



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

January 12, 2010
Third Floor Conference Room, Andrew Johnson Tower

The Tennessee Real Estate Appraiser Commission met January 12, 2010, at 9:00 a.m. in Nashville, Tennessee, at the Andrew Johnson Tower in the third floor conference room. Chairman, Herbert Phillips, called the meeting to order and the following business was transacted.

COMMISSION MEMBERS PRESENT

Herbert Phillips
James E. Wade, Jr.
Kenneth Woodford
Marc Headden
Thomas R. Carter
Dr. Edward A. Baryla

COMMISSION MEMBERS ABSENT

Najanna Coleman
William R. Flowers, Jr.
Erik Sanford

STAFF MEMBERS PRESENT

Nikole Avers, Administrative Director
Aminah Saunders, Staff Attorney
Susan Lockhart, Administrative Service Assistant 4

ADOPT AGENDA

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

MINUTES

The December 2009 minutes were reviewed. Mr. Headden made the motion to accept the minutes as written. It was seconded by Mr. Carter. The motion carried unopposed.

GENERAL BUSINESS

Experience Interviews

Laura Beth Covington made application to upgrade from a licensed real estate appraiser to become a certified residential real estate appraiser. Mr. Wade was the reviewer and recommended approval of her

experience request. Mr. Carter made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

James Nicholas Matlock made application to upgrade from a registered trainee to become a certified general real estate appraiser. Mr. Carter was the reviewer and 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.

Brett Thayer Jones made application to upgrade from a registered trainee to become a certified general real estate appraiser. Mr. Woodford was the reviewer and recommended approval of his experience request. Mr. Wade made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

Wesley Leon Slater made application to upgrade from a registered trainee to become a certified general real estate appraiser. Mr. Headden was the reviewer and recommended approval of his experience request. Mr. Wade made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion carried unopposed.

Education Committee Report

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

January Education Committee Report

Provider	Course #	Course Name	Instructors	Hrs.	Type	Rec. from Dr. Baryla
Franklin Educational Institute	1350	Real Estate Red Flags	Richard L. De Heer Diana T. Jacob Bobby Crisp Amelia Brown Marc Taylor	4	CE	for
Franklin Educational Institute	1351	The 3 F's – Facts, Figures and Formulas	Richard L. De Heer Diana T. Jacob Bobby Crisp Amelia Brown Marc Taylor	7	CE	for
Franklin Educational Institute	1352	Appraisal Report Writing	Richard L. De Heer Diana T. Jacob Bobby Crisp Amelia Brown Marc Taylor	7	CE	for
Franklin Educational Institute	1353	National USPAP Update	Diana T. Jacob Bobby Crisp Amelia Brown	7	CE	for
Van Education Center	1354	On-Line: 2010-11 7-hour USPAP	Burton Lee	7	CE	for

Van Education Center	1355	On-Line: Yield Capitalization (Discounting)	Burton Lee	4	CE	for
ASFMRA	1356	Uniform Country Residential Report	Mark Elder	7	CE	for
Appraisal Institute	1357	On-Line General Appraiser Sales Comparison Approach	Kenneth Foltz	14	CE	for

Individual Course Approval

Name File# Provider Course Name Hrs Type Rec. from Dr. Baryla

Robert D. Landis	CG 746	Appraisal Institute	Subdivision Analysis	7	CE	For
Robert D. Landis	CG 746	Appraisal Institute	FHA - 2008	7	CE	For

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

Based on prior Commission approval, the Chairman signed an order in the following matter:

Germain Charles Bush (approved 12/09) – signed Consent Order requiring completion of a thirty (30) hour classroom Basic Procedures course. In an appraisal report, Respondent violated Scope of Work Rule, Problem Identification Section, and Standard Rules (SRs) 1-1(b), 1-4(a),(b), 1-6, 2-1(a), 2-2(b)(viii).

1. 2009017381 There was no Reviewer

This complaint was opened by the Administrative Staff for this Commission subsequent to notification from the Oklahoma Real Estate Appraiser Board that this person's credential had been suspended for failure to pay renewal fees. The Respondent was given licensure in Tennessee based on a reciprocal agreement with the State of Texas. This Respondent holds active credentials in three (3) states, Arkansas, Missouri and Tennessee.

Respondent's Oklahoma license was suspended for failure to pay renewal fees. The Oklahoma credential is issued for three (3) years and the fees are collected annually. The credential holder renews every three (3) years and makes fee payments in the intervening years. If after the first and second year no annual fee has been received the Oklahoma board initiates a complaint. The grounds for the Oklahoma suspension do not constitute grounds for discipline in Tennessee.

The disciplinary authority of the Commission is rooted in TCA § 56-1-313, which provides in relevant part, "Disciplinary Authority of entities attached to the division of regulatory boards. (a) In addition to any other lawful disciplinary authority, any board, commission or agency attached to the division of regulatory

boards may, upon receipt of a certified order, refuse to issue or renew a license, permit or authorization to practice and revoke, suspend or restrict any license, permit or authorization to practice that the board, commission, or agency has issued to any person who:(1) Has had the person's license, permit or authorization to practice in the professions or occupation subject to the jurisdiction of the board, commission or agency suspended or revoked by another state or national board, commission or agency for any acts or omissions that would constitute grounds for discipline in this state."

Prior Complaint / Disciplinary History: None

Recommendation and reasoning: Pursuant to § 56-1-313(a)(1), the Commission is limited to disciplining a licensee when the grounds for the discipline in the other state constitute grounds for discipline in TN. In this case, the Respondents license was suspended for failure to pay renewal fees; the OK renewal fee rules do not have a counterpart in TN. Furthermore, the reciprocal discipline provisions found in TREAC Rule 1255-6-.01 are inapplicable as reciprocity exists with the state of Texas not Oklahoma.

Counsel for the State and the Administrative Director would recommend that this Complaint be closed.

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

2. 200900950 Danny Wiley was the Reviewer.

A consumer submitted this complaint alleging that the Respondent under valued a residential property by communicating a value of \$360,000 on April 16, 2009. The Complainant further alleged that the Respondent misreported data including: garage, bathroom flooring, wall materials of the great room, reporting a bathroom as a "bonus room", misstating the number of bathrooms, decking material, items of interior quality, attic access, omitting appliances, misreporting the drive as public, omitting subdivision information including restrictions, omitting the subject property buttes to the national forest. The complainant also alleged that the Respondent used inappropriate comparable sales, failed to analyze subject characteristics and applied inappropriate cost figures in the cost approach.

Respondent conceded in his response letter that he misreported the number of garage stalls, but stated that it had no bearing on the value opinion. Respondent states that it was not necessary to describe the interior quality in detail unless the quality is above or below average. Respondent states that the room over the garage was considered as a "bonus room" and the comparables appear to have the same. According to Respondents notes and sketch, the property has two baths on the first level and one on the second, but if he was in error then a small positive adjustment could have been made. In describing the deck, Respondent states that "wood deck" is the general term used. Respondent states that his notes do not indicate an attic, but if there is one, it would have to be small and may possible decrease the amount of finished area on the second floor. Respondent states that the refrigerator and washer and dryer are typically not included in the appraisal unless it is a purchase and mentioned in the contract. Respondent states that he was not informed that the road leading to the house was a private road, but indicated that this could have an effect on value. Respondent states that he obtained the legal description of the property from the assessor's record card and "there was no mention of the subject property being in a subdivision." Respondent stated that there was no need to mention that the property buttes up against a national forest because that is considered in the subject property's overall appeal to the market. He indicated that the subject is just outside the city limits and he used sales within the city limits then location/appeal adjustments would have been necessary. Respondent states that the cost

figures were obtained from Marshall & Swift and that the assessed values in that area incorrect and "cost does not equal value." Respondent concluded by stating that the subject property owner chose a site which did not have easy access to water or a public road.

EXPERT CONCLUSIONS as to the this appraisal [alleged violations included within brackets]:

- The zoning information reported for the subject property is not accurate.
- There are multiple errors in the description of the subject property.
- There are multiple errors in the descriptions of the comparable sales.
- The Respondent did not submit all information requested from the assignment workfile by TREAC.

SITE DESCRIPTION

The report states that the zoning is RS. The zoning resolution for Washington County indicates that there is no such zoning. The zoning for the subject site is A1. This is a general agricultural district. [SR 1-3(a), SR 2-1(a), SR 2-2(b)(iii)]

The report states that the site is accessed by a public road. The complaint states that the road is private rather than public. The reviewer contacted officials in Washington County who indicated that the subject is located on a public road.

