



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

**April 12, 2010**  
**Third Floor Conference Room, Andrew Johnson Tower**

The Tennessee Real Estate Appraiser Commission met April 12, 2010 at 8:30 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  
Thomas R. Carter  
William R. Flowers, Jr.  
Najanna Coleman  
Erik Sanford

**COMMISSION MEMBERS ABSENT**

Dr. Edward A. Baryla  
Marc Hadden

**STAFF MEMBERS PRESENT**

Nikole Avers, Administrative Director  
Aminah Saunders, Staff Attorney

**ADOPT AGENDA**

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

**MINUTES**

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

**GENERAL BUSINESS**

**Experience Interviews**

---

**Jason William Blankenship** made application to upgrade from a registered trainee to become a state certified general real estate appraiser. Mr. Woodford was the reviewer and recommended approval of his

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

**Nesbit Harris** made application to upgrade from a registered trainee to become a certified residential real estate appraiser. Mr. Phillips was the reviewer and recommended approval of his experience request. Mr. Flowers made the motion to accept the recommendation and Mr. Wade seconded the motion. The motion carried unopposed.

**Chad Aaron Gravitt** made application to upgrade from a registered trainee to become a certified residential real estate appraiser. Mr. Flowers was the reviewer and recommended approval of his experience request. Mr. Carter made the motion to accept the recommendation and Mr. Wade seconded the motion. The motion carried unopposed.

**Jason F. Webster** made application to upgrade from a registered trainee to become a certified residential real estate appraiser. Mr. Carter was the reviewer and recommended approval of his experience request. Mr. Flowers made the motion to accept the recommendation and Ms. Coleman seconded the motion. The motion carried unopposed.

**Richard Allan Simpson** 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 his experience request. Mr. Flowers made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

### **Education Committee Report**

---

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

#### **April 2010 Education Committee Report**

Course Provider      Course #      Course Name      Instructors      Hrs.      Type      Rec.

Appraisal Educators, Inc.	1382	118 Foreclosures & Short Sales: Dilemmas & Solutions	Robert Sneed	7	CE	for
The Spearman Center	1383	Pitfalls in Appraising: Be Aware	W.L. Spearman	7	CE	for
Nat'l Assn of Independent Fee Appraisers	1384	19.1 An Appraiser's Guide to Environmental Issues	Mike Orman	7	CE	for
The Spearman Center	1385	Appraisal Report Language: Your Best Defense	W.L. Spearman	7	CE	for
McKissock, Inc.	1386	On-Line Appraising Apartments: The Basics	Richard McKissock	7	CE	for

Franklin Educational Institute	1387	The Income Approach for the Residential Appraisers	Richard L. De Heer Diana T. Jacob Bobby Crisp Amelia Brown Marc Taylor Howard Johnson	7	CE	4 hours only. Pages 5 and 6 of "Instructor Guide" show a 4 hour course. Add Bryan Reynolds as instructor. Material submitted, but name not listed.
Appraisal Institute	1388	Advanced Income Capitalization	Harry Holzhauer Stephen Roach	30	QE/ CE	For under income property appraising module. This is not specified in the application
Appraisal Institute	1389	Analyzing the Effects of Environmental Contamination on Real Property	Thomas Jackson	7	CE	For: conditional on instructor bio or resume

#### Individual Course Approval

Name	License #	Provider	Course Name	Hrs	Type	Recommendation from Dr. Baryla
Lon Kaprive	1041	IAAO	Residential Modeling Concepts	30	CE	for
Michael Mead	708	Appraisal Institute	Appraisal Principles (Wasn't approved under new matrix requirements)	39	QE	for
Michael Mead	708	Appraisal Institute	Principles of Capitalization (Wasn't approved under new matrix requirements)	<del>39</del>	QE	<b>Against: There is no matrix submitted that clearly defines what the applicant is requesting and, regardless, it does not appear the content would support a petition for the "residential sales comparison" component of the core module for "Residential Sales Comparison and Income Approaches," as referred to in the applicant's submission documents.</b>

#### LEGAL REPORT

The Chairman is signed orders in the following matters regarding which prior Commission approval has been obtained:

**John D. Fisher** (approved 02/10) – signed Consent Order requiring a \$2000.00 civil penalty and completion of a fifteen (15) hour USPAP course, a fifteen (15) hour Residential Report Writing course and a fifteen (15) hour Residential Site Valuation and Cost Approach course. Respondent failed to support the opinions and conclusions in the two appraisal reports he communicated to the client pertaining to one (1) subject property and failed to meet record keeping requirements of USPAP. Respondent violated Standard Rules (SR's) 1-1(a) (b), 1-4 (a), 1-5(a), 2-1(a), 2-2(b)(i),(iii),(iv),(vii) & (viii) of the Uniform Standards of Professional Appraisal Practice.

**1. 2010000761 There was no Reviewer**

This complaint was filed by a fellow practitioner and included allegations that the Respondent has denied access to appraisal work files on reports he co-signed. According to the Complainant the parties had a professional relationship that was terminated by the Respondent.

The Respondent states that he has been an appraiser for thirty one (31) years in Tennessee, Mississippi and Arkansas and that he has never faced discipline in any jurisdiction. The Respondent replied to the complaint by indicating that he had not violated the Ethics Rule of USPAP and that access arrangements to appraisals and workfile only had to be provided under specific conditions of USPAP which he outlined and referenced Appraisal Standards Boards Frequently Asked Questions (FAQ's). Respondent also indicated that an identical complaint had been filed with the Mississippi Real Estate Appraisal Licensing and Certification Board.

The Administrative Director obtained a copy of the March 3, 2010 letter advising the Complainant that the Mississippi Board had found no substantial USPAP violation.

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

**Recommendation and reasoning:** Counsel and the Administrative Director recommend that this complaint be **DISMISSED** as that there have been no violation of USPAP.

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

**2. 200901856 Danny Wiley was the Reviewer.**

This complaint was filed by a consumer and included allegations that the Respondent communicated an appraisal report that contained "several mistakes" and that the subject property was under valued.

The Respondent stated in his response letter that the accusations are baseless.

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

- The complaint alleges an improper relationship between the appraiser and the lender/client. The complaint also alleges that the home was intentionally under valued. The reviewer found no merit to these allegations.
- The report indicates that CRS was used as a data source, but the workfile documents submitted include no CRS data.

The report indicates that the Courthouse Retrieval System (CRS) was used as a data source for the comparables, but no CRS data was contained in the workfile documents submitted by the Respondent. [ETHICS RULE: Record Keeping section]

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

**Recommendation and Reasoning:** The Respondent has been licensed Certified General since 1995. Counsel and the Administrative Director recommend that this complaint be closed with a Letter of Caution regarding Recordkeeping requirements.

**Vote:** After some discussion of the recommendation, Mr. Wade made the motion to **dismiss** this complaint. Mr. Sanford seconded the motion. The motion carried unopposed.

### **3. 200902115 Danny Wiley was the Reviewer.**

This complaint was filed by a consumer and included allegations that the Respondent communicated an "incomplete" appraisal by omitting the cost and income approaches to value and using inappropriate foreclosure sales. Complainant alleges that property being remodeled for an appraisal was described as containing both an "as is" and an "as complete" value opinion.

The Respondent stated in his response letter that the lender/client requested an appraisal of the subject property both "as is" and "as repaired". He wrote that the foreclosure sales in the subject market that are being renovated and resold have contributed to a declining market in this area, and for that reason, he felt it necessary to include both foreclosure sales non-foreclosure sales in his market analysis. He alleged that the Complainant requested he use sales outside the market to obtain a higher value opinion.

**SPECIAL NOTE:** Two appraisal reports were reviewed. Both reports had an effective date of 09/09/2009, and both indicate that they were signed on 09/09/2009. One of the reports (hereinafter referred to as Report 1) communicates a value opinion based on the "as is" condition. The other report (hereinafter referred to as Report 2) communicates a value opinion that is subject to repairs/updating.

#### **EXPERT CONCLUSIONS as to Report one (1) and Report two (2) [alleged violations included within brackets]:**

- The NEIGHBORHOOD sections of the reports do not address adverse conditions.
- The reports state that prices are declining, but no market condition adjustments are applied.
- Prior transfers of the subject and comparable sales are not disclosed and analyzed.
- There are apparent errors in reporting and adjusting of the comparables in Report two (2).
- Neither report contains an explanation for omission of the cost approach and income approach.
- The workfile documents submitted contain no tax data.

