from the depreciated cost in the cost approach because it does not include the additional cost of main components which are included in the cost approach. Respondent disagrees that the “quantity” of the data was not addressed. The report states that the comparable properties currently offered for sale in the same neighborhood ranged from \$369,900 to \$500,000. With regard to the omission of the income approach, Respondent stated that on a home of this type in a homeowner neighborhood, of a higher price range similar to the subject, the income approach is not needed to produce a credible opinion of value. This is implied in the report, as Respondent concluded entirely with the sales comparison approach. The statement of past service can be found in two places in the appraisal. The 1004 appraisal form pages are completely filled with standard certification printed material. Respondent chose to make the statement in two separate places in a clear and conspicuous manner rather than hand write in the margin of one of those filled pages. With regard to a “corrected” version, the client came back four separate times with requested changes which Respondent made. The result was four separate versions of the same appraisal and Respondent made the statement of “corrected version” as a result. All four versions were submitted to the Executive Director in response to her request. Version 4 was the final report after changes mentioned in previous responses were made after the client’s review such as how the basement finish was described in the appraisal.

Licensing History:	Registered Trainee	1/13/1999-2/5/2003
	Licensed RE Appraiser	2/6/2003-7/5/2006
	Certified Residential	7/6/2006-Present

Disciplinary History: (200901090-Closed with Consent Order with a \$2,000 civil penalty and restriction of the Respondent’s credential for a period of 30 days by downgrading the credential to licensed real estate appraiser; 201201202-Closed with no further action; 201201813-Closed with no further action)

Reasoning and Recommendation: While the reviewer did find several violations, the basement bullet point and the adjustment for land size in the wrong direction are substantial errors that would affect value. The remainders were report writing violations. As such, Counsel recommends that this matter be **Closed with a Letter of Caution.**

Vote: Mr. Hall made a motion to accept counsel’s recommendation to close with a letter of caution that would not contain the bulleted points from the reviewer’s conclusions. This was seconded by Dr. Mackara. The motion carried unanimously.

3. 2014022301

This complaint was filed by an appraiser and alleged that Respondent failed to submit payment for five (5) unpaid appraisal invoices, where appraisals were completed 10/28/13, 10/30/13, 4/1/14, 4/1/14, and 4/17/14 totaling \$1,800 in unpaid appraisals. According to T.C.A. 62-39-421, “Each appraisal management company shall, except in cases of breach of contract or substandard performance of services,

make payment to an appraiser for the completion of an appraisal or valuation assignment within sixty (60) days, unless a mutually agreed upon alternative payment schedule exists, from when the appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.”

Respondent’s attorney filed a response with the State, stating that according to the statute, there are two exceptions to the prompt payment requirement: breach of contract or substandard performance of services. In addition, the 60-day period does not begin to run until the appraiser transmits or otherwise provides the completed appraisal or valuation study to appraisal management company. Respondent’s attorney stated that Respondent acted in good faith, and with regard to two of the instances complained of, checks were issued in a timely manner. Proof of those payments is included in the complaint file. Respondent stated that two of the appraisal orders were cancelled due to appraiser tardiness and unresponsiveness. With regard to the other instance, the order was cancelled when it was discovered the property type exceeded the appraiser’s license. Counsel contacted Respondent and requested written documentation showing correspondence with the Complainant on the cancellation of the above-mentioned appraisal orders. Such documentation was provided by Respondent, showing that Complainant failed to submit the reports during the time frame requested by Respondent, and, thus, the appraisal orders were cancelled in writing. It is Respondent’s belief that the Complainant may have violated USPAP on one appraisal order, by offering to complete a commercial appraisal without the necessary license and competency and by not declining the assignment when it was discovered that the property type exceeded his license type and competency.

Licensing History: Registered AMC 8/4/2011-Present

Disciplinary History: None.

Reasoning and Recommendation: Complainant did not provide any information sufficient to dispute the detail record provided by Respondent in this matter. As such, Counsel recommends that this matter be **Closed with no further action**, as Respondent has provided sufficient information to support that there was no violation on their part regarding payment for services in this matter.

Vote: Mr. Hall made a motion to accept counsel’s recommendation. This was seconded by Ms. Johnson. The motion carried unanimously.

4. 2014019881

This complaint was filed by a consumer and alleged that Respondent did not report that there will be a five (5) lane highway behind the house. Complainant feels that Respondent took advantage of Complainant’s age when appraising the property.