PROPERTY DESCRIPTION

The report states that the bathroom floors are vinyl. The owner stated in the complaint that the bathroom floors are travertine.

The report states that the home has a two-car attached garage. In a response to TREAC the Respondent stated that this was a mistake. The home has a three-car attached garage (which is visible in the pictures). The owner stated in the complaint that there is an additional garage in the basement level. This was not mentioned in the appraisal report.

The report indicates that there is a wood deck. The owner stated that the deck is made of composite material rather than wood. The Respondent stated that "wood deck" is a general term. "Deck" is a general term, but "wood deck" is a specific term.

The appraisal report states that the subject property has three bathrooms. The owner states that the home has four bathrooms. [SR 2-1(a), SR 2-2(b)(iii)]

COMPARISON APPROACH

Data Sources: The appraisal report indicates that the sales data was obtained from public records and verified by exterior inspection. Workfile documents submitted by the Respondent include MLS data sheets for the comparables, but do not include data sheets from public records. [ETHICS RULE, Record Keeping section, SR 2-1(a)]

Sale 1: The age adjustment applied to sale 1 is not consistent with the reported effective age.[SR 1-1(a), SR 1-4(a)]

The appraisal report indicates that this home has a 1-car garage and a carport. The MLS listing indicates a 1-car garage, a carport, and a 25' x 25' detach garage/workshop. The appraisal report states that this home has a porch and a deck. The MLS listing indicates a 13' x 41' covered patio.[SR 1-1(b), SR 1-4(a)]

Sale 2: The appraisal report indicates that this home has a 2-car attached garage. The MLS listing indicates a 2-car attached garage and a 2-car detached garage.
[SR 1-1(a), SR 1-4(a)]

Sale 3: The age adjustment applied to sale 3 is not consistent with the reported effective age. The appraisal report indicates that this home has three bathrooms. The MLS listing indicates 2.5 baths. [SR 1-1(a), SR 1-4(a)]

Site Value/Site Adjustments: The workfile documents submitted for review included no support for the estimated value of the subject site or the site adjustments applied to the comparables. [ETHICS RULE, Record Keeping section, SR 1-4(a)]

WORKFILE

The Respondent did not submit the all information requested from the assignment workfile. Documents submitted do not include: Data sheets from public records for the comparable sales, Lot sales used to derive an opinion of the subjects site value or Cost data sheets. [ETHICS RULE, Record Keeping section]

Prior Complaint/ Disciplinary History: 199901689 (Closed with a Letter of Warning)

Recommendation and Reasoning: The Respondent has been licensed as a Certified Residential appraiser since 1991 and has had no prior discipline. The review indicated possible negligent reporting issues throughout and failure to verify relevant data and report information accurately. In addition the Respondent failed to submit the complete workfile information as required. Counsel for the State and the Administrative Director would recommend that the Respondent be offered a consent order requiring a civil penalty of \$1,000, and completion of a 15 hour "Residential Report Writing" Course within 180 days (6 months) of execution of the order. No continuing education credit should be granted for this corrective education. If the Respondent rejects the consent order formal hearing proceedings should be commenced.

Vote: Dr. Baryla recused himself due to possible prior knowledge in this matter. Mr. Wade made the motion to accept the recommendation and Mr. Carter seconded the motion. The motion failed three to three votes (Wade-yes; Headden-no; Woodford-no; Carter-yes; Phillips-no). After some discussion, Mr. Woodford requested that this complaint be deferred until the end of the Legal Report. After all other matters were reviewed Mr. Wade made a recommendation that the original recommendation be approved. Mr. Carter seconded the motion. The motion passed three to three votes (Wade-yes; Headden-no; Woodford-no; Carter-yes; Phillips-yes).

3. 200900582 Danny Wiley was the Reviewer.

A mortgage lender submitted this complaint alleging that the Respondent over valued a residential property by communicating a value of \$1,550,000 on February 5, 2008. The Complainant further alleged that the Respondent compared the lake view subject property to properties that had direct lake access and boat docks. The Complainant submitted a field review appraisal that indicated a value opinion of \$835,000 on the same effective date. According to the Complainant the subject property

does not adjoin the lake, but sits higher on a hillside overlooking the lake. The subject has shared lot access with other property owners on a site that includes a boat dock.

The Respondent stated in his response letter that in hindsight, the original appraisal was not well done with respect to the explanation of his approach to value determination and in defining the terms, "direct lake access", "lake access", "lake front" and "direct waterfront access". Respondent states that when he originally appraised the property he considered the property to offer similar rights, use, function, and utility as property that accessed the water directly from the same lot without a deeded easement and access lot. Respondent states that the subject's lake access is shared with adjoining lots which he felt created no negative affect on the subject's market value, appeal or marketability. In addition, Respondent states that because the subject sits higher on the hill and offers superior views of the lakes and mountains that this would make the subject lot similar in attraction to buyers to lots directly touching the lake.

EXPERT CONCLUSIONS as to the this appraisal [alleged violations included within brackets]:

- The characteristics of the subject site were not properly considered causing value inflation. The subject site has no water frontage and no direct water access. The comparable sales are all situated on lots with direct water frontage and direct water access. No site or location adjustments were applied. Some of the information about the comparable sales is not consistent with the data sources cited in the appraisal report.
- There is no support for the cost approach.

NEIGHBORHOOD

The report states that supply and demand are in balance. This is not consistent with the data provided at the top of page 2, which indicates over twice as many listings as sales in the past year. [SR 1-2(e)(i), SR 2-1(a), SR 2-2(b)(iii)]

SITE DESCRIPTION

The nature of the lake access is not clearly and accurately addressed. The SITE section of the report states, "*Subject has direct waterfront access...*" The addendum to the report states, "*Subject is connected to the lake by a parcel of land that gives deeded access to the lake and boat slips/covered dock.*" The subject site has no water frontage. Access to the lake is provided via an easement. A copy of the recorded easement was included in the workfile documents submitted by the Respondent. [SR 1-2(e)(i), SR 2-1(a), SR 2-2(b)(iii)]

COMPARISON APPROACH

Sale 2: The report indicates that data related to this home was obtained from public records. The report states that the home was not listed in the MLS. The information in the adjustment grid regarding the basement area in his home is not consistent with online public records. [SR 1-4(a), SR 2-1(a)]

Sale 3: The MLS listing for this property indicates that there is a guest cottage. This was not addressed in the adjustment grid. [SR 1-4(a), SR 2-1(a)]

Basement Adjustments: The adjustments for rooms in the basement are inconsistent. For example, the finished basement in sale 1 is reported as "RR/1BR/1.5Bath," and an adjustment of +\$25,000 was applied. Sale 3 is reported to have, "RR/BR/1.5Bath," but the adjustment to this comparable is only

+\$2,500. Sale 2 is reported to have, "RR/BR/Bath," and an adjustment of +\$50,000 was made. [SR 1-1(a), SR 1-4(a)]

Sites: The report indicates that all of the comparable sales are on similar sites. This is inaccurate and misleading. Tax maps show that the comparable sales all have water frontage and direct water access. The subject has no water frontage, and water access from the subject site is provided via an easement. Waterfront sites have a very different market appeal than sites not located directly on the water. This was not addressed in the sales comparison approach. [SR 1-1(a), SR 1-1(b), SR 1-4(a), SR 2-1(a)]

COST APPROACH

The site value is reported to be \$450,000. There is no explanation of how the site value is derived. The workfile documents submitted by the Respondent include no support for the estimated site value. There is no explanation or support for the estimated cost of the subject property. [ETHICS RULE, Record Keeping section, SR 1-4(b), SR 2-2(b)(viii)]

INCOME APPROACH

There is no explanation for omission of the income approach. It appears likely that this approach is not applicable. However, an explanation for omission of the approach is required in the appraisal report. [SR 2-2(b)(viii)]

VALUE INFLATION

It appears that the value of the subject property has been inflated due to the lack of consideration for the fact that the subject site has no water frontage and no direct water access. The effective date of the appraisal report is February 6, 2008, and the reported value opinion is \$1,550,000. Workfile documents amended by the Respondent include an MLS listing showing that the subject property was listed for sale in June 2006 with an asking price of \$825,000. That listing expired six months later with no sale. The final asking price was \$799,990.