Report 1: The subject property has been adequately identified. Both reports indicate that the subject property had been listed in the past year, but neither report indicates at what price it had been offered. A copy of the listing was included in the workfile documents submitted by the Respondent, so the failure to indicate the offering price appears to be only a matter of reporting, and not a matter of proper analysis. [SR 2-2(b)(viii)]

Report 1: The information presented in the NEIGHBORHOOD section of the report is inconsistent Page one (1) of the appraisal report states that prices in the area are declining. The appraisal report also states, "No adverse neighborhood conditions noted." [SR 1-2(e)(i), SR 2-2(b)(iii)]

Report 1: Market Condition Adjustments: The NEIGHBORHOOD section of the reports states that prices are declining in the area. However, no market condition adjustments were applied in the comparison approach. [SR 1-1(a), SR 1-4(a)]

Report 1: The report indicates that none of the comparables sold in the year prior to the sale reported in the adjustment grid. In addition to the sale reported in the adjustment grid, Sale one (1) also transferred in

April of 2008. In addition to the sale reported in the adjustment grid, Sale two (2) also transferred in May of 2009. In addition to the sale reported in the adjustment grid, Sale three (3) also transferred in July of 2008. [SR 2-1(a)]

Report 2: The NEIGHBORHOOD section of the reports states that prices are declining in the area. However, no market condition adjustments were applied in the comparison approach. [SR 1-1(a), SR 1-4(a)]

Report 2: The report indicates that none of the comparables sold in the year prior to the sale reported in the adjustment grid. In addition to the sale reported in the adjustment grid, Sale two (2) also transferred in February 2009. Sale four (4) transferred two other times in the year prior to the sale reported in the adjustment grid. [SR 2-1(a)]

Report 2: The MLS listing for Sale two (2) states that it has a full basement that is partially finished. This is stated in both the BASEMENT section of the listing and in the narrative comments. [SR 1-1(b), SR 1-1(4)(a)]

Report 2: The MLS listing for Sale three (3) states that it is a "fixer-upper" that is in "fair" condition. The appraisal communicated in Report two (2) was based upon updating to the subject. Hence, it appears that a condition adjustment should have been applied to Sale three (3). [SR 1-1(b), SR 1-1(4)(a)]

Both reports indicate that there have been no transfers of the subject property in the past three (3) years. The CRS data sheet included in the work file documents indicates that the subject property transferred in November 2007. [SR 2-2(b)(viii)]

Both reports include only the sales comparison approach. Neither report includes an explanation for the omission of the cost approach and the income approach. The omission of these approaches must be explained in the report, even if they are not applicable or not necessary for credible results. [SR 2-2(b)(viii)]

Both reports indicate that data for the comparison approach was based on MLS data and tax records. MLS data sheets were provided, but no tax data cards were included in the workfile documents submitted for review. [ETHICS RULE: Record Keeping section]

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

**Recommendation and Reasoning:** This Respondent has been Certified Residential since 1991. Counsel and the Administrative Director recommend that the Respondent be offered a consent order imposing a \$500.00 civil penalty and requiring a fifteen (15) hour Residential Report Writing course OR a fifteen (15) hour Residential Market Analysis and Highest and Best Use course.

**Vote:** Mr. Wade made an alternate recommendation and motion that the Respondent be offered a consent order which would include a \$1,500 civil penalty and require completion of a fifteen (15) hour Residential Report Writing course OR a fifteen (15) hour Residential Market Analysis and Highest and Best Use course. Mr. Sanford seconded the motion. The motion carried. Mr. Flowers and Mr. Woodford voted no. Ms. Coleman, Mr. Wade, Mr. Carter, Mr. Phillips and Mr. Sanford voted yes.

#### **4. 200902116 Danny Wiley was the Reviewer.**

This complaint was filed by HUD and included allegations that the Respondent communicated three misleading appraisal reports. In the first appraisal, complainant alleged Respondent over-valued the subject property by using superior comparable sales, omitted significant deferred maintenance/structural issues, and reported the appraised value as "as is" rather than an "as repaired" conclusion.

In the second appraisal, complainant alleged that the Respondent misrepresented relevant characteristics of the subject property, reported the appraised value as "as is" rather than an "as repaired" and used superior comparables and omitting relevant sale information. In the third appraisal report, the Respondent was alleged to have omitted relevant amenities of the comparable sales and possibly misrepresented the size of the subject property.

The Respondent stated in his response letter that the values included in the appraisals are fair and justified and supported by the data available at the time of the reports.

#### **EXPERT CONCLUSIONS as to the APPRAISAL ONE (1) [alleged violations included within brackets]:**

- The subject property was not adequately identified. The appraisal report reflects consideration of only a portion of the site. That fact was not disclosed, and the portion of the site being appraised was not identified.
- A prior listing of the subject was neither analyzed nor reported.
- Two of the comparables are much newer homes; no age adjustments were applied.

The subject property has been identified in the report as parcel 27.02 on (Omitted) County Tax Map 37. Public records indicate that this parcel contains 5.2 acres. In a response to HUD dated October 7, 2009, the Respondent indicated that he had been informed that the site was to be subdivided, and that only 2.2 acres were to remain with the home. The report should identify the 2.2 acres included in the appraised. The report should also note that only a portion of the site is being appraised. The appraisal should be made subject to subdivision of the site rather than "as is." [SCOPE OF WORK RULE: Problem Identification section, SR 1-2(e)(i), SR 2-2(b)(iii), SR 2-1(a)]

The appraisal report indicates that the home has not been listed in year prior to the effective date of December 19, 2008. MLS records indicate that the home was listed on February 7, 2008 with an asking price of \$192,500. That listing was withdrawn on March 25, 2008. The property was also listed July, 2008 with an asking price of \$189,900. That listing was withdrawn on September 19, 2008. In a response to HUD dated October 7, 2009 the Respondent stated that the property had been listed, and the prior listings were overlooked. Failure to report and analyze the prior listings is an omission. [SCOPE OF WORK RULE: Problem Identification section, SR 1-1(b), SR 2-1(a)]

The report states that the comparables are all similar in age. The subject was reported to be 23 years old. Sales two (2) and three (3) involve homes that are only 9 years old. No age adjustments were applied. [SR 1-4(a)]

The site value for the subject is reported to be \$40,000. This is supported by land sales in the workfile documents. Sale two (2) has 15.88 acres, and an adjustment of -\$30,000 was applied. There is nothing in

the workfile to indicate how the adjustment of approximately \$2,200 per acre was derived. [SR 1-4(a), ETHICS RULE: Record Keeping section]

The appraisal report notes that the subject property sold in February 2007. Public records indicate that the subject property also transferred in November 2007 (Book 439A, page 1685). That transfer was not reported. [SR 1-5(b), SR 2-2(b)(viii)]

For an FHA appraisal, the cost approach is not required for a home as old as the subject. A cost approach was completed. The report states that the cost approach is supports the final value, but the indicated value from the cost approach is significantly lower. The report contains "boilerplate" language rather than reconciliation of the two approaches that were used. [SR 1-6(b), SR 2-2(b)(viii)]

**EXPERT CONCLUSIONS as to the APPRAISAL TWO (2) [alleged violations included within brackets]:**

- There are some minor errors in the comparison approach that do not affect the assignment results.
- One prior sale of the subject property was reported, but was not analyzed.
- A sale of the property in July 2005 was not reported.

The appraisal report notes that the subject property sold in December 2005 for \$74,300, but the report contains no analysis of the sale. Public records indicate that the subject property also sold in July 2005. This sale was not reported. [SR 1-5(b), SR 2-2(b)(viii)]

**EXPERT CONCLUSIONS as to the APPRAISAL THREE (3) [alleged violations included within brackets]:**

- The neighborhood section of the report does not address foreclosure activity in the area.
- The report states that there is a septic tank; there is no comment on the availability of sewer. The comparable sales all have sewer service, and online maps indicate sewer service is available in the area.
- There appears to be a significant crack in the foundation. The appraisal should be subject to inspection and, if necessary, repair of this structural issue.
- A prior sale of Comparable 1 was not reported.

Foreclosure activity within the neighborhood was not addressed. Sale 1 in the Respondent's adjustment grid was a sale out of foreclosure. [SR 1-2(e)(i), SR 2-2(b)(iii)]

The site section of the report states that the home is on a septic tank. In a response to HUD that is dated October 7, 2009, the Respondent stated that septic tanks were typical and that sewer is not available. The MLS listings for the three comparable sales indicate that they are all on sewer. An online map from the (Omitted) County Planning and Zoning Office indicates that sewer is available in the area. FHA requirements mandate that the appraiser comment on the availability of sewer service. It appears that the home is actually connected to sewer service. The Water Department for the City of (Omitted) indicated that the sewer tap fee was paid in 1998, and sewer fees have been paid by the owner since that time. [SCOPE OF WORK RULE: Problem Identification section, SR 1-2(e)(i), SR 2-2(b)(iii)]



The appraisal report states that there is a, "crack in the mortar (sic) of the back right corner of the basement foundation." The box indicating that there were signs of settlement was not checked. The photos provided in the field review report appear to show a significant crack and shifting of the foundation. The appraisal was done for an FHA loan. Hence, an applicable assignment condition was compliance with FHA requirements. Per FHA protocols, the report should have indicated that the appraisal was subject to inspection of the crack by a qualified professional, and repair of the crack, if necessary. [SCOPE OF WORK RULE: Problem Identification section]

Sale 1 The report states that there were no sales of this home in the year prior to the sale reported in the adjustment grid. Online data sources indicate that this home sold in May 2007 for \$34,000. This was a sale out of foreclosure; the seller was (Omitted). Analyzing and reporting this sale would be required by FHA requirements applicable to the assignment. [SCOPE OF WORK RULE: Problem Identification section]

**Prior Complaint/ Disciplinary History:** 200504045 (Closed with a letter of caution); 200801999 (Dismissed); 200802146 (Closed with a Consent Order \$2,500 & 3 courses)

**Recommendation and Reasoning:** The Respondent has been licensed as a Certified Residential appraiser since 1991. Respondent's prior discipline was contemporaneous with the reports included in this complaint, so the education taken as a result of the prior consent order could not be expected to show in the reports in question in these complaints. Counsel and the Administrative Director recommend the Respondent be offered a **CONSENT ORDER** imposing a \$1,500 civil penalty, Respondent's license would be **RESTRICTED** in that Respondent will have a one (1) year probation during which time Respondent may not have any new trainees. Furthermore, should Respondent be subject to discipline in Tennessee or in any other jurisdiction for violations of professional standards which occurred after the July 2009 consent order was executed then the Respondent *may* be suspended for ninety (90) days or indefinitely until resolution of any other suspension or revocation order that was a result of discipline in this or another jurisdiction.