Respondent sent a response to the complaint stating that he had no idea the road in question was being widened until he received a letter from the Complainant, after the appraisal was completed. Respondent stated he was engaged by a regional bank to do a market value appraisal of the subject property for the purpose of mortgage financing for the purchase of the subject property by the Complainant. Respondent stated there were no survey markers, no spray painted lines in the yard, no signs posted, and no kind of physical activity that road work was going to be done. Respondent stated that a veteran real estate broker had the listing of the subject property, and he made no mention of any road widening project in the listing. The Complainant provided Respondent with a project information sheet that TDOT gave them on June 13, 2014 stating that a public hearing on the widening was going to be held December 11, 2001, which was 13 years ago. Respondent stated that he can understand why the Complainant is looking for someone to blame because they are not happy about their purchase; however, Respondent had no idea of Complainant’s age, at the time of the appraisal and would never take advantage of an older person. Respondent stated he honestly did not have knowledge of the road widening at the time of the appraisal.

REVIEWER CONCLUSIONS [alleged violations included within brackets]:

- The contract is discussed on page 11; however, there is no discussion of why the opinion of value is much higher than the contract. There is a contract presented with “Re/Max” letterhead. This

implies the property was listed. Yet the listing was not mentioned or analyzed in the report. No analysis was found in the workfile indicating that no analysis was performed. [SR 2(a)(viii)(Lines 229-240); SR 1-5(a)(Lines 627-630)]

Licensing History: Certified Residential 12/31/1991-Present

Disciplinary History: (947103-Closed with Letter of Warning)

Reasoning and Recommendation: The reviewer noted several reporting issues in their review; however the only substantial issue noted was a failure to summarize the analysis of the current contract. As such, Counsel recommends that this matter be **Closed with a Letter of Caution** relative to this reporting requirement.

Note: Mr. Thomas made a motion to accept counsel's recommendation. This was seconded by Mr. Hall. The motion carried unanimously.

5. 2014020371

This complaint was filed by a consumer and alleged that Respondent used incorrect comparable sales data, which caused the subject property to be undervalued. Complainant alleged that the comparable sales used were homes that had no garage, were vinyl-sided, and were not in an upscale neighborhood. Complainant alleged that you couldn't even build a home at the price Respondent appraised the subject home.

Respondent sent a response to the complaint stating that the client requires three comparable sales and two comparable listings be used, which have taken place in the prior 12 month period. Of the comparable sales used in determining market value, all four comparable sales and one comparable listing had garages, and one comparable listing had a carport. All four sales and one listing were brick, and one listing was vinyl. All comparable sales and all comparable listings were in similar neighborhoods. Respondent stated in his response that the appraisal was to determine an opinion of market value and not the replacement cost.

REVIEWER CONCLUSIONS [alleged violations included within brackets]:

- Lot size: The appraisal indicates that the total site size is 20,893 square feet; however, a measurement of the site from public records supports a site size of around 37,460 square feet, which is a difference of almost 45%. [SR 1-2(e); SR 2-2(a)(iii); SR 1-1(c)]
- Flood plain: The appraisal indicates that the subject is located in the 100 year flood plain, but also indicates that the "exact location of the home in relationship to the flood zone area is not determined." However, the appraisal included a map of the subject site with the flood plain indicated, and it shows that the whole lot is basically in the flood plain, including the home. There is no further discussion in the report regarding the extent to which the flood plain affects the value of the property; it appears to be assumed by the appraiser that it has no affect. [SR 1-2(e); SR 2-2(a)(iii); SR 1-1(c)]
- There are two appraisal reports related to this assignment: the first is dated August 11, 2014 and indicates that the condition of the subject is a C3, the second report, dated August 19, 2014, indicates that the condition is a C2. By Fannie Mae's own definition, a C2 is a property with little or no physical depreciation. In the cost approach of the first report, an effective age of 10 is used to support 16.7% physical depreciation; in the second report an effective age of 6 is used to support 10% depreciation. In either case, this does not appear to meet the Fannie Mae definition of a C2 rating. [SR 1-2(e); SR 2-2(a)(iii); SR 1-1(c)]
- Site value: An opinion of site value is provided in the cost approach. Basing a site value on local tax assessor's records is not a recognized valuation method. There are no land sales nor any extraction data provided in the report to support the site value conclusion, and there is no extraction data found in the workfile. Land sales are provided in the workfile, but the date found on the MLS report sheet is subsequent to the date of the appraisal report indicating that they were added to the workfile after the report was completed. There is no summary of support and no

reconciliation found in the report. Since an opinion of site value is, by definition, an appraisal, all applicable standards rules in Standard 1 and 2 are required of the appraiser. [SR 1(Lines 478-480); Record Keeping Rule (Line 321)]