If the failure to consider the lack of direct water frontage was inadvertent, or a result of inexperience, this would constitute a violation of the COMPETENCY RULE. If it was intentional, this would be a violation of the ETHICS RULE.

Prior Complaint/ Disciplinary History: 200604339 (Closed with a Letter of Warning)

Recommendation and Reasoning: The Respondent has been licensed as a certified residential appraiser since 2007. The Respondent has had no prior discipline. Counsel and the Administrative Director believe that this Respondent was incompetent to perform the appraisal correctly on this lake front property, but that he should have been aware of his limitations. The expert reviewer found that Respondent did not properly analyze the lake influence on the value of the property. Ultimately, Respondent's lack of competency in performing this assignment led to a misleading appraisal report that was communicated to the client which included an inflated value opinion.

Counsel for the State and the Administrative Director would recommend that the Respondent be offered a consent order requiring a civil penalty of \$3,000, and completion of a 15 hour "Advanced Residential Applications & Case Studies" course, a 15 Residential Report Writing Course, and a 15 hour Cost Approach & Site Valuation course within 180 days (6 months) of execution of the order. No continuing

education credit should be granted for this corrective education. If the Respondent rejects the consent order formal hearing proceedings should be commenced.

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

4. 200900672 Danny Wiley was the Reviewer.

A mortgage lender submitted this complaint alleging that the Respondent over valued a residential property by communicating a value of \$107,000 on September 27, 2007. The Complainant submitted a field review appraisal that indicated a value opinion of \$67,000 on the same effective date. According to the Complainant, Respondent failed to analyze the listing history, prior sale and contract information, misreported ownership information, failure to reconcile the reported increase in value from the prior sale just two days prior to the appraisal, and communicated a misleading appraisal report.

The Respondent stated in his response letter that he analyzed comparable sale data and provided a supported market value opinion. He alleged that the comparables used in the field review were distressed bank sales and did not reflect typical buyer and seller motivation. There was a further allegation that the field review contained sale/foreclosure information on the subject property one week after the effective date of the Respondent's appraisal (\$51,500) and a foreclosure prior to the effective date of the appraisal by five months for \$67,750. The Respondent indicated that on the effective date of the report he had received a written request to appraise the subject property and that prior to that he had been told this property would need to be appraised and a contract was being completed. He indicated he was told by the client that the identified investment company owned the property from a recent purchase and he was provided documentation of such in the form of a signed and dated HUD-1 settlement statement dated September 26, 2007. He wrote that he did err in that he noted on the original appraisal communicated to the client that the investment company was the "owner of public record; however, on the day after the effective date the client gave him a list of completed repairs and some corrections to be made to the appraisal and requested that interior photos show the repairs were completed. He wrote that he delivered an addendum on September 28, 2007 addressing those matters and correcting the "owner of public record" on the appraisal. He indicated that he included the 12 month listing history of the subject, but that the investment company had only owned the property for 2 days before the sales contract agreement was signed and that was a for sale by owner purchase. He stated that he noted "N/A" in the contract section of the original appraisal because he had noted a mistake in the contract regarding seller concessions. He indicated that he disclosed in both appraisals he communicated the sale history for the subject that the last two sales of the subject were bank and foreclosure sales that sold below market value.

The Respondent submitted only one appraisal report in response to the complaint, not the two reports he communicated to his client as indicated in his response letter.

EXPERT CONCLUSIONS as to the this appraisal [alleged violations included within brackets]:

- The complaint alleges that the value of the subject property was inflated because of the use of inappropriate comparable sales. It appears that this allegation does not have merit.
- Foreclosure activity in the subject neighborhood was not reported.
- Repairs/updates to the subject property were not adequately addressed in the appraisal report.
- Prior transfers of comparable sales were not adequately addressed.
- Concessions in the comparable sales were not reported

SUBJECT PROPERTY

The report identifies the seller as [name omitted]. The report also states that the seller is the owner of record. Public records indicate that [name omitted] did not become the owner of record until after the effective date of the appraisal (deed recorded in October 2007). The workfile contains a copy of a HUD-1 showing that [name omitted] acquired the property on September 25, 2007. Therefore, it appears that the home had been sold to [name omitted], but [name omitted] had not yet become the owner of record. This is not considered a significant error.

NEIGHBORHOOD

There was significant foreclosure activity in the subject neighborhood at the time of the appraisal. This is relevant information that is not addressed in the appraisal report. [SR 2-1(a), SR 2-2(b)(iii)]

PROPERTY DESCRIPTION

The size and room count are consistent with information found in the MLS and MAAR data. The home was listed in the MLS on May 10, 2007. The listing indicates that the subject is a bank owned home, and that it is in fair condition. The appraisal report indicates that the home is in average condition. The report includes a list of minor repairs that are needed (total cost of \$750). The report does not indicate any recent updating to home.

In a response to TREAC dated April 26, 2009, the Respondent stated that an addendum addressing the repairs and correcting the ownership information was provided to the client. The reviewer found no copy of this addendum in the workfile documents submitted for review. [ETHICS RULE, Record Keeping section]

COMPARISON APPROACH

Sale 1: The report indicates that there had been no prior transfers of sale 1. MAAR data indicates two transfers of this property in the year prior to the sale shown in the adjustment grid. There was a foreclosure action in November 2006 and a sale in May 2007 for \$45,900. [SCOPE OF WORK RULE, Assignment Conditions section]

Sale 2: The report indicates that there no known sales concessions. The MLS listing indicates sales concessions of \$6,120. [SR 1-4(a), SR 2-1(a)]

Sale 3: The report indicates that there no known sales concessions. The MLS listing indicates sales concessions of \$7,500. [SR 1-4(a), SR 2-1(a)]

The report indicates that there had been no prior transfers of sale 3. MAAR data indicates a sale of the home for \$62,000 in March 2007. The seller was HUD. HUD acquired the home by foreclosure in November 2005. [SCOPE OF WORK RULE, Assignment Conditions section]

Selection of Sales: The complaint alleges that the value was inflated because of the use of inappropriate comparable sales. The sales used in the field review report submitted with the complaint are all sales out of foreclosure. MLS data indicates that all of those homes were in need of repairs. It appears that the subject property either had been repaired or was going to be repaired. If that is the case, then it is the reviewer's opinion that the sales used by the Respondent were appropriate. If the home had not been updated, or the report was not intended to be subject to updating, then the sales would be inappropriate.

The report would have provided stronger support for the value conclusion if (1) the repairs to the subject property had been adequately addressed, and (2) analysis of the history of the comparable sales had been properly reported.

SALES HISTORY

One section of the report indicates that there have been no prior sales or transfers of the subject property in the past three years. This appears to be a typographical error. Two transfers of the subject property are reported in another section of the report. The report describes both of these prior transfers as foreclosure sales.

Prior Complaint/ Disciplinary History: 200708377 (Closed with Consent Order \$1,000 civil penalty and 15 hour USPAP course required)

Recommendation and Reasoning: The Respondent has been a state licensed appraiser since January, 1992. The Respondent has one prior discipline complaint from 2007 that was closed by consent order in 2008 imposing a \$1,000 civil penalty and a 15 hour USPAP course. That discipline predates this complaint. In this complaint the expert reviewer found a failure to accurately report issues throughout the report and failure to analyze and report market conditions, seller concessions and sales history.

Counsel for the State and the Administrative Director would recommend that the Respondent be offered a consent order requiring a civil penalty of \$1,000, and completion of a 15 hour "Residential Report Writing" Course, and a 15 hour "Residential Market Analysis and Highest & Best Use" course within 180 days (6 months) of execution of the order. No continuing education credit should be granted for this corrective education. If the Respondent rejects the consent order formal hearing proceedings should be commenced.

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

5. 200900948 Danny Wiley was the Reviewer.

This complaint was submitted by a lender and alleged over-valuing a residential property by issuing a value opinion of \$127,000 on June 6, 2007. The Complainant submitted a field review appraisal report as support for the allegation that included a value opinion of \$107,000 with the same effective date. The field reviewer indicated that the Respondent used sales that had large finished basements, while the subject property did not. Additional allegations of misreporting the carport of comparable four, failing to support gross living area and basement adjustments in the appraisal report, and omitting the prior transfer of the subject property and the analysis of that sale from the appraisal report.