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

#### **5. 200901028 Danny Wiley was the Reviewer**

This complaint was filed by a consumer and included allegations that the Respondent appraised a property a second and third time by cloning an appraisal report, but without including updates to the subject property since the first appraisal a year in the past. Additional allegations included undervaluing a residential property and committing significant errors of omission or commission in the development and communication of an appraisal report.

The Respondent stated in her response letter that she originally did this appraisal as part of a foreclosure one year prior to this refinance. She wrote that unfortunately she forgot to change one photo and make some changes, like the enclosed porch that is now part of the square footage. She indicated this was because she had cloned the previous report to save time on the building sketch. She added that the mistakes were in the description of the subject property and were changed before the "final copy" was sent to the lender. She indicated the property had been renovated and the indicated value was supported.

**EXPERT CONCLUSIONS as to the APPRAISAL [alleged violations included within brackets]:**

- Five appraisal reports were prepared. They all contain a series of small errors that, in aggregate, affect the credibility of the assignment results.
- Information regarding the transfer history of the subject and the comparable sales has not been adequately analyzed and reported.
- The workfile contains no support for the site value and site adjustments.

Five different reports were submitted. They all report a value of the subject property as of March 17, 2009. The reports contain no title, file name, or other identifier that easily distinguishes them from each other. For ease of reference, in this review they will be referred to as Report 1, Report 2, Report 3, Report 4, and Report 5.

Report 1 is the report that shows the size of the home on page 1 of the URAR as 1,670 square feet and reports a value of \$119,000.

Report 2 is the report that indicates the size of the home is 1,929 square feet and the floors are described as "Carpet/Vyl/A."

Report 3 is the report that describes the floors as "Cpt/Tile/Hwd/A" and reports no prior sales of the subject property.

Report 4 is the report that describes the floors as "Hwd/Bamb/Tile/A."

Report 5 is the report that indicates prior sales of the subject property.

The subject property has been adequately identified in all of the reports. Report 1 incorrectly states that the home was listed for sale as of the effective date. All five (5) reports contain the following statement, "(OMITTED) Loan Services is listed as the seller on the contract. The tax record shows (OMITTED) Association as the current owner." The home was not under contract as of the effective date of the appraisal. [SR 2-1(a)]

All five (5) reports contain conflicting information regarding market conditions. The grid in the NEIGHBORHOOD section states that prices are stable. Attached comments indicate that prices are declining. [SR 1-2(e)(i), SR 2-2(b)(iii)]

All five (5) reports state that the view is "Average." Comments submitted by the Respondent indicate that there is a view of a river or small lake. This is not mentioned in the site section of any of the reports. [SR 1-2(e)(i), SR 2-2(b)(iii)]

There are numerous errors/inconsistencies in the descriptions of the improvements. Report one (1) and four (4) state that the effective age of the home is twenty (20) years. The other three reports state that the effective age is five (5) years. All of the reports indicate that the exterior is "Wood" and the roof has "Comp Shing." In a response to TREAC the Respondent stated that the home has vinyl siding and metal roofing. The description of the flooring varies from report to report. Report one (1) and two (2) indicate carpet and vinyl. Report three (3) and five (5) indicate carpet, tile and hardwood. Report 4 indicates hardwood, bamboo and tile.

Page 1 of the URAR in Report 1 indicates 1,670 square feet. The adjustment grid in that report indicates 1,929 square feet. The other reports indicate 1,929 square feet.

Reports 1 and 2 indicate that the bath floors are vinyl. The other reports indicate that they are tile.

Reports 1 and 2 indicate that the wainscoting is fiberglass. The other reports state that it is tile. Individually, these errors are minor. Collectively, the series of errors affects the credibility of the entire appraisal. The Respondent stated that the errors were the result of "cloning" a report that was prepared a year earlier when the home sold as an REO home. It also appears that the errors are due in part to a lack of diligence in re-inspecting the home. The field notes provided by the Respondent indicate updating to the home, but the field notes contain no details regarding floor coverings, exterior siding, etc. [SR 1-1(c)]

Sale 2: The appraisal reports all state that sale two (2) last sold in April 2007 and that tax records were used as the data source. Records indicate two transfers of this home in the year prior to its sale in November 2008. In April 2008 the home was acquired by (OMITTED) Inc. in an apparent foreclosure. It transferred to Fannie Mae in July 2008. Records indicate no transfers in April 2007. [SCOPE OF WORK RULE: Problem Identification section, SR 2-1(a)]

The reports indicate that tax records were used as a data source, but the workfile documents submitted by the Respondent contain no tax data. If tax records were consulted but not retained, then record keeping requirements have not been met. [ETHICS RULE: Record Keeping section]

Reports 1, 2, 3 and 4 indicate that there had been no transfers of the subject property in the three years prior to the effective date. Report 5 indicates two transfers in the past three years, but the report contains no analysis of the transfers. [SR 1-5(b), SR 2-2(b)(viii)]

The workfile documents contain no support for the site value. If data was analyzed, but not retained, the workfile requirements have not been met. [ETHICS RULE: Record Keeping section]

Two of the reports indicate that the Date of Signature and Report is March 17, 2009. Three of the reports indicate the Date of Signature and Report is March 23, 2009. The Respondent amended and submitted the reports over a period of several weeks. The workfile documents submitted by the Respondent include a letter to (OMITTED), Inc. that is dated May 5, 2009. That letter addresses an amended report that had been submitted. It appears that the dates provided for the Date of Signature and Report are not correct. [SR 2-2(b)(vi)]

**Prior Complaint/ Disciplinary History:** 944600 (Closed - Letter of Caution), 200002309 (Dismissed), 200101098 (Closed - Letter of Warning), 200207945 (Closed - Consent Order Paid \$7,000 civil penalty), 200209569 (Closed - Letter of Caution), 200210221 (Dismissed), 200501785 (Closed - Letter of Warning)

**Recommendation and Reasoning:** The Respondent has been Certified General since 1993. Counsel and the Administrative recommend that due to Respondent's disciplinary history the numerous violations noted in the report, a consent order imposing a \$2,000 civil penalty, and requiring the Respondent to successfully complete a 15 hour USPAP course, and 45 hours in Residential Report Writing and/or Residential Applications & Case Studies courses. Furthermore Respondent would be placed on one (1) year probation, where Respondent would be precluded from having any trainees. Respondent would be

required to submit the experience log due at 180 days of probation for random review of at least one (1) appraisal for possible USPAP violations.

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

**6. 200901680 Danny Wiley was the Reviewer.**

This complaint was filed by a consumer and included allegations that the Respondents under-valued a residential property by indicating a value opinion of \$107,000 on July 3, 2009. The complainants state that the property was appraised in 2008 for \$155,000. Complainant alleges that Respondent(s) used inappropriate comparable sales. The Complainant also alleges that the comparable sale photos included in the report were taken from the MLS and that this was misleading in that there was no disclosure of this source in the appraisal report. Complaint alleges that the Respondents communicated a misleading appraisal report in that the first Respondent did not inspect the subject property, but instead stood in the driveway, while a second certified appraiser inspected the interior of the subject property. The first Respondent was the only one to sign the appraisal report and the second Respondent was not identified in the certification as contributing significant real property appraisal assistance and failed to report the separate scope of work (inspection performance) for each appraiser within the appraisal report.

The Respondents indicated that they felt the other appraisal for \$155,000 was fraudulent and/or inflated. They wrote that, "as this was a request for a partial release appraisal the client was asked exactly what the lender needed appraised: the home with all the acreage, or otherwise. The lender stated they wanted only a value for the home and one acre which was completed with a value opinion of \$93,000. Soon after that appraisal was submitted to the client the lender decided they wanted a report that included the 4.02 acres. We did not understand their reasoning for this request, but we complied and completed the report with 4.02 acres for a value opinion of \$107,000." They added that the owner of the property had told them the neighbor was interested in purchasing 3.02 acres of the property. The first Respondent admitted that he did not inspect the interior of the property because he walks with a cane. He wrote that the second Respondent conducted the interior inspection and that she was identified on page five (5) of the appraisal as providing assistance. He indicated that he inspected the comparable sales from the exterior and it is not unusual for appraisers to use MLS photos. He indicated the subject was appraised based on current market conditions and added that there have been 200-300 foreclosures in the area.

**EXPERT CONCLUSIONS as to the APPRAISAL [alleged violations included within brackets]:**

- The reports are misleading. The Respondent who signed both Report 1 and Report 2 did not observe the interior of the subject property as stated in the certification.
- Neither report contains a summary of the extent of the assistance provided by Respondent two (2).
- The signature date indicated in Report 2 is not accurate.
- The workfile documents submitted did not contain required elements.

Both Report one (1) and Report two (2) contain a certification that was signed by Respondent one (1). By signing this certification the Respondent is certifying, among other things, that he has, "...performed a complete visual inspection of the interior and exterior areas of the subject property..." The complaint alleges that Respondent one (1) did not complete a visual inspection of the interior of the home.