- Unsupported and unexplained adjustments in the sales comparison approach: In the revised report, dated August 19, 2014, comparable sales 4-6 received substantial adjustments for age and condition. No explanation or support is provided in the report or workfile for the age adjustment; a statement is made that the condition of these properties was adjusted \$5 per square foot based on market acceptance and matched pairs; however, no matched pairs are provided in the report of workfile. [SR 1(Lines 478-480); Record Keeping Rule (Line 321)]
- Reconciliation: Based on the appraiser's reasoning in the appraisal report summary, Sale 1 should have been given the most weight since it required the fewest adjustments and is closest in proximity to all other comparable properties. This would have resulted in a final value opinion of around \$157,000, but the indicated value is \$170,000 which gives the most weight to sales 3 and 4. [(SR 2-1(a); SR 2-2(a)(viii)(Lines 732-734)]
- Market analysis: Page 1 of the report indicates that supply and demand is in balance, but in the comments on page 1 the report indicates that there are currently 14 similar homes on the market and that 11 similar homes sold in the past 12 months. Based on this data, there is over a 1-year supply of competitive properties on the market indicating an over-supply, not a balanced market. In addition, on page 2 and on the 1004 MC form, the market data is reported differently; there the report indicates that there are only 5 competitive listings, but 15 competitive sales have occurred in the past 12 months. This data is misleading. [SR 1-3(a)(Lines 576-577)]
- There is no summary of the support and rationale for the highest and best use of the property. [SR 1-3(b); SR 2-2(a)(x)]

Licensing History: Certified Residential 12/23/1991-Present

Disciplinary History: 943109-Dismissed; 200105784-Closed with Letter of Warning; 20080688-Closed with Consent Order with \$500 civil penalty and continuing education; 200901324-Closed with Consent Order with \$2,000 civil penalty and 1 year probation.)

Reasoning and Recommendation: The above noted issues indicate a pattern of report writing issues and failure to summarize analysis or support analysis in the appraisal or workfile. As such, Counsel recommends authorization of a fifteen (15) hour Residential Report Writing course and a five hundred dollar (\$500) civil penalty to be settled by consent order or authorized for formal hearing.

Vote: Dr. Mackara made a motion to accept counsel's recommendation. This was seconded by Ms. Point. The motion carried unanimously.

6. 2013011451

RE-PRESENTATION

This complaint is a re-presentation and was filed by a consumer that is in federal prison for bank fraud that has alleged the Respondent communicated an oral appraisal to a bank in a federally related transaction, which requires a written appraisal, and overvalued three commercial properties which included two carwashes and a strip mall. The Respondent indicated that he completed an appraisal of these commercial properties in early 2006. He indicated he was engaged by the buyer and then referred to the lender for the financial data on the property. He indicated that he tried several times to get the data from the bank. He indicated he did not tell them prior to closing any value because they had not provided financial data. He indicated a few days after closing he received the rental schedules and summaries for the shopping center and he submitted a combined value for the 3 properties of \$1,720,000.00. He indicated the buyer defaulted on the mortgage and the property sold at public auction for \$1,500,000.00. He indicated few days later that the loan officer asked him to do a business valuation of the properties. He said he did not have much confidence in the reported income statements but he submitted an appraisal but stated several times in the report "if any information I used in proved incorrect I reserved the right to revise the report." He indicated several months later he was contacted by the FBI and they asked him to bring his files with him. He said he gave them a statement indicating he did not provide a verbal

appraisal of \$4,000,000.00 and other than the business analysis done after the loan was closed he hasn't done any further appraisal work on these properties. He indicated he no longer has the appraisals or workfiles because the FBI took them. On June 18, 2013, Nikole Avers, Executive Director, provided the Respondent a copy of the appraisal which was submitted with the complaint. The copy provided to the Respondent was marked "Copy" at the top of the appraisal report. The Respondent indicated that he received a letter from the Complainant also. Ms. Avers requested a copy of that letter. He stated in conclusion he believes his value option was "reasonably accurate".

This complaint was formerly authorized for formal hearing by the Commission; however, the Respondent had been ill for a number of months and after a period of time in hospice passed away in October.

Reasoning and Recommendation: As such, Counsel recommends that this matter be Closed with no further action.

Note: Mr. Hall made a motion to accept counsel's recommendation. This was seconded by Ms. Point. The motion carried unanimously.

7. 2012001291 RE-PRESENTATION

This matter was previously presented in a formal hearing. As a result, a final order was filed on January 29, 2014 which assessed a civil penalty in the amount of Two Hundred Dollars (\$200.00), along with investigatory and hearing costs in the amount of Three Thousand Seven Hundred Sixty Dollars (\$3,760.00) for a total of Three Thousand Nine Hundred Sixty Dollars (\$3,960.00) due and payable. The facts as presented at the December 2012 Commission meeting are as follows:

This complaint was filed anonymously and alleged that the Respondent communicated a misleading and/or unsupported value opinion. The complaint included two reports on the same property completed by Respondent on September 15, 2010 and September 18, 2009.