The Respondent stated in his response letter that the review appraisal was a "drive-by" only and this is not truly reflective of the market value of the house and does not consider the recent renovation and quality of the interior of the subject property. He wrote that he did use sales that had basements; however, he indicated he made adjustments for those with basements. He wrote that he felt the comparables he used were more similar to the subject property and "more closely in the value range that the subject (with pool, updates, quality, condition, etc.), would fall in, when and if it were placed on the market." He stated the carport indication of comparable four was a typo.

EXPERT CONCLUSIONS as to the this appraisal [alleged violations included within brackets]:

- It appears that the value conclusion was intentionally inflated by using comparable sales with large basement areas and applying very small basement adjustments. Sales involving similar non-basement homes in the area were available at the time of the appraisal, but none were included in the appraisal report.

INTENDED USER

The appraisal report contains an FHA case number. For FHA appraisal assignments, HUD must be identified as intended user. [SCOPE OF WORK RULE, Problem Identification section]

NEIGHBORHOOD

The Neighborhood Description field states, "*No unfavorable conditions were observed which would adversely affect value or marketability.*" This is a generic comment which provides no information specific to the subject neighborhood. This comment does not meet the reporting requirements of HUD as expressed in document 4150.2. [SCOPE OF WORK RULE, Problem Identification section, SR 2-2(b)(iii)]

PROPERTY DESCRIPTION

The report states that there is an in ground pool. The property data sheet obtained from TNRealEstate.com indicates that the pool is an above ground pool. The photographs included in the appraisal report also appeared to indicate that it is an above ground pool. [SR 2-1(a), SR 2-2(b)(iii)]

COMPARISON APPROACH

The comparison approach was developed using five sales. The location map shows only three sales. HUD requirements dictate a location map that shows the location of the subject property and all comparable sales. [SCOPE OF WORK RULE, Problem Identification section]

Item 7 in the Appraiser's Certification indicates that the appraisal has been developed using the sales that are locationally, physically and functionally the most similar to the subject property. This does not appear to be the case. The subject property is a one-story dwelling with no basement and no garage. Four of the five sales used in the comparison approach have large basements. All of the sales used have some basement area. Four of the sales used have finished living area on the basement level. Sale 1 and Sale 5 both have over 1,000 square feet of finished basement area. The field review report submitted with the complaint includes an adjustment grid with three sales of non-basement homes. [SCOPE OF WORK RULE, Problem Identification section, SR 1-4(a), SR 2-1(a)]

Sale 1: The MLS listing indicates that the basement level of this home is a separate apartment (with a kitchen) that was rented at the time of the sale. No pool is indicated, but the MLS reports that there is an eight person hot tub. These issues were not addressed in the comparison approach. [SR 1-1 (a), SR 2-1(a)]

Sale 2: The MLS listing indicates a screened porch. This is not addressed in the adjustment grid. [SR 1-1 (a), SR 2-1(a)]

Sale 3: The MLS listing indicates the home has been completely remodeled, including the flooring, appliances, kitchen cabinets, bathroom fixtures, and heat pump. The description of the subject property does not indicate similar updating. Therefore, a condition adjustment appears to be warranted. [SR 1-4(a), SR 2-1(a)]

This home also transferred in May 2006. That transfer is within one year of the March 2007 sale reported in the adjustment grid. Therefore, the transfer in May 2006 must be reported and analyzed. [SCOPE OF WORK RULE, Problem Identification section, SR 2-1(a)]

Sale 4: The MLS listing indicates that this home has updated hardwood floors and updated tile in the baths and kitchen. It also has new cabinets, windows, and doors. A condition adjustment appears to be warranted. The appraisal report indicates a two-car attached carport. The MLS listing states that it has a three car detached carport. [SR 1-4(a), SR 2-1(a)]

Adjustments: The adjustments applied to the comparable sales appear to be inappropriate. Unfinished basement area in the comparable sales has been adjusted at only \$2 per square foot. Finished basement area has been adjusted at only \$4 per square foot. An adjustment of +\$8,500 has been applied for the subject's pool and fence. Hence, the adjustment grid indicates that the subject's swimming pool is more valuable than over 1,000 square feet of finished basement area. One can apply paired sales analysis using the sales in the report prepared by the Respondent and the sales used in the field review report to demonstrate that the adjustments for basement area used by the Respondent are inappropriate.

Bias: It appears that the value of the subject property has been intentionally inflated by (1) using sales with large basement areas and applying very small adjustments, and (2) not using sales that are more similar to the subject property that sold at lower prices. [ETHICS RULE, Conduct section, SR 1-1(b), SR 2-1(a)]

COST APPROACH

The estimated cost for the appliances, heat pump, pool, fence, porch and deck is \$35,000. The pool appears to be an above ground pool rather than an in ground pool. Therefore, this cost appears high. [SR 2-1(a)]

RECORD KEEPING

The Respondent submitted one appraisal report. The documents reviewed indicate that more than one appraisal report was prepared. The report submitted by the Respondent indicates an effective date of June 6, 2007 and a signature date of June 7, 2007. The appraisal report submitted with the complaint indicates an effective date of June 6, 2007 and a signature date of August 30, 2007. The reviewer noted the following differences between the appraisal report submitted by the Respondent and the appraisal report submitted with the complaint: The cover pages are different; one includes a photo of the subject property and one does not. One report states that the area of the site is 15,000 square feet and one states that the area of the site is "N/A" The signature dates are different. Workfile documents submitted by the respondent include a copy of the request for the appraisal. The request form includes a cell labeled "Contact for Entry." In that cell the order form indicates, "appraisal already complete." [ETHICS RULE, Record Keeping section]

Prior Complaint / Disciplinary History: 200800321 (Dismissed)

Recommendation and Reasoning: The Respondent has been a Certified Residential appraisal since 1998 with no prior disciplinary history. The expert reviewer's findings of value inflation are serious; therefore Counsel for the State and the Administrative Director would recommend that Respondent be offered a consent order for \$4,000 civil penalty and a six (6) month suspension. The Respondent may

request an informal conference in this matter. If the Respondent rejects this consent order, formal hearing should commence.

Vote: Mr. Wade made the motion to accept the recommendation and Dr. Baryla seconded the motion. After some discussion, Mr. Wade and Dr. Baryla revised their motion to offer the Respondent a consent order for \$4,000 civil penalty; a fifteen (15) hour USPAP course; and a thirty (30) hour sales comparison and income approach course. The motion carried unopposed.

6. 200900793 Danny Wiley was the Reviewer

This complaint was submitted by counsel on behalf of homeowners and included allegations that the Respondent appraised a manufactured home as a "site built" house and overvalued the residential property by indicating a value of \$95,000 on September 9, 2005.

The Respondent states that when he inspected the subject he found no indications that the subject was a mobile or manufactured home. Respondent states that he did a "head and shoulders" inspection of the crawl space as required by FHA and only wood floor joists and floor insulation was noticed. He wrote that the public records did not identify the subject as manufactured. Respondent states that at this time he has no proof that the subject is a manufactured home. According to the Respondent, the subject has had two previous FHA loans, so that the allegation that the property could not qualify for an FHA loan is without merit.

In rebuttal, the Complainant submitted the MLS sheet identifying the subject as a partially manufactured home and indicated that the tax appraisal has been reduced because of its manufactured status.

EXPERT CONCLUSIONS as to the this appraisal [alleged violations included within brackets]:

CONCLUSIONS:

- The complaint alleges that the appraisal report fails to disclose the fact that the subject property is a manufactured home. This allegation appears to have merit. When the home sold in September 2005 it was listed in the MLS system. The MLS listing indicates, "*...this home is partial manufactured.*" This is not addressed in the appraisal report. Hence the report appears to be inaccurate and misleading.
- The fact that a portion of the subject property is a manufactured home was not addressed in the analysis. Therefore, the assignment results are not credible.