In a response to TREAC dated August 25, 2009, Respondent one (1) states that he did not enter the property. The reports are inaccurate and misleading. [ETHICS RULE: Conduct section, SCOPE OF WORK RULE: Scope of Work Acceptability section and Disclosure Obligations section, SR 2-1(a)]

Both Report one (1) and Report two (2) contain the following statement: *Assistance in preparing this appraisal report was provided by Respondent two (2)*. Neither report contains a summary of the extent of the assistance. [ETHICS RULE: Conduct section, SCOPE OF WORK RULE: Disclosure Obligations section, SR 2-1(a), SR 2-2(b)(vii)]

In a letter dated August 17, 2009, the Respondents were directed to provide TREAC with a copy of the complete workfile for the assignment, including copies of all appraisal reports prepared and all data used. It appears that the Respondents did not comply. The appraisal reports indicate that the data sources used were MLS and courthouse records. The workfile documents submitted include copies of MLS listings for comparables, but no courthouse records were supplied. It does appear that some data source other than MLS was used because prior sale information was provided for comparables, and that information is not in the MLS system. [ETHICS RULE: Record Keeping section]

**Prior Complaint/ Disciplinary History:** Respondent one (1): 949216 – Closed with Consent Order 200100311 – Closed with Letter of Warning, 200601030 - Closed with Letter of Instruction.

**Prior Complaint/ Disciplinary History:** Respondent two (2): None.

**Recommendation and Reasoning:** Respondent one (1) has been an appraiser for 25 years and has not been formally disciplined since obtaining his Certified Residential credential in 1995. Respondent two (2) has been Certified Residential since 2006. Respondent one (1) failed to adequately identify Respondent two (2) contributions; however the expert reviewer found the appraisal report to be otherwise credible. Respondent (1) indicates that he thought he met the disclosure obligations by stating that Respondent two (2) made significant appraiser contributions. Because this appraisal involved a familial relationship where Respondent two (2) was assisting a family member who has physical limitations and the file does not indicate that a supervisor/trainee relationship exists, Counsel and the Administrative Director believe that the issues raised by the reviewer can be adequately addressed by closing this complaint matter with **Letters of Warning and Instruction** advising both Respondent's of the Disclosure and Certification requirements and retaining CRS records in the work file.

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

#### **7. 2009012301 Danny Wiley was the Reviewer.**

This complaint was filed by a consumer and alleged that the Respondent under valued a residential property by rendering an opinion of value on March 30, 2009 of \$330,000. The complainant alleged that the Respondent included \$25,000 of personal property which was not included in the sale and omitted a comparable sale that was located on the same street as the subject property. Complainant alleges that Respondent performed a second appraisal which excluded the personal property and indicated a value of 315K. Complainant then obtained a second appraisal which indicated a value of 340K. Complainant alleges that the Respondent failed to obtain and analyze the sales contract. Complainant alleges that Respondent used an inappropriate adjustment for GLA of \$25 per square foot and included an

inappropriate or unsupported adjustment for garage and omitted adjustments for covered patio, sprinkler systems and drapes.

The Respondent wrote in his response letter that the USPAP Ethics Rule prohibits him from analyzing data in a manner to support the contract price. Respondent states that in the first appraisal of the subject property the client did not provide a copy of the sales agreement, therefore he did not review it. Respondents states that when he inspected the property on March 30<sup>th</sup> the son of the property owner advised that all of the personal property would remain with the property. Respondent states that he relied on that representation in the first appraisal. Respondent states that on April 9<sup>th</sup> the client provided a copy of the purchase agreement and he adjusted the value opinion to exclude personal property. Respondent states that the sale the Complainant alleges was omitted was a pending sale on March 30, 2009 and the listing was accounted for in the final reconciliation. Regarding the adjustments, Respondent states that the garage adjustment was developed using local builder prices and the covered patio and sprinkler systems were considered in the final reconciliation of value. Respondent states that the drapes were not considered in the value per USPAP. He indicated that adjustments in the market area range from \$25-\$50 per square foot and he felt the adjustment of \$25 per square foot was appropriate. Respondent concluded by stating that he believed the value conclusion of \$310,000 was supported.

**EXPERT CONCLUSIONS as to the APPRAISAL [alleged violations included within brackets]:**

- The Respondent indicates that he did not retain a true copy of all reports that were transmitted to the client.
- It appears that improper consideration was given to personal property in a real property appraisal.
- The site value was not supported using recognized methods.
- The signature date is not accurate.

The complaint alleges that the Respondent initially prepared and delivered to the client an appraisal report that reported a market value of \$330,000, and that subsequently a second report was delivered to the client that reported a market value of \$315,000. The Respondent acknowledges that two reports (with differing values) were delivered to the client. However, the Respondent indicates that a copy of the first appraisal report that was transmitted to the client was not retained. [ETHICS RULE: Record Keeping section]

The report states that the site value was, "Taken from (Omitted) County Tax Assessor." Basing the market value of a site on its assessed value is not a recognized method. Furthermore, the site value reported is not consistent with the discussion of land value provided in the comment field under comparable four (4). Those comments indicate that site values in the area range from \$3 to \$5 per square foot. This is much lower than the subject's site value stated in the appraisal report. [SR 1-1(a)]

The report indicates that it was signed on 03/20/2009. The Respondent stated that the report was not issued until after the contract was received in April 2009. Hence, the signature date is not accurate. [SR 2-2(b)(vi)]

**8. 2009012301 Danny Wiley was the Reviewer.**

This complaint was filed by HUD and included allegations that the Respondent communicated two misleading appraisal reports (in October and November of 2008). In the first appraisal, the Respondent was alleged to have, among other things, reported an incomplete or inaccurate neighborhood description,

incomplete or inaccurate improvements description, failing to report readily observable property defects, inaccurate or incomplete specific data for the comparable sales, inconsistent or unsupported adjustments in the sales comparison approach, incorrectly conditioned appraisal as of the effective date of the report. In the second appraisal, the Respondent was alleged to have reported an incomplete or inaccurate subject data, incomplete or inaccurate purchase/contract data, reported an incomplete or inaccurate neighborhood description, inaccurate or incomplete specific data for the comparable sales, and inconsistent or unsupported adjustments in the sales comparison approach.

Regarding the allegations referenced for the appraisal one (1), the Respondent admitted misreporting the owner information and lot number of the subject property. Regarding the allegation that the contract information in the appraisal report was inaccurate and incomplete, the Respondent wrote, "The client called us to order an appraisal, to determine if the offered sales price of \$130,000, was a fair market value. We asked if they had a contract offer for us to have and the client faxed it to us. We have provided you with copies of that contract. We can only assume that after our appraisal was completed, our appraised value determined the agreed upon contract price. We never received nor requested for the new contract, although typically an underwriter would contact me and ask me to change the contract information to match the new agreed upon contract."

Regarding the allegation that the description of the neighborhood was inaccurate and the market conditions were declining at the time of the appraisal, the Respondent wrote, "The housing market throughout the nation is in overall decline; however, not all of our market areas are in decline. This was a newly constructed subdivision, and the comparables were taken from a similar nearby subdivision. There was some foreclosure activity in the market area but we did not believe the market area to be in decline, as there is no known standard definition of a declining market area." In response to the allegation that the comparable sales data was misreported and inappropriate to comparison to the subject, the Respondent wrote, "We performed custom comparable searches, which we have provided you with copies. We didn't have access to the MLS at the time, so we custom searched another record source. We got our MLS sheet on site. Our information reported comparable one GLA as 1762, not 1329." He indicated that the map inaccuracy is simply a computer glitch that was not edited. Regarding the allegation that the cost approach was incomplete, he responded that, "this was an unedited omitted error."

Regarding the allegations referenced for the appraisal of property two (2), he wrote that there were foreclosures in the area, but not nearly as many as the Complainant indicated. He further wrote that he reported the condition of the subject and recommended a pool inspection when he did not know the functionality of the pool. He admitted that he made an error on his location map because it included data from a prior evaluation report and he also misreported one comparable zip code. In response to allegations that he made unsupported adjustments or omitted adjustments in the sales comparison approach, and conditioned the appraisal "as is" instead of "as repaired", the Respondent wrote, "All are unedited errors that I made. It's not like I was unaware of these requirements, I was just moving too fast and did not edit my work well enough. Due to my mistakes I was required to complete an FHA Appraisal Course, which I have done and provided documentation."

**EXPERT CONCLUSIONS as to APPRAISAL one(1) [alleged violations included within brackets]:**

- The Respondent did not have access to the MLS at the time of the appraisal. This does not meet scope of work requirements, and it resulted in errors in the analysis.
- Information regarding foreclosure activity in the area was not addressed.

- The sales contract was not adequately analyzed.

The contract has not been adequately analyzed. The report states that the seller is M.L. and that the seller is the owner of record. The owner of record was T.C. A Purchase and Sale Agreement was included in the workfile documents, however, the document is not signed by the seller, and it is not dated. [SR 1-5(a), SR 2-2(b)(viii)]

The report does not adequately address market conditions in the area at the time of the appraisal. There is no discussion of foreclosure activity in the area. Workfile documents submitted by the Respondent include data from MAAR showing 21 sales. 8 of those sales are identified as bank sales, HUD sales, or Fannie Mae sales. [SR 1-2(e)(i), SR 2-2(b)(iii)]

Sale 1: The report indicates no sales concessions. The MLS indicates concessions of \$5,600. The appraisal report states that the home has 1,762 square feet. The MLS listing indicates that the home has 1,329 square feet. The appraisal report states that the home has no fireplace. The MLS listing says that the home has a fireplace.

In a response to TREAC dated 12/14/2009 the Respondent stated that he did not have MLS access at the time of the appraisal. MLS is a major data source in the area, and MLS data would be required to comply with the scope of work performed by other appraisers in the area and expected by clients. [SCOPE OF WORK RULE: Scope of Work Acceptability section, SR 1-1(b), SR 1-4(a)]

Sale 2: The appraisal report states that there were sales concessions in the amount of \$15,500. MLS and MAAR data report no sales concessions. No adjustment was applied, so there is no effect on the analysis, but the description of concessions is inaccurate. [SR 2-1(a)]

Sale 3: The appraisal report states that the sales concessions were \$3,400. MLS and MAAR report concessions of \$10,000. The appraisal report states that the home has 2,348 square feet. MLS indicates 1,914 square feet. MAAR indicates 1,970 square feet and 1,914 square feet. These errors appear to be due to the lack of MLS access.