The Respondent stated in his response that the subject property appraised consisted of vacant land that was planned to be developed with a condominium development. The developer had projected the construction of a club house and other amenities for this development, but the Respondent was never provided with any construction plans or details of the proposed club house or other amenities. Because of this any influence of amenities, such as the proposed club house, etc., was not included in his appraisals. Respondent stated the appraisal reflected the value assuming completion of the development and the value of the land assuming no development occurred. Respondent states that his appraisals are accurate and indicative of market value, whether the land was developed with condo pads or remained vacant and undeveloped. Values for either circumstance were included in the appraisal reports.

REVEIWER CONCLUSIONS [alleged violations included within brackets]:

- The site characteristics and improvements were not properly identified in the September 15, 2010 report or the September 18, 2009 report. [SR 1-1(b); SR 1-2e(i), Comment: lines 518-520 and lines 522-524; USPAP 2008-2009, pages U-16 & U-17; USPAP 2010-2011, pages U-18 & U-19; SR 2-1(b); SR 2-2(b)(iii); SR 2-3(b)(iii)].
- The sales comparison approach was not properly supported, and there was no clear analysis or conclusion presented in the September 15, 2010 report or the September 18, 2009 report. [SR 1-1(a); SR 1-4(a); SR 2-1(b); SR 2-2(b)(viii); USPAP 2008-2009; USPAP 2010-2011].
- The discounted cash flow analysis present in the September 15, 2010 report has mathematical errors and does not provide sufficient information to support the opinions and conclusions presented. [SR 1-1(a)(b)(c); SR 1-4(c)(iii)(iv); SR 2-1(b); SR 2-2(b)(viii); USPAP 2010-2011].
- The discounted cash flow analysis present in the September 18, 2009 report does not provide sufficient information to support the opinions and conclusions presented. [SR 1-1(a); SR 1-4(c)(iii)(iv); SR 2-1(b); SR 2-2(b)(viii); USPAP 2008-2009].
- The September 15, 2010 report did not have a final reconciliation addressing the quality or quantity of data in arriving at the final value. [Scope of Work Rule; SR 1-6(a)(b); SR 2-2(b)(viii); USPAP 2010-2011].

- The quality and quantity of data available and analyzed, and the applicability and suitability of the approaches used to arrive at the value conclusions had not been adequately reconciled in the September 18, 2009 report. [Scope of Work Rule; SR 1-6(a)(b); SR 2-2(b)(viii); USPAP 2008-2009].
- Previous work experience (2009 & 2008) was not disclosed in the certification of the 2010 report. [Ethics Rule-Conduct; USPAP 2010-2011].

Licensing History: Certified General 12/31/1991-Present

Disciplinary History: (937743-Closed with a \$250.00 civil penalty; 941873-Closed; 942975-Closed; 945164-Closed).

Reasoning and Recommendation: The reviewer found that the 2010 and 2009 reports do not provide results in an appropriate manner, do not contain sufficient information to enable the client(s) and any intended user(s) who receive or rely on these reports to understand them properly. The reviewer also found a violation of an ethics standard. Respondent has been the subject of disciplinary action by the Commission in the past. Thus, Counsel recommends the authorization of a civil penalty in the amount of One Thousand Dollars (\$1,000.00) to be satisfied within thirty days of the execution of the Consent Order, along with a thirty (30) hour course on General Appraiser Sales Comparison Approach and a thirty (30) hour course on General Appraiser Income Approach to be completed within 180 days of execution of the Consent Order. These terms are to be settled by Consent Order or Formal Hearing. The civil penalty should serve as a sufficient economic deterrent while the corrective education should assist the Respondent in becoming a more effective appraiser thereby protecting the interest of the public.

New Reasoning and Recommendation: This office received a \$3,500 payment from Respondent in early October. Respondent passed away in late October. The outstanding balance on the Final Order is \$460. Due to Respondent's death, the \$460 is now uncollectable. As such, Counsel recommends that this matter be **closed as paid**.

Vote: Mr. Hall made a motion to accept counsel's recommendation. This was seconded by Ms. Johnson. The motion carried unanimously.

NEW BUSINESS

Director Avers mentioned that the newsletter had been sent out and the office had received back many positive comments. She encouraged the Commission members to submit articles of interest and to volunteer for personal interest pieces, which Cody Kemmer would continue to add to future newsletters. The new licensing software system would soon be implemented as final checks on the systems feature set were underway. Background checks and finger printing requirements would be implemented for all new applicants from January 1st, 2015. Director Avers ended by informing the board that if all continued as planned on complaint handling and resolution, the board could perhaps meet every other month in 2015.

Having no further business, Mr. Walton adjourned the meeting at 11:46 a.m.