PROPERTY DESCRIPTION

The report indicates that the subject property is an existing single-family home. The appraisal was done for an FHA loan, and the appraisal report includes a HUD VC sheet. Page 4 of the VC sheet indicates that no portion of the property is a manufactured home. Page 1 of the URAR form also indicates that the home is not a manufactured house. When it sold in 2005 the home was listed for sale in the local MLS system. A copy of the MLS listing is included as an exhibit to this appraisal review report. The MLS listing states, "*...this home is partial manufactured.*" The appraisal report indicates that the MLS system was used as a data source. Hence, the Respondent had access to the MLS system. Analysis of the MLS listing would be part of the required scope of work for the appraisal assignment. Therefore, the Respondent should have been aware that a portion of the subject property was a manufactured home. Because of the failure to disclose that a portion of the home was a manufactured home, the property description is inaccurate and

misleading. Failure to disclose that a portion of the home was a manufactured home also violates appraisal requirements of HUD. HUD's appraisals include disclosures related to manufactured homes (HUD seals or manufacturer's certification). HUD also requires the appraiser to require inspection of the home by the appropriate state agency if the manufactured home has been modified. The report does not address these items. [SUPPLEMENTAL STANDARDS RULE, SR 1-1(b), SR 1-2(e)(i), SR 2-1(a), SR 2-2(b)(iii)]

COMPARISON APPROACH

The fact that a portion of the home is a manufactured home is not addressed in the sales comparison approach. [SUPPLEMENTAL STANDARDS RULE, SR 1-1(a), SR 1-1(b), SR 1-4(a), SR 1-2(f), SR 2-1(a)]

LISTING/CONTRACT

The subject property was listed for sale at the time of the appraisal. The report contains no analysis of listing. The workfile documents submitted by the Respondent did not include a copy of the subject's listing. The reviewer obtained a copy of the listing from the local MLS system. [SR 1-5(a), SR 2-2(b)(ix)]

The appraisal report includes a copy of part of the sales contract. The report contains no analysis of the sales contract. [SR 2-2(b)(ix)]

REQUIRED IDENTIFICATIONS

The report contains no statement of the intended users. [SR 2-2(b)(i)]

The report does not state the intended use of the appraisal. [SR 2-2(b)(ii)]

Prior Complaint / Disciplinary History: None.

Recommendation and Reasoning: The Respondent has been a certified residential appraiser since 2006 and was a state licensed appraiser from 1994-2006. The Respondent has no prior disciplinary history. The Respondent failed to verify the listing history of the subject which would have revealed that it was a partially manufactured dwelling. The Respondent did not use sales that were manufactured or partially manufactured in his sales comparison approach and also failed to appropriately identify the intended use and intended users of this report. Overall, the report is not credible and is misleading.

Counsel for the State and the Administrative Director would recommend that the Respondent offered a consent order requiring a civil penalty of \$1,000, and completion of a 15 hour "Residential Report Writing Course", a course at least 7 hours in length on FHA appraisal assignments and a course at least 7 hours in length on appraising manufactured housing within 180 days (6 months) of execution of the order. No continuing education credit should be granted for this corrective education. If the Respondent rejects the consent order formal hearing proceedings should be commenced.

Vote: Mr. Carter made the motion to accept the recommendation and Mr. Wade seconded the motion. After some discussion, Mr. Carter and Mr. Wade withdrew their motion. Mr. Woodford made the motion to issue the Respondent a letter of caution and Mr. Headden seconded the motion. The motion carried unopposed.

7. 200900969 Danny Wiley was the Reviewer

This complaint was filed by a mortgage lender and included allegations that the Respondent over-valued a residential property by issuing a value opinion of \$230,000 on January 26, 2009. The

lender/Complainant submitted an additional appraisal report as support for the allegation that included a value opinion of \$148,000 with the same effective date. Further, the Complainant alleged that the comparables used in the Respondent's appraisal were inappropriate in that the sales were older sales on larger sites and locationally distant from the subject. The Complainant alleged that the site adjustments were unsupported; that the style of comparable three wasn't reconciled in the report; adjustments for kitchenette and garage were unsupported; the cost approach was unsupported including the site value; and the 45% current offerings price range for the neighborhood is too wide to credibly represent the competing segment of the subject's market.

The Respondent stated in his response letter that within six months of the effective date of the report the subject property had "completely remodeled the kitchen and bath" and that because of this remodeling it was necessary to expand the comparable sale search to consider sales of similar quality and appeal. He indicated that the sales used by the reviewer were not updated properties. He indicated that he felt the site adjustments were modest, but that not everyone in that market area would want a big yard to care for and would not be willing to pay additionally for the larger lot size. He indicated the cost approach was left on the report by mistake from another appraisal he cloned.

EXPERT CONCLUSIONS as to the this appraisal [alleged violations included within brackets]:

CONCLUSIONS:

- It appears that the value opinion was inflated by the use of inappropriate sales data and the failure to apply appropriate adjustments. It appears that this was intentional.
- The report includes a cost approach that was "cloned" from a previous report without proper modification.

COMPARISON APPROACH

Selection of Sales: [name omitted] was established in the 1940s as a base for the [name omitted] Project. The original housing was built by the United States government. The original homes have a unique market appeal. The subject property is one of the original [name omitted] homes. The comparables used in the comparison approach are all much newer homes. Sales of other original [name omitted] homes were available for use in the comparison approach. The sales were at significantly lower prices, and they would have resulted in a significantly lower indicated value. These sales were readily available in the MLS system. Hence, it appears that sales from outside the subject neighborhood were used to inflate the value. The sales used are all at least 2.5 miles from the subject, and they are all on much larger sites. It appears that they were not the most comparable sales available as of the appraisal date. [ETHICS RULE, Conduct section, SR 1-4(a), SR 2-1(a)]

Site Adjustments: The comparable sales are all on larger sites. Adjustments for differences in site size were applied, however, in comments regarding the appraisal report that were sent to the client the Respondent stated, "*I do agree that my lot adjustments were not large enough.*" Larger site adjustments would have resulted in a lower value conclusion. It appears that lower site adjustments were used to inflate the final value conclusion. [ETHICS RULE, Conduct section, SR 1-1(b), SR 1-4(a)]

COST APPROACH

The cost approach is typically not a good value indicator for homes as old as the subject.

However, they cost approach was included in the appraisal report. In a response to the TREAC, the Respondent stated, "*The cost approach was left on by mistake from another appraisal that this (sic) was cloned to start the report.*" [SR 2-1(a)]

WORKFILE

The copy of the report provided by the Respondent was not signed. The workfile must include a true copy of the report, and a true copy must include all signatures. [ETHICS RULE, Record Keeping section]

Recommendation and Reasoning: Respondent has been a licensed appraiser since 2007 and was a registered trainee from 2003-2007. Respondent has no prior discipline history. The expert reviewer's findings of value inflation are serious; therefore Counsel for the State and the Administrative Director would recommend that Respondent be offered a consent order for \$4,000 civil penalty and a six (6) month suspension. The Respondent may request an informal conference in this matter. If the Respondent rejects this consent order, formal hearing should commence.

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

8. 200900585 Danny Wiley was the Reviewer

This complaint was filed by a consumer that alleged the Respondent under-valued a vacant land property by indicating a value opinion of \$34,000 on February 25, 2009. The Complainant further alleged this report was full of errors and that the Respondent revised the report and rendered a second appraisal report indicating a value opinion of \$42,000. The Complainant concluded that she believed the Respondent and the purchaser may have some unethical relationship that caused the appraisals to be biased in favor of the purchaser.

On July 8, 2009 the Respondent contacted the TREAC office and e-mailed that he just realized that TREAC had never received his response to the complaint. On July 13, 2009 the response package with appraisal and workfile contents was received. He stated in his response letter that the Complainant was not his client. He stated his client did not provide him with a sales agreement to review and "only that he needed the appraisal quick because he was in the middle of negotiations." He wrote that he inspected the property which was not a lakefront property then copied an appraisal on his appraisal software that was a lakefront lot. He reported that he selected lake view lot sales, but neglected to change the MLS numbers in the report. He stated that in 2003-2004 the county re-platted the road in this section of the subdivision. He stated the report he copied in his software was for a court case for the purpose of estimating damages due to a reduction in site size. He stated the first report he submitted to his client had a smaller site size than the deed he had received from the Realtor, so he changed the site size and resubmitted the report. He stated the change in site size caused a slightly higher indicated value. He stated he does not have a copy of the first report because all he did was change the site size and e-mailed it back to the client. He included that he told his client over the phone that the site size is above average for the subdivision because of the steep topography and is limited to one building site per restrictions and a survey would be need to verify site size, the cost of the site improvements and properly engineered foundation on a steep site could be 5 to 15 times the average cost, and the transfer history of the subject site reflected the original sale price of \$35,900 on 10/29/1998 and the Complainant's purchase price of \$28,000 on 6/15/2006.

EXPERT CONCLUSIONS as to the this appraisal [alleged violations included within brackets]:

CONCLUSIONS:

- Two reports were reviewed. Both involved the same subject property. A report was sent to the client, and an amended was sent later.
- There is no identification of the intended use and intended user(s) in either report.
- Neither report contains analysis of the listing and sales history of the subject property.
- Omission of the income approach and cost approach was not explained in either report.
- The sales comparison approach was not properly developed. The analysis presented is incomplete and misleading.
- The complaint alleges bias, but the reviewer found no indication of bias.