[SCOPE OF WORK RULE: Scope of Work Acceptability section, SR 1-1(b), SR 1-4(a)]

Sale 4 involves a 9 year old home. No age adjustment was applied. [SR 1-4(a)]

The report states that the site value was, "Taken from the County Tax Assessor." Basing the market value of the site upon assessment records is not a recognized method. [SR 1-1(a)]

The Respondent was directed to provide copies of all supporting data. The data for the comparable sales was not provided. The Respondent was also directed to provide copies of all reports that were prepared. Correspondence included in the workfile documents indicates that multiple versions of the report were sent to the client. Only one version of the report was supplied by the Respondent. [ETHICS RULE: Record Keeping section]

**EXPERT CONCLUSIONS as to APPRAISAL TWO (2) [alleged violations included within brackets]:**

- The report does not adequately address market conditions.
- Because the appraisal was being done for an FHA loan, the appraisal should have been done subject to the repair of the swimming pool. The appraisal was done "as is."



- The site value was not developed using recognized methods and techniques.

The report does not adequately address market conditions in the area at the time of the appraisal. There is no discussion of foreclosure activity in the area. Workfile documents submitted by the Respondent include data from MAAR showing 20 NORMAL SALES, 7 REO/BANK SALES and 12 FORECLOSURES; hence, REO sales and foreclosures account for approximately 50% of the market activity. The data on the top of page 2 of the URAR indicates over supply in the area. [SR 1-2(e)(i), SR 2-2(b)(iii)]

The improvements include an in ground swimming pool. The report includes pictures of the swimming pool that show that the pool was not filled with water and the liner was torn at the time of the inspection. This presents a significant safety issue. Given that the appraisal was done for an FHA loan, the appraisal should have been made subject to repair of the pool. The report recommends inspection of the pool, but the appraisal was done "as is." [SCOPE OF WORK RULE: Problem Identification section, SR 1-2(e)(i), SR 2-2(b)(iii)]

The report states that the site value was, "Taken from the (Omitted) County Tax Assessor." Basing the market value of the site upon assessment records is not a recognized method. [SR 1-1(a)]

The Respondent was directed to provide copies of all supporting data. The data for the comparable sales was not provided. The Respondent was also directed to provide copies of all reports that were prepared. Correspondence included in the workfile documents indicates that multiple versions of the report were sent to the client. Only one version of the report was supplied by the Respondent. [ETHICS RULE: Record Keeping section]

**Prior Complaint/ Disciplinary History: 2009012301 – Open (See No.7)**

**Recommendation and Reasoning:** Respondent has been licensed as Certified Residential since 2007. Counsel and the Administrative Director recommend that the Respondent be offered a **CONSENT ORDER** imposing a \$1500.00 civil penalty for the violations noted in the three (3) reviews. Respondent would also be required to successfully complete the following courses: 15 hour Residential Market Analysis and Highest & Best Use course, and a 15 hour Site Valuation & Cost Approach course with no continuing education granted.

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

**9. 200902561 Danny Wiley was the Reviewer.**

This complaint was filed by consumers and included allegations that the Respondents over-valued a residential property by indicating a value conclusion of \$2,950,000 on November 9, 2009. They indicated they requested an "as is" value opinion for a property which had been on the market for 568 days and had deferred maintenance. They alleged the Respondents failed to adequately analyze the market conditions, quality of the subject, deferred maintenance, and comparable sales in developing the market value opinion. They indicated the Respondents used comparable sales over 10 miles away in superior locations when sales were available within the subject's subdivision. They felt the appraisers were biased or acted in the interest of a lender that financed the construction of the property.

The Respondents stated in their response letter that they have appraised the subject property on five separate occasions from proposed construction to the current request for an “as is” value for a potential purchase. They indicated they had been told in casual conversation that the purchase offer was for \$900,000 for the home on a 15 acre site. They appraised the property for \$2,950,000. The subject was listed for \$3,499,000. They indicated they did not address the personal changes or modifications indicated by the client in this “as is” value conclusion because it was not within the scope of this assignment. They indicated that the comparable sales were from the subject’s market area, which is broader than its immediate subdivision. They concluded that any possible location appeal differences have been taken into consideration and were noted in the appraisal report.

**EXPERT CONCLUSIONS as to the APPRAISAL [alleged violations included within brackets]:**

- The allegation that the Respondents acted with bias in completing the assignment appears to be without merit.
- The sales used appear to be among the best available and the analysis presented appears credible. Minor errors were noted (closing date off by one month on one comparable, prior quit claim transfer not reported for one comparable). No significant errors were noted.

**Prior Complaint/ Disciplinary History:** None. (Both)

**Recommendation and Reasoning:** Counsel and the Administrative Director recommend that this complaint be **DISMISSED** as there has been no USPAP violation.

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

**10. 200902374 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 indicating a value opinion of \$219,000 on April 26, 2007. The Complainant cited a field review appraisal indicated the value of the property to be \$160,000 on the same effective date.

Respondent provided a response letter written to the mortgage company pertaining to the over-valuing allegation. In that letter, Respondent wrote that the field review appraiser did not adequately adjust for finished basement and used an inappropriate method to value the subject site. He further alleged that the field review failed to diligently verify the transaction for comparable sale six (6).

**EXPERT CONCLUSIONS as to the APPRAISAL [alleged violations included within brackets]:**

- The analysis of the subject’s listing history is incomplete.
- The prior sale of the subject is noted, but the report contains no analysis of that sale.
- There is a series of errors in the comparison approach that affects the credibility of that approach.

The workfile documents submitted by the Respondent include only one listing. [ETHICS RULE: Record Keeping section]

The neighborhood comments make reference to the “pride in ownership” in the area. Such language is not permitted in appraisal reports for lenders. [SCOPE OF WORK RULE: Problem Identification section]

The dimensions shown in the appraisal report for the main level of the home are consistent with the dimensions shown on the tax card. The field notes submitted by the Respondent contain no dimensions for the main level. The field notes do contain dimensions for the basement area. The depth of the main level area is not consistent with the depth of the basement area. This indicates a possible error. [SR 2-2(b)(vii)]

Sale 1 involves a transfer from J.B.S. to L.B. This was a sale among family members. The home was not listed in the MLS. Because the sale was not listed in the MLS, and because the buyer and seller are related parties, this sale is not suitable for use in the comparison approach. One of the field review reports submitted with the complaint notes that the seller was from a father (a real estate agent) to a son. That field reviewer also noted that the sale should not have been used because it was not an arms-length transaction. [SR 1-1(a), SR 1-4(a)]

Sale 2: The MLS listing for the property notes that there is a 40' x 60' workshop. The listing photos include pictures of both the garage and the workshop. The workshop is not reported in the adjustment grid, and no adjustment was applied. Applying an adjustment for the workshop would lower the adjusted sale price of this comparable. [SR 1-4(a)]

Sale 3: The deed included in the workfile documents submitted by the Respondent indicates that the actual sale price for this home was \$170,500. Correction of the sale price would result in a lower adjusted sale price. The MLS reports the price as \$175,600. The listing also notes that the price includes \$5,100 in sales concessions. The sales concessions were not reported in the appraisal report. [SR 1-4(a)]

The report notes that the subject property sold in September 2006 for \$125,000. However, the report contains no analysis of that sale. [SR 1-5(b), SR 2-2(b)(viii)]

The report states that the income approach was considered but not used. The report must explain the omission of the income approach, even if the income approach is not applicable or not necessary for credible results. This is a common oversight. [SR 2-2(b)(viii)]

#### **11. 200902412 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 indicating a value opinion of \$70,000 on July 28, 2009. The Complainant cited a field review appraisal which indicated the value of the property to be \$63,000 on the same effective date and a subsequent appraisal with interior/exterior inspection by the same appraiser indicated a value opinion of \$58,000 on August 17, 2009.

Respondent submitted an appraisal report and workfile documentation which included a response letter to the mortgage company pertaining to the over-valuing allegation. In that letter he wrote that his trouble with this lender began when the lender requested he reduce the value on his appraisal because they didn't want to loan the amount indicated and he alleged the lender threatened to remove him from the appraisal panel if he didn't do so. The Respondent included e-mails between him and the loan officer. The first indicated that the loan officer felt the appraiser hadn't analyzed the transfer history of the subject adequately and a listing that was located across the street from the subject and requested further comments. In his response addendum to the appraisal he indicated that the value in the subject neighborhood varies greatly with "many sales from mortgage foreclosures that are not arm's length transactions". He indicated the subject had been remodeled and was in good condition. He indicated the

listing referred to was in “run down condition”. A follow-up e-mail from the lender indicated he had been removed from the appraiser panel because a review and second appraisal indicate that his original value indication was “high beyond a reasonable tolerance”. This e-mail indicated he was provided with both the review and subsequent appraisal at that time. He sent a rebuttal letter to the removal e-mail in which he indicated the review/subsequent appraiser had used REO sales rather than arm’s length transactions. He indicated again that the subject was in good condition and referenced his appraisal and photos. He further indicated that the cost approach completed by this other appraiser was not credible.