SCOPE OF WORK

The report does not contain a summary of the scope of work used to develop the appraisal. [SCOPE OF WORK RULE, Disclosure Obligations section, SR 2-2(b)(vii)]

INTENDED USE/INTENDED USERS

The report does not contain an identification of the intended user(s). There is no statement of the intended use. In a response to the TREAC the Respondent indicated that the intended use was to assist the client in evaluating a potential purchase of the property. [SR 2-1(b)(i), SR 2-2(b)(ii)]

PROPERTY HISTORY

The report does not address the listing and sales history of the subject property. The complaint indicates that the subject property was listed for sale with Sail-Away Homes.

This is not addressed in the report. Workfile documents submitted by the Respondent indicate a prior sale of the property on June 15, 2006. This is within three years of the effective date of the appraisal, February 25, 2009. The prior sale is neither reported nor analyzed. [SR 1-5(a), SR 1-5(b), SR 2-2(b)(viii)]

SITE DESCRIPTION

The site dimensions were not reported, but this is not unusual for small acreage tracts. The report includes a tax map showing the subject parcel. The reported site size is slightly different from the site size reported on the CRS data sheet for the subject property. The Respondent stated that the lots in the development were replatted after roads in the development were rerouted. As a result, some of the actual site sizes differ from the size reported in public records.

COMPARISON APPROACH

Based on workfile information provided by the Respondent, it appears that the MLS numbers for sales 2 and 3 have been reversed. This appears to be an administrative error. The report states that sale 2 involves a steep lot with a lake view. The MLS listing indicates that much of the lot is level to gently rolling, and that the site has water frontage. The adjustment grid in the appraisal report includes three sales of lots in lakefront communities. Each sale is identified by lot number and street name. The sale price of each property is reported along with the sale price per acre. The features of each property are listed in the adjustment grid, but no adjustments are applied for differences. The report states that the comparable sales provided indicated values for the subject property of \$40,000, \$35,000 and \$69,950, respectively. This is inaccurate and misleading - these are the sale prices, not the values indicated by the respective sales. The appraisal was based on a price per acre analysis. The report notes that the price per acre varies from \$5,400 to \$18,804. The report states that this range has been reconciled to an indicated value

of \$9,000 per acre, but there is no explanation as to how this reconciliation was carried out. Based on the sales data in the appraisal report and additional data in the workfile documents submitted by the Respondent, it appears that the per acre analysis does not reflect the actions of buyers in this market. [SR 1-1(a), SR 1-1(b), SR 1-4(a), SR 2-1(a), SR 2-2(b)(viii)]

OMISSION OF APPROACHES

The appraisal was based on the sales comparison approach. The income approach and cost approach were not part of the scope or work. This is typical for land appraisals. However, omission of the income approach and cost approach must still be addressed in the appraisal report. The report does not explain the omission of the income approach and cost approach. [SR 2-2(b)(viii)]

RECORD KEEPING

The complaint states that two reports were generated. The Respondent confirmed this; however, the Respondent also stated that he did not retain a true copy of all reports that were transmitted to the client. [ETHICS RULE, Record Keeping section]

SCOPE OF WORK

The report does not contain a summary of the scope of work used to develop the appraisal. [SCOPE OF WORK RULE, Disclosure Obligations section, SR 2-2(b)(vii)]

INTENDED USE/INTENDED USERS

The report does not contain an identification of the intended user(s). There is no statement of the intended use. In a response to the TREAC the Respondent indicated that the intended use was to assist the client in evaluating a potential purchase of the property. [SR 2-1(b)(i), SR 2-2(b)(ii)]

PROPERTY HISTORY

The report does not address the listing and sales history of the subject property. The complaint indicates that the subject property was listed for sale with Sail-Away Homes. This is not addressed in the report. Workfile documents submitted by the Respondent indicate a prior sale of the property on June 15, 2006. This is within three years of the effective date of the appraisal, February 25, 2009. The prior sale is neither reported nor analyzed. [SR 1-5(a), SR 1-5(b), SR 2-2(b)(viii)]

SITE DESCRIPTION

The site size is reported at 4.21 acres. An amended report was issued with the site size reported as 4.65 acres. The Respondent stated that the change in size resulted in a difference in value. The appraised value in the original report was \$34,000. The appraised value in the revised report was \$42,000. [SR 1-1(b), SR 1-2(e)(i), SR 2-1(a), SR 2-2(b)(iii)]

OMISSION OF APPROACHES

The appraisal was based on the sales comparison approach. The income approach and cost approach were not part of the scope or work. This is typical for land appraisals. However, omission of the income approach and cost approach must still be addressed in the appraisal report. The report does not explain the omission of the income approach and cost approach. [SR 2-2(b)(viii)]

COMPARISON APPROACH

Sale 2 is identified as Lot 12; it is actually Lot 32. This was corrected in the later report. The MLS numbers provided for the comparables are not correct. The report states that sale 2 involves a steep lot with a lake view. The MLS listing indicates that much of the lot is level to gently rolling, and that the site has water frontage. The sale price of each property is reported along with the sale price per acre. The features of each property are listed in the adjustment grid, but no adjustments are applied for differences. The report states that the comparable sales provided indicated values for the subject property of \$40,000, \$35,000 and \$30,000, respectively. This is inaccurate and misleading - these are the sale prices, not the values indicated by the respective sales. The appraisal was based on a price per acre analysis. The report notes that the price per acre varies from \$5,400 to \$13,900. The report states that this range has been reconciled to an indicated value of \$8,000 per acre, but there is no explanation as to how this reconciliation was carried out. Based on the sales data in the appraisal report and additional data in the workfile documents submitted by the Respondent, it appears that the per acre analysis does not reflect the actions of buyers in this market. [SR 1-1(a), SR 1-1(b), SR 1-4(a), SR 2-1(a), SR 2-2(b)(viii)]

DATE OF REPORT

The report indicates that it was signed on 2/26/2009. This is the same date indicated on the first report. The Respondent stated that two reports were issued. It appears that the signature date is incorrect on the second report. [SR 2-1(a), SR 2-2(b)(vi)]

BIAS

The complaint alleges that the appraiser acted with bias. It is specifically alleged that the property was intentionally undervalued in an attempt to help the client acquire the property at a lower price. The reviewer found no evidence to support that claim.

Prior Complaint / Disciplinary History: 941842 (Letter of Warning), 200504517 (Closed)

Recommendation and Reasoning: Respondent has been licensed as a state Certified General appraiser since 1991. The Respondent has no prior disciplinary history. The expert review found that two reports were communicated with differing value opinions without this detail being reconciled in the second appraisal report. Counsel and the Administrative Director feel that there are competency issues in that the Respondent failed to properly report necessary elements in any appraisal; including: Scope of Work, Intended User(s) and Intended Use. These are essential elements to determine if an appraisal is credible.

Counsel for the State and the Administrative Director would recommend that the Respondent be offered a consent order requiring a civil penalty of \$1,000, and completion of a 30 hour Basic Appraisal Procedures course, a 15 Residential Report Writing Course, and a 15 hour Cost Approach & Site Valuation course within 180 days (6 months) of execution of the order. No continuing education credit should be granted for this corrective education. If the Respondent rejects the consent order formal hearing proceedings should be commenced.

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

9. 200900124 Danny Wiley was the Reviewer

This complaint submitted by mortgage lender alleging the Respondent over valued a residential property by rendering a value opinion of \$67,000 on October 28, 2008. As evidence, the Complainant submitted an

exterior only appraisal that indicated a value of \$28,500. The exterior only appraisal indicated that the property was in fair condition as opposed to the Respondent who described the property as in average condition.

The Respondent stated that his appraisal was accurate and that the exterior only appraiser was neither accurate nor credible. The Respondent stated that the second appraiser was not aware of all the updates and repairs to the property. As such, the comparables used in the second appraisal were inappropriate. The Respondent states that he included as additional support a current active listing of comparable one after it had undergone remodeling and two additional closed sales to support his position that he did not over value the updates and repairs. Respondent stated that the subject had undergone many updates however the owner had not updated the kitchen cabinets, windows or the rear siding of the home. Due to the lack of these updates the home had a higher effective age and had comparables that had "TLC still needed". Respondent added that the second appraiser used distressed sales, and while distressed sales are high in this area and he used two distressed sales himself, it would be inappropriate to use all distressed sales in a market value appraisal. In addition, Respondent adds that the second appraiser used properties that required major repairs.

EXPERT CONCLUSIONS as to the this appraisal [alleged violations included within brackets]:

CONCLUSIONS:

- The listing and transfer history of the subject and the comparable sales was not adequately addressed.
- Significant information regarding current market conditions was omitted.
- The current zoning of the subject property was not accurately reported or adequately addressed.
- The report date appears to be inaccurate.
- Sales concessions were not properly addressed for one of the comparable sales.

PROPERTY HISTORY – LISTING

The information provided regarding the listing history of the subject property is incomplete and inconsistent with the data in the workfile. The report states, "*Home was listed (sic) for \$39,900 and was on market for 92 days.*" The MLS listing in the workfile indicates that the home was listed for sale on June 28, 2008. The original list price was \$44,900. The listing expired after 92 days. The final list price was \$34,900. [SCOPE OF WORK RULE, Assignment Conditions section, SR 2-1(a)]

NEIGHBORHOOD

The report states, "*Economic conditions are considered stable.*" However, in response to TREAC, the respondent stated, "*...foreclosures are high in the subject area...*" this is significant information about market conditions in the area that was omitted from the appraisal report. [SR 2-1(a), SR 2-2(b)(iii)]

SITE DESCRIPTION

In a report submitted with the complaint, the specific zoning classification is reported as "*N/A,*" and the zoning description states, "*Property is zoned for residential and industrial.*" In the report submitted by the Respondent, the specific zoning classification is reported as "*R-1 & I-1.*" Online zoning maps indicate that the entire parcel is zoned I-3. This is a general industrial district. Information obtained from the Knoxville city zoning code indicates that residential use is not allowed under the I-3 zoning. It appears that the current use may be a legal nonconforming use. In the zoning compliance section of the report and "*X*" was

placed in the box that indicates "No Zoning." This is not accurate. There is zoning in the subject area. The possible effects and implications of the industrial zoning are not addressed in the appraisal report. The highest and best use is said to be the current use, but there is no support for this conclusion. [SR 1-3(a), SR 2-1(a), SR 2-2(b)(iii), SR 2-2(b)(viii)]

PROPERTY DESCRIPTION

The report states, "As of 11/11/2008 the broken window has been repaired." The report indicates that the report was signed on 11/03/2008. It appears that the report date is not accurate. If the report was signed on 11/03/2008, it would be impossible to know of repairs made 8 days later. [SR 2-1(a), SR 2-2(b)(vi)]

SALES DATA

At the top of page 2 the report indicates that there are "5+" current listings of comparable homes, and there have been "5+" comparable sales in the subject neighborhood in the past months. The data in the section of the report is an indicator of supply and demand. Specific numbers must be provided. [SCOPE OF WORK RULE, Assignment Conditions section, SR 2-1(a)]

COMPARISON APPROACH

Sale 1: The report indicates that there were no transfers of sale 1 in the year prior to the sale reported in the adjustment grid. Online public records indicate a foreclosure action in March 2008. This transfer must be reported and analyzed. [SCOPE OF WORK RULE, Assignment Conditions section, SR 2-1(a)]

Sale 2: The report indicates that there were no transfers of sale 2 in the year prior to the sale reported in the adjustment grid. Online public records indicate a foreclosure action in December 2007. This transfer must be reported and analyzed. [SCOPE OF WORK RULE, Assignment Conditions section, SR 2-1(a)]

Sale 3: The report indicates that there were no known sales concessions for this transaction. The sale price exceeded the list price. The reviewer contacted the listing agent, Garry Long. Mr. Long indicated that the "true selling price" of the home was \$65,000, and the \$71,300 sale price reported in the MLS reflected significant closing costs. [SR 1-1(a), SR 1-1(b), SR 1-4(a), SR 2-1(a)]

COST APPROACH

The report indicates that the estimated site value was based on comparable sales of vacant building sites within the subject area. The workfile documents submitted by the Respondent did not include any vacant land sales. [ETHICS RULE, Record Keeping section, SR 2-1(a)]

INCOME APPROACH

A comparable rent schedule was included in the report. The analysis is not clear. Current rental rates are indicated for each of the comparables. However, each of the comparables is also said to be "unrented." Therefore, it is not clear whether the rents reported are actual rents or estimated rents. A gross rent multiplier (GRM) is reported, but there is no analysis showing how the GRM was derived. [SR 2-1(a), SR 2-2(b)(viii)]

Prior Complaint / Disciplinary History: None.

Recommendation and Reasoning: The Respondent has been licensed as state Certified Residential real estate appraiser since 2004 and was a registered trainee from 2002-2004. The Respondent has no

prior disciplinary history. The appraisal report demonstrates a failure to report issues throughout and a failure to analyze and report market conditions, seller concessions and zoning information accurately.

Counsel for the State and the Administrative Director would recommend that the Respondent be offered a consent order requiring a civil penalty of \$1,000, and completion of a 15 hour "Residential Report Writing" Course, and a 15 hour "Residential Market Analysis and Highest & Best Use" course within 180 days (6 months) of execution of the order. No continuing education credit should be granted for this corrective education. If the Respondent rejects the consent order formal hearing proceedings should be commenced.

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

10. 2009018071 Danny Wiley was the Reviewer

This complaint was filed by a concerned citizen and included allegations that the appraisal report was incomplete and full of errors including: no price range for similar properties, failure to accurately report the highest and best use analysis, used only commercial properties for comparables sales to a residential dwelling including omitting the residential property next door, omitted the significant deferred maintenance of the subject property, failing to analyze and report negative valuing influencing features such as the subject not being able to be used for commercial purposes because of lack of parking. The Report is identified as an appraisal and purports to comply with USPAP, but seemingly fails to meet the reporting requirements of Standard 2 of USPAP.

The Respondent stated in his response letter that he did the original appraisal of the subject property in March of 2006 for (Mortgage Company). He wrote that his client for the real estate evaluation report in mid 2008 was an investor with the previous client (Mortgage Company). He stated that when he was engaged in this assignment his new client told him that the owner of the (Mortgage Company) had filed for bankruptcy and that (Complainant) was one of the company's largest investors. He wrote that the original appraisal was completed "subject to plans and specifications" and these changes were never completed and there was no re-inspection done (at that time). He stated that when the company was liquidated that the property assets were returned to the investors. In July of 2009 he was told by this new client that that he had received several offers on the property but had not accepted them because he believed the offers were too low, but he wanted to know a fair price for the property. He indicated that a group was trying to buy up properties in the area and that Complainant was one of these investors. The Respondent indicated that he decided to do an evaluation report not an appraisal. He wrote that he did this just to help this client who had been "caught in the middle" and wanted some negation point. He wrote that he was aware of the sales the Complainant indicated, but they had different zoning than the subject property and were "foreclosure" sales were therefore not used. He wrote that his client was not willing to sell his property for those prices and wanted an estimated value of his property. He added that he does not do commercial appraisals, that he only completes residential appraisal reports and that he was only trying to give his client "a ranged of value" and now realizes that some of the forms he used may have made it appear that this was an appraisal. He stated that the boards on the window of the subject property were there to deter vandals, that the property was being renovated to be a rental property for an insurance company or real estate company, and that the outside air unit was missing and in need of replacement.

EXPERT CONCLUSIONS as to the this appraisal [alleged violations included within brackets]:

CONCLUSIONS:

- It appears that the assignment was beyond the competency of the appraiser.
- Prior sales of the subject property were reported, but not analyzed.
- The highest and best use was not adequately analyzed.
- The sales used in the comparison approach were not appropriate.
- Several required reporting elements were omitted.

NATURE OF THE ASSIGNMENT

In a letter dated September 8, 2009, the Respondent stated that his intent was to prepare a real estate evaluation report, not an appraisal report. Page 6 of the report identifies the form as a, "REAL ESTATE EVALUATION REPORT." However, the cover page (page 2 of the report) identifies the entire report as, "RESIDENTIAL APPRAISAL REPORT." The letter of transmittal (page 3 of the report) begins with the following, "*In accordance with your request, we have **appraised** the above referenced property. The report of that **appraisal** is attached.*" The transmittal letter makes multiple references to the **appraisal** of the subject property. Page 4 of the report specifically identifies the document as a Summary Appraisal Report in accordance with SR 2-2(b). Based on these and other numerous references throughout the document, the reviewer has treated the document as an appraisal report, and has conducted an appraisal review in light of the requirements provided in SR 2-2(b).