**EXPERT CONCLUSIONS as to the APPRAISAL [alleged violations included within brackets]:**

- Prior sales of the subject property are reported but not analyzed.
- The report contains conflicting information regarding market conditions.
- The workfile documents contain no support for the site value.
- The report contains no summary of the data and analysis that led to the in the income approach.

The data presented in this section of the report is not consistent with the data presented on the 1004MC form. The 1004MC form indicates that prices in the area are declining, but the NEIGHBORHOOD section indicates that prices are stable. Fannie Mae reporting requirements mandate that the information in the NEIGHBORHOOD section of the report must be supported by data/information on the 1004MC. [SCOPE OF WORK RULE: Problem Identification section, SR 2-1(a)]

The dates and consideration amounts for prior transfers of the subject property are reported, but there is no analysis of any of the sales. According to the MAAR data: (Omitted) Mortgage services acquired the home in August 2008 in an apparent foreclosure. (Omitted) sold the home to J.H. on November 13, 2008. On November 25, 2008 J.H. transferred the home to M.H. via a quit claim deed. On the same day, M.H. sold the home to G.M. for \$70,000. The sale was financed with private or owner financing. On 03/5/2009 the home was transferred to M.H. via quit claim deed. On 06/08/09 the home was sold to A.C. for \$70,000. The sale was financed with private or owner financing. [SR 1-5(b), SR 2-2(b)(viii)]

The appraisal report states that the site value was based on local lot sales within the last twelve (12) months. The workfile documents submitted for review include no lot sales. If sales were analyzed but not retained, the record keeping requirements have not been met. [ETHICS RULE: Record Keeping section]

The report states that there is insufficient data for developing the income approach, but the report also contains comparable rentals. The statement about the lack of data appears to be “boilerplate” language that was left in the report accidentally.

The report indicates a GRM of 100; however, there is no summary of the analysis that led to the GRM that was used. [SR 2-2(b)(viii)]

There is also no definition of Market Rent. This is a common error in residential appraisal reports that include an estimate of market rent. [SR 2-2(b)(v)]

**Prior Complaint/ Disciplinary History:** 200902374 – Open (See No. 10) .

**Recommendation and Reasoning:** The Respondent was a Licensed RE from 1995-2006 and Certified Residential since 2006. The effective dates of the report are two years apart. The reports suggest a pattern of negligence and reporting issues. Counsel and the Administrative Director recommend that a

**CONSENT ORDER** be offered to the Respondent imposing a \$1,000 civil penalty and requiring the Respondent to complete the following coursework a 15 hour Residential Report Writing Course and a 15 hour Residential Applications/Case Studies course.

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

**12. 200901156 Residential Reports - Danny Wiley was the Reviewer.**

This complaint was submitted by personnel of the Assessor's office and included allegations of USPAP violations, including violations of the Competency Rule, and Standards 1 & 2 in that the Respondent submitted eight appraisal reports (4 commercial, 4 residential) for use in tax appeal purposes which contained numerous errors or misleading information including: Identifying the reports as "limited"; Inconsistently reporting the real property interest appraised; Reporting application of the sales comparison approach when this approach was omitted from the report; Representing the sketch of the property as the Respondent's own work when it was assessor information; Reporting assumptions and limiting conditions data in the report when no data was presented; Failing to support the income approach and failed to source the data used in the income approach; Failing to analyze and report a summary of the analysis of the three year sale history of the residential properties appraised. Misreporting sale dates and/or sales prices of the comparable sales; Failing to report the distance of the comparable sales from the subject property; Omitting two sales which occurred in one of the subject property's subdivision PUD; and, Failing to analyze and report the analysis of the zoning differences of the subject and comparable sales.

The Respondent wrote in his response letter that the reports on the properties included in the complaint were performed for the client for the intended use of the client for the purpose of internal portfolio management and decision making relating to the recent new property tax assessment and re-appraisal performed by the (Omitted) County Property Assessor's office for the 2009 tax year. Respondent stated that these properties were included in the client's overall portfolio and were part of a larger consulting and subsequent appraisal assignment. He wrote that the overall assignment first consisted of consulting services, analysis and evaluation of the portfolio in question to specifically analyze, compare and identify the results of the recent (Omitted) County Property Assessor's office re-appraisal values for 2009 to determine which properties, if any, should be further analyzed. Respondent states that the bulk of the analysis was performed as a consulting assignment and the data was presented to the client verbally. The client directed him to prepare an analysis which could be used in the informal appeal of the properties appraised value and prepare for the client a written analysis for properties identified by the client for appeal during the informal appeal process. The client directed the consultant to then prepare a written report (an appraisal) for the formal appeal process for the intended use of the client with other intended users to be identified. He emphasized that the client was knowledgeable of the properties appraised as was the other intended users of these appraisal reports as they were acting in the capacity as tax assessment appraisers and had performed appraisals relating to the properties in question. The Respondent stated in his response letter that he meant to identify the reports as "Restricted Use" reports. He acknowledged that he misreported in some of the transmittal letters the property rights appraised, but indicated that it was correctly identified later in the appraisal. He indicated that the sales comparison approach was analyzed in each of the appraisals, but that in two properties a combination of sales and allocation was used because the improved parcel would not be functionally adequate to produce the current income level without the parking, access and visibility from the adjacent vacant tract and is included in the leased premises, thus, a segregated value was provided for the tax analysis purpose. He indicated the sketch of the properties was obtained from the public website and included as an exhibit to the appraisal report. He

indicated a summary of the data relating to the method selected to estimate the market value was provided in each appraisal report. He indicated that he obtained market data for income and expenses for the subject properties, but in retrospect should have included further support and identification of sources in the appraisal reports. Pertaining to the omission of the three year sale history of the subject properties, the Respondent indicated that this information is not included in the appraisal reports but that the client and intended users were aware of the sale histories of these properties. The Respondent acknowledged that this information should have been included in the appraisal reports. He further acknowledged that on two appraisal reports he misrepresented the sale date of comparable sales. He indicated that one of the allegedly omitted sale dates was because the property had sold twice; the second time after renovation, and the first sale was used because it was more similar to the subject property in condition. He indicated that in one appraisal, the distances of the comparables wasn't reported in the sales grid, but that they are all located within a reasonable distance from the subject property. Pertaining to the two omitted sales from the same PUD as the subject, he indicated that one sale wasn't listed through the MLS and both sales were below the square footage minimum he placed on the search criteria. He added that while this does not excuse the omission of these sales, he contended that these sales would have had to have been significantly adjusted; however, he admitted he should have used those sales and it may have changed the indicated value opinion on that report. Finally, pertaining to the allegation that he failed to analyze the zoning differences between the subject property and its comparable sales used he wrote that in residential property analysis, the differences in zoning may or may not be a significant factor warranting discussion and/or adjustment. He did not feel that an adjustment in this situation for the zoning differences was warranted.

**EXPERT CONCLUSIONS as to Residential APPRAISAL one (1)[alleged violations included within brackets]:**

- There is no identification of the reporting option that applies to the report. The Respondent stated that the intent was to provide a Restricted Use Appraisal Report.
- The report does not meet several of the content requirements for a Restricted Use Appraisal Report.
- The Respondent stated that there were multiple intended users. Restricted Use Appraisal Reports cannot be used for assignments with intended users other than the client.
- The scope of work was insufficient for the intended use.

The report must prominently state the reporting option that has been used. There is no such statement. [SR 2-2]

In correspondence to TREAC the Respondent stated that the intent was to provide a Restricted Use Appraisal Report. This review has been performed in light of the applicable requirements for a Restricted Use Appraisal Report. A Restricted Use Appraisal Report must contain a prominent use restriction that limits use of the report to the client and warns that the appraiser's opinions and conclusions set forth in the report may not be understood properly without additional information in the workfile. [SR 2-2(c)(i)]

The client is identified as T & C.E. In correspondence to TREAC the Respondent stated multiple times that there were other intended users. The report contains no identification of other intended users. The Restricted Use Appraisal Report option is not allowed in assignments with intended users other than the client. [SR 2-3]

The scope of work is not adequately disclosed. Some statements address the research and analysis that was conducted, and not conducted, but the information presented is insufficient to understand the scope of work for the assignment. [SCOPE OF WORK RULE, Disclosure Obligations section, SR 2-2(c)(vii)]

The report contains a sales comparison approach. Exclusion of the cost approach or income approach must be explained. [SR 2-2(c)(viii)]

The Certification of Value indicates that only an exterior inspection of the property was conducted. Given the intended use, this is not an acceptable scope of work. [SCOPE OF WORK RULE, Scope of Work Acceptability section, SR 1-2(e), SR 1-2(h)]

It appears that the size of the home was taken from public records. It is common for tax assessments to be wrong due to discrepancies in the size of the home. This is often the basis for a tax appeal on a residential dwelling. Therefore, failure to measure the home is not consistent with the intended use of the appraisal report. [SCOPE OF WORK RULE, Scope of Work Acceptability section, SR 1-2(e), SR 1-2(h)]

The subject property sold in March 2008 for \$1,271,000, and it sold for \$1,100,000 in May 2006. Neither of these prior sales were disclosed or analyzed in the appraisal report. These appear especially relevant given the intended use and the value conclusion of \$1,055,000. [SR 2-2(c)(viii)]

There is no statement of the highest and best use of the subject property. SR 2-2(c)(ix)

The comparison approach is developed using sales from (area Omitted). The sale date for Sale 3 is reported to be in March 2008. It was actually May 2007. [SR 2-1(a)]

In correspondence to the TREAC, the Respondent stated that “consulting” work was done prior to preparing an appraisal. The Respondent states that the purpose of the consulting was to analyze properties in a portfolio to determine if an appeal of the property tax appraisals was warranted. Such an analysis would necessarily entail developing an opinion as to whether the value of the property was equal to, higher than or lower than the appraisal done for tax purposes. Such an opinion is an appraisal, not a “consulting” service. The definition of “Appraisal” in USPAP notes that a value opinion may be expressed as a specific number, as a range or a relationship. It appears that the “consulting” assignment was actually an appraisal assignment with the results communicated as a relationship to the tax appraisal. Furthermore, materials submitted by the Respondent include an “Evaluation.” Based on the Respondent’s correspondence, it appears that this “Evaluation” was used in the informal appeal process. The “Evaluation” identifies the subject property, provides data related to comparable sales, and includes an estimated value for the subject property. This is an appraisal report, but it does not comply with any of the rules set forth for communicating an appraisal report in STANDARD 2. [SR 2-1(a), SR 2-2(b), SR 2-2(c)]

**EXPERT CONCLUSIONS as to Residential APPRAISAL two (2)[alleged violations included within brackets]:**

- There is no identification of the reporting option that applies to the report. The respondent stated that the intent was to provide a Restricted Use Appraisal Report.
- The report does not meet several of the content requirements for a Restricted Use Appraisal Report.

- The Respondent stated that there were multiple intended users. Restricted Use Appraisal Reports cannot be used for assignments with intended users other than the client.
- The scope of work was insufficient for the intended use.
- There are multiple errors in the analysis presented in the appraisal report.

The report must prominently state the reporting option that has been used. There is no such statement. [SR 2-2]

In correspondence to TREAC the Respondent stated that the intent was to provide a Restricted Use Appraisal Report. This review has been performed in light of the applicable requirements for a Restricted Use Appraisal Report. A Restricted Use Appraisal Report must contain a prominent use restriction that limits use of the report to the client and warns that the appraiser's opinions and conclusions set forth in the report may not be understood properly without additional information in the workfile. [SR 2-2(c)(i)]

The client is identified as S.W.H. In correspondence to TREAC the Respondent stated multiple times that there were other intended users. The report contains no identification of other intended users. The Restricted Use Appraisal Report option is not allowed in assignments with intended users other than the client. [SR 2-3]

The report contains conflicting information regarding the effective date. In some places the effective date is reported as 01/01/2009, but the Certification of Value reports the effective date as 06/03/2009. [SR 2-1(a), SR 2-2(c)(vi)]

The scope of work is not adequately disclosed. Some statements address the research and analysis that was conducted, and not conducted, but the information presented is insufficient to understand the scope of work for the assignment. [SCOPE OF WORK RULE, Disclosure Obligations section, SR 2-2(c)(vii)]

The report contains a sales comparison approach. There is no indication as to whether or not the cost approach and income approach were used. Exclusion of the cost approach or income approach must be explained. [SR 2-2(c)(viii)]

The Certification of Value indicates that only an exterior inspection of the property was conducted. Given the intended use, this is not an acceptable scope of work. [SCOPE OF WORK RULE, Scope of Work Acceptability section, SR 1-2(e), SR 1-2(h)]

The size of the home was taken from MLS records. Failure to measure the home is not consistent with the intended use of the appraisal report. The diagram provided in the appraisal report appears to be from WebPro. The reported size is not consistent with current public records. The reported size of the home is consistent with the reported size in the MLS listing from January 2006. Actual measurement of the home must be part of the scope of work in a tax appeal assignment. Including the sketch from WebPro, but using the size of the home from some other source (without disclosure of the source) is misleading. [SCOPE OF WORK RULE, Scope of Work Acceptability section, SR 1-2(e), SR 1-2(h), SR 2-1(a)]

The subject property sold in January 2007 for \$2,350,000. This sale was reported in the MLS and in public records. This prior sale is neither disclosed nor analyzed in the appraisal report. [SR 2-2(c)(viii)]



There is no statement of the highest and best use of the subject property. SR 2-2(c)(ix)

There appear to be multiple errors in the sales comparison approach. The size of the comparable sales has been reported in a misleading manner. The +40% adjustment for living area made to sale three (3) appears to be a significant error. The home has less above grade area, but it has more than twice as much finished basement area and the total area is larger than the total area for the subject. [SR 1-1(b), SR 1-4(a)]

Sale 1 is reported to have been 2 years old when it sold. This was a new home that was built after the lot sold in June 2006. The subject was built in 1987. No adjustment for age or condition was applied. [SR 1-1(b), SR 1-4(a)]

The report indicates that sale one (1) has 2,774 square feet that is described as "Other (Bsmt)." There is no basement area in this home. Comparing basement area to second floor area is not consistent with recognized methodology for residential appraisals. [SR 1-1(a), SR 1-4(a), SR 2-1(a)]

The report indicates that sale two (2) has 3,263 square feet that is described as "Other (Bsmt)." There is no basement area in this home. [SR 2-1(a)]

Sale two (2) was built in 2005. No age or condition adjustments were applied. [SR 1-1(b), SR 1-4(a)]

The report indicates that sale three (3) has 3,685 square feet that is described as "Other (Bsmt)." This appears to be a combination of second floor area and finished basement area. Comparing basement area in the subject with the combination of basement and second floor area in a comparable is not consistent with recognized methodology for residential appraisal. [SR 1-1(a), SR 1-4(a), SR 2-1(a)]

In correspondence to the TREAC, the Respondent stated that "consulting" work was done prior to preparing an appraisal. The Respondent states that the purpose of the consulting was to analyze properties in a portfolio to determine if an appeal of the property tax appraisals was warranted. Such an analysis would necessarily entail developing an opinion as to whether the value of the property was equal to, higher than or lower than the appraisal done for tax purposes. Such an opinion is an appraisal, not a "consulting" service. The definition of "Appraisal" in USPAP notes that a value opinion may be expressed as a specific number, as a range or a relationship. It appears that the "consulting" assignment was actually an appraisal assignment with the results communicated as a relationship to the tax appraisal. Furthermore, materials submitted by the Respondent include an "Evaluation." Based on the Respondent's correspondence, it appears that this "Evaluation" was used in the informal appeal process. The "Evaluation" identifies the subject property, provides data related to comparable sales, and includes an estimated value for the subject property. This is an appraisal report, but it does not comply with any of the rules set forth for communicating an appraisal report in STANDARD 2. [SR 2-1(a), SR 2-2(b), SR 2-2(c)]

**EXPERT CONCLUSIONS as to Residential APPRAISAL three (3)[alleged violations included within brackets]:** The report appears biased.

The report is labeled as a 'Restricted Use Appraisal.' The Term "Restricted Use" applies to appraisal reports rather than appraisals. This is a common error. In correspondence to TREAC the Respondent stated that the intent was to provide a Restricted Use Appraisal Report. This review has been performed in light of the applicable requirements for a Restricted Use Appraisal Report. A Restricted Use Appraisal

Report must contain a prominent use restriction that limits use of the report to the client and warns that the appraiser's opinions and conclusions set forth in the report may not be understood properly without additional information in the workfile. [SR 2-2(c)(i)]

The client is identified as H.T. The intended user is identified in the report as the client. In correspondence to TREAC the Respondent stated multiple times that there were other intended users. The report contains no identification of other intended users. The Restricted Use Appraisal Report option is not allowed in assignments with intended users other than the client. [SR 2-3]

The intended use is reported to be "portfolio management." In correspondence to TREAC the Respondent stated that the intended use was to assist in tax appeals. [SR 2-1(a), SR 2-2(c)(ii)]

The report contains a sales comparison approach. Exclusion of the cost approach and income approach is not explained. [SR 2-2(c)(viii)]

The Certification of Value indicates that only an exterior inspection of the property was conducted. Given the intended use, this is not an acceptable scope of work. [SCOPE OF WORK RULE, Scope of Work Acceptability section, SR 1-2(e), SR 1-2(h)]

The size of the home was taken from public records. It is common for tax assessments to be wrong due to discrepancies in the size of the home. Failure to measure the home is not consistent with the intended use of the appraisal report. [SCOPE OF WORK RULE, Scope of Work Acceptability section, SR 1-2(e), SR 1-2(h)]

There is no statement of the highest and best use of the subject property. SR 2-2(c)(ix)

The subject is located in a small PUD with only 8 units. For such an assignment the first step in researching data for use in the sales comparison approach would be to analyze the sales history for all units in the subject's complex. The unit at 6016 S Drive sold in June 2007 for \$375,000. This sale is reported in both the MLS and public records. The unit at 6014 S Drive sold in October 2007 for \$363,750. This sale was reported in public records and was readily available at the time the appraisal was prepared. Failure to analyze these recent sales in the development is an error of omission. [SCOPE OF WORK RULE, Scope of Work Acceptability section, SR 1-1(a), SR 1-1(b), SR 1-2(h)]

The subject is an attached unit in a PUD. None of the comparable sales are attached units. This is not disclosed in the adjustment grid, and no adjustments are applied.[SR 1-4(a), SR 2-1(a)]

None of the sales used are attached units. Sales of similar units in the subject's complex were not included in the appraisal. The available sales in the subject's complex sold at prices far exceeding the sale prices of the comparables used. It appears that use of the sales within the subject's development would have resulted in a significantly higher value conclusion. [ETHICS RULE, Conduct section]

In correspondence to the TREAC, the Respondent stated that "consulting" work was done prior to preparing an appraisal. The Respondent states that the purpose of the consulting was to analyze properties in a portfolio to determine if an appeal of the property tax appraisals was warranted. Such an analysis would necessarily entail developing an opinion as to whether the value of the property was equal to, higher than or lower than the appraisal done for tax purposes. Such an opinion is an appraisal, not a

“consulting” service. The definition of “Appraisal” in USPAP notes that a value opinion may be expressed as a specific number, as a range or a relationship. It appears that the “consulting” assignment was actually an appraisal assignment with the results communicated as a relationship to the tax appraisal. Furthermore, materials submitted by the Respondent include an “Evaluation.” Based on the Respondent’s correspondence, it appears that this “Evaluation” was used in the informal appeal process. The “Evaluation” identifies the subject property, provides data related to comparable sales, and includes an estimated value for the subject property. This is an appraisal report, but it does not comply with the rules set forth for communicating an appraisal report in STANDARD 2.  
[SR 2-1(a), SR 2-2(b), SR 2-2(c)]

**EXPERT CONCLUSIONS as to Residential APPRAISAL four (4)[alleged violations included within brackets]:**

- There are indications that the assignment results were biased.
- The report contains no prominent statement of the reporting option.

In correspondence to TREAC, the Respondent stated that the intent was to provide a Restricted Use Appraisal Report. This review has been performed in light of the applicable requirements for a Restricted Use Appraisal Report. A Restricted Use Appraisal Report must contain a prominent use restriction that limits use of the report to the client and warns that the appraiser’s opinions and conclusions set forth in the report may not be understood properly without additional information in the workfile. [SR 2-2(c)(i)]

The client is identified as J.D.W., M.F. and assigns. In correspondence to TREAC the Respondent stated multiple times that there were other intended users. The report contains no identification of other intended users. The Restricted Use Appraisal Report option is not allowed in assignments with intended users other than the client. [SR 1-2(a), SR 2-2]

The report does not adequately disclose the scope of work. There are some statements about the research and analysis that was done (and not done), but the disclosures are not sufficient to understand the scope of work for the assignment.  
[SCOPE OF WORK RULE, Disclosure Obligations section, SR 2-2(c)(vii)]

The report contains a sales comparison approach. Exclusion of the cost approach and income approach is not explained. [SR 2-2(c)(viii)]

The Certification of Value indicates that only an exterior inspection of the property was conducted. Given the intended use, this is not an acceptable scope of work. [SCOPE OF WORK RULE, Scope of Work Acceptability section, SR 1-2(e), SR 1-2(h)]

It appears that the size of the home was taken from public records. It is common for tax assessments to be wrong due to discrepancies in the size of the home. This is often the basis for a tax appeal on a residential dwelling. Therefore, failure to measure the home is not consistent with the intended use of the appraisal report. [SCOPE OF WORK RULE, Scope of Work Acceptability section, SR 1-2(e), SR 1-2(h)]

There is no statement of the highest and best use of the subject property. SR 2-2(c)(ix)

In the adjustment grid the subject is reported to have 5,635 square feet of living area that is entirely above grade. Historic MLS listings and online public records both show that some of the living area is in the basement. [SR 2-1(a)]

The date of sale is incorrect for all three of the comparables. [SR 2-1(a)]

The sales used in the comparison approach all occurred more than one year prior to the effective date of the appraisal. More recent sales in the development were readily available in the MLS and in public records. [SR 1-1(b), SR 1-4(a)]

The report states that a “subjective” adjustment was applied due to location next to a park and proximity to a parking lot. Adjustments must be objective rather than subjective. Location next to a park might be a negative feature or positive feature. [ETHICS RULE, Conduct section]

Older sales were used in the comparison approach. More recent sales that would lead to higher value indications were not reported. Negative adjustments were made without support. In general, prices in the market rose significantly from 2005 through the end of 2006, yet the value reported in the appraisal report is \$45,000 less than the owners paid for the home in 2005. Considering all of these factors, there is a strong indication that the assignment results were biased in favor of the client’s objective – to lower the property taxes. [ETHICS RULE, Conduct section]

In correspondence to the TREAC, the Respondent stated that “consulting” work was done prior to preparing an appraisal. The Respondent states that the purpose of the consulting was to analyze properties in a portfolio to determine if an appeal of the property tax appraisals was warranted. Such an analysis would necessarily entail developing an opinion as to whether the value of the property was equal to, higher than or lower than the appraisal done for tax purposes. Such an opinion is an appraisal, not a “consulting” service. The definition of “Appraisal” in USPAP notes that a value opinion may be expressed as a specific number, as a range or a relationship. It appears that the “consulting” assignment was actually an appraisal assignment with the results communicated as a relationship to the tax appraisal. Furthermore, materials submitted by the Respondent include an “Evaluation.” Based on the Respondent’s correspondence, it appears that this “Evaluation” was used in the informal appeal process. The “Evaluation” identifies the subject property, provides data related to comparable sales, and includes an estimated value for the subject property. This is an appraisal report, but it does not comply with the rules set forth for communicating an appraisal report in STANDARD 2. [SR 2-1(a), SR 2-2(b), SR 2-2(c)]

**EXPERT CONCLUSIONS as to Commercial Appraisals one (1), two (2), three (3) & four (4)[alleged violations included within brackets]:**

**Commissioner Carter was the Reviewer.**

For the purpose of this review the four (4) commercial reports will be summarized as a group.

In correspondence to TREAC the Respondent stated that the intent was to provide a Restricted Use Appraisal Report. The reviews have been performed in light of the applicable requirements for a Restricted Use Appraisal Report. A Restricted Use Appraisal Report must contain a prominent use restriction that limits use of the report to the client and warns that the appraiser’s opinions and conclusions set forth in the report may not be understood properly without additional information in the workfile. In correspondence to TREAC the Respondent stated multiple times that there were other intended users.

The report contains no identification of other intended users. The Restricted Use Appraisal Report option is not allowed in assignments with intended users other than the client. [SR 2-2(c)(i), SR 2-3]

In the cover letter, the property rights to be appraised are identified as “fee simple”, yet the only analysis in the report was for the “leased fee interest” of the property. This is a violation of which requires a report to state the real property interest to be appraised, and state the type of value, and cite the sources of definition. [SR 2-2 (c), (iv) (v)]

Each appraisal stated in the cover letter that “the scope of the analysis limited to the sales comparison approach”, yet the only approach shown in three of the four reports was the income approach, which requires a report to adequately state the scope of work used to develop the appraisal. [SR 2-2, (c), (vii), (viii)]

In correspondence to the TREAC, the Respondent stated that “consulting” work was done prior to preparing an appraisal. The Respondent states that the purpose of the consulting was to analyze properties in a portfolio to determine if an appeal of the property tax appraisals was warranted. It appears that the “consulting” assignment was actually an appraisal assignment with the results communicated as a relationship to the tax appraisal. Furthermore, materials submitted by the Respondent include an “Evaluation.” Based on the Respondent’s correspondence, it appears that this “Evaluation” was used in the informal appeal process. The “Evaluation” identifies the subject property, provides data related to comparable sales, and includes an estimated value for the subject property. This is an appraisal report, but it does not comply with the rules set forth for communicating an appraisal report in STANDARD 2. [SR 2-1(a), SR 2-2(b), SR 2-2(c)]

The appraisals failed to state the appraisal methods and techniques employed, state the value opinions and conclusions reached, and reference the workfile; exclusion of the sales comparison approach, cost approach, or income approach must be explained. [SR 2-2, (c), (viii)]

The appraisals failed to include a signed certification page. [SR 2-3]

The income approach to value was incomplete and gave no explanations or references to provide a credible analysis. Appraisers must perform assignments ethically and competently. [Ethics Rule, Conduct Section]

The work file submitted did not provide adequate data to support the appraisal analysis. [Ethics Rule, Record Keeping Section]

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

**Recommendation and Reasoning:** Respondent has been licensed as a Certified General Appraiser since 1997. Counsel and the Administrative Director recommend that the Respondents credential be Downgraded to certified residential real estate appraiser for one year and *indefinitely* until Respondent complies with the following terms; payment of a \$5,000 Civil Penalty, Respondent would not be allowed to have any new trainees, Respondent would be required to complete a 15 hour USPAP course, 45 hours of Report Writing and Case Study Course(s), 30 hour General Appraiser Income Approach course, Respondent would be allowed to use up to 21 hours towards his continuing education requirement. Before the certified general credential could be reinstated the following requirements would have to be met: no

less than 500 hours of non-residential experience which must be documented after completion of the above referenced courses. The experience log will be subject to a review by the Commission before any approval to take the certified general exam will be granted. Respondent would be required to obtain a passing grade of the current certified general real estate appraiser examination. Mr. Carter clarified that the Respondent could not have trainees for at least one year and until all other requirements have been met.

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

**13. 200901680 Chairman Phillips was the Reviewer.**

On March 8, 2010 the Commission approved for issuance to Respondent in this complaint, a consent order imposing a \$500.00 civil penalty due and payable immediately.

An informal conference was conducted with the Respondent and his Counsel on April 5, 2009. The Respondent and Counsel responded to the specific allegations contained in the complaint. The expert reviewer found that the Respondent provided the wrong photos and failed to identify contributions made by others. Regarding the photos, the Respondent conceded the error and indicated that this was an oversight. Respondent provided a letter from the client confirming that the correct photos were provided shortly after the appraisal was sent. The client confirms that there was no reliance on the wrong photos. As to the contributions made by others, the Respondent indicated that the persons named in the report were clerical staff and made no significant contribution to the appraisal. Respondent states that he will clarify this in his appraisal reports moving forward. Counsel and the Administrative Director are of the opinion that the Respondent's explanation was reasonable and that a **LETTER OF WARNING