COMPETENCY

The subject property is zoned IWD (Industrial Warehousing/Distribution). In a letter dated September 8, 2009, the Respondent stated, "*I do not do commercial appraisals...*" Based on this statement, and based on the other findings reported herein, it appears that the Respondent lacked the competency to complete the assignment correctly. [COMPETENCY RULE]

INTENDED USE

The following appears on page 7, FIRREA/USPAP Addendum: "*The intended use of this appraisal is for mortgage loan (sic) and collateral valuation purposes.*" In a letter dated September 8, 2009 the respondent stated that the intended use of the assignment was to assist the owner in establishing a sale price for the property. This is not consistent with the statement of the intended use in the appraisal report. [SR 2-1(a), SR 2-2(b)(ii)]

DEFINITION OF VALUE

The report provides an opinion of Market Value. On page 7, reference is made to the definition of Market Value in Fannie Mae guidelines. The applicable definition of Market Value is not included in the appraisal report. [SR 2-2(b)(v)]

HIGHEST AND BEST USE

The report provides conflicting conclusions regarding the highest and best use. On page 6 the report states that the highest and best use is, "*Commercial type establishment.*" On page 7 the report states that the highest and best use is, "*single-family residential.*" It appears that the highest and best use of the property was not adequately analyzed. The subject property was improved with a small single-family home. However, the zoning is IWD (Industrial Warehousing/Distribution). The existing improvements represent a legal nonconforming use. Planning officials verified that the current improvements could not be rebuilt if voluntarily removed or damaged. The site is much smaller than the typical site in the area, and the shape is triangular. The size and shape of the site would severely limit the utility and marketability of

the site. Any potential commercial use of the site would be severely limited by the lack of parking area.[SR 1-1(a), SR 1-1(b), SR 2-1(a)]

SALES HISTORY

Prior transfers of the subject property are reported, but not analyzed. As a result, the sales history is misleading. The report notes that the subject property was acquired November 30, 2007. The report states that the "sales price" was \$117,576. Public records indicates a transfer of the property on that date, however, this was not a traditional sale. The property was transferred to [name omitted] as part of the dissolution of an investment company. The appraisal report notes that the property also sold on March 3, 2006. The report contains no analysis of the sale. [SR 1-1(b), SR 1-5(b), SR 2-1(a), SR 2-2(b)(viii)]

SALES COMPARISON APPROACH

Site Size: The subject site is much smaller than average. The site size would play a significant role in the value. The three sales used in the comparison approach all have sites which are at least three times as large as the subject site. No adjustments were applied despite the extreme difference in site size. The subject site is so small that it appears only one or two cars could be parked beside the existing improvements. Hence, it appears that it is simply not feasible to use the existing improvements for a commercial use. The comparable sales used are not appropriate for comparison to the subject because they all involve larger sites that do accommodate commercial use. [SR 1-1(a), SR 1-1(b), SR 1-2(e)(i), SR 1-4(a)]

RECONCILIATION

After adjustments were applied to the comparable sales, the resulting value range was from approximately \$83,000 to \$135,000. The final value opinion is \$103,000. The comments provided to reconcile the indicated values into a final value conclusion are minimal and contradictory. One sentence states that comparable 2 and comparable 3 were given most consideration because they are the most recent sales. Another sentence states that comparable 2 is given less consideration because of its age. None of the statements provided address the large value range.[SR 1-6]

CERTIFICATION

A certification is provided on page 4 of the report. The certification does not comply with the minimum requirements of USPAP. The certification does not clearly state whether or not the appraiser has a perspective interest in the property. [SR 2-1(a), SR 2-3]

SCOPE OF WORK

There is no explanation for the omission of the cost approach and the income approach. [SR 2-2(b)(viii)]

Prior Complaint / Disciplinary History: 200104204 (Closed with a Letter of Warning), 200706849 (Closed with a Consent Order requiring a class)

Recommendation and Reasoning: The Respondent has been a Certified Residential real estate appraisal since October, 1999. Respondent was a registered trainee from 1995-1999. The Respondent had a 2007 complaint that was closed by consent order. Respondent indicated that he intended to do an evaluation not an appraisal. However, Respondent repeatedly referred to the report throughout as an appraisal.

Counsel for the State and the Administrative Director would recommend that the Respondent be offered a consent order requiring a civil penalty of \$1,000, and completion of a 30 hour Basic Appraisal Procedures course, a 15 Residential Report Writing Course, and a 15 hour Residential Market Analysis and Highest and Best Use course within 180 days (6 months) of execution of the order. No continuing education credit should be granted for this corrective education. If the Respondent rejects the consent order formal hearing proceedings should be commenced.

Vote: Mr. Phillips recused himself due to possible prior knowledge in this matter. Mr. Headden made the motion to accept the recommendation and Mr. Wade seconded the motion. After some discussion, Mr. Headden and Mr. Wade amended their motion to accept the recommendation with the exception of a \$3000 penalty in lieu of the recommended \$1000. The motion carried unopposed.

11. 200902060/2009024841 There was no reviewer.

Complaint No.: 200902060

The Complainant, a consumer, alleged the Respondent grossly under-valued a residential property and used inappropriate comparable sales outside the subject neighborhood.

The Respondent stated in his response letter that there were a number of items of deferred maintenance with this property, including one room where there is a wall separation where "you can see daylight through the corners of the walls". Several rooms had been remodeled, but remodeling was reportedly still in process. He wrote that the comparables he used were reflective of the current condition of the subject. He alleged that the comparable sales the Complainant wanted him to use were inappropriate. He indicated the land value "was extracted from the general area".

Complaint No.: 200902484

The Complainant a consumer alleged the Respondent communicated a misleading or negligently prepared appraisal report by misreporting the site size, room totals, omitting energy efficient items and amenities of the subject property. The Complainant also indicated that the cost approach to value was not a credible value opinion.

The Respondent stated in his response letter that he misreported the site size, but wrote that it was not intentional. He indicated that the room/bedroom count issue was because a room the owner identified as a bedroom was used as a utility room and he reported it as such. Respondent stated that he misreported the bathroom total and his market data did not show an increase in value for the tank less water heaters. Respondent states that he did not include two (2) storage buildings in the appraisal because they are not on a permanent foundation and therefore he considered them to be personal property. Respondent states that his cost data came from a web site source, [www. building-cost.net](http://www.building-cost.net) and discussions with contractors in the area on building costs. Respondent states that site value was based on four (4) site sales which averaged \$25,000 but he "wanted to be conservative due to differences in the lot sizes and I estimated the land value at \$20,000." Respondent concluded he made some errors in the report, but he does not feel they would have affected the value conclusion.

On November 30, 2009, Respondent stated in a letter, "due to conditions at hand I am no longer appraising. I have already stopped all appraisal orders from lenders and management companies and have canceled my E&O insurance and wish to forfeit my license back to the State, no longer to be used by me."

Prior Complaint / Disciplinary History: 200105196 (Dismissed), 200316654 (Dismissed), 200900122 (Closed w/ Consent Order), 200900261 (Open), 200902060 (Open)

Recommendation and Reasoning: Counsel for the State and the Administrative Director would recommend that the Respondent be offered a consent order for permanent voluntary surrender. If the Respondent rejects the consent order the complaints should be forwarded for expert witness review.

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

12. 2009009361 There was no reviewer.

This matter was presented previously in 10/09 and the Commission approved issuance of a proposed Consent Order for additional corrective education, for alleged errors that were not intentional. Since that time, counsel for the State has noticed that the Respondent has both TN and GA certified residential certificates with an office in Chattanooga, and that the subject property and all comps were located in GA.

Since GA has a more direct responsibility to enforce the practice of appraising in that State, we believe it would be more prudent to refer this complaint to the GA state enforcement authorities for their determination, to close this file and reactivate for disposition after GA reports its disposition to this Commission. It did not appear that the Complainant ever filed a complaint directly with the GA authorities.

Recommendation and reasoning: Counsel for the State and the Administrative Director recommend that this complaint be closed, and flagged for reactivation and further presentation to the Commission after the GA authorities report their disposition to us.

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

Complaint file number 200900950 (#2) was revisited.

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

Chairman, Herbert E. Phillips

Nikole Avers, Administrative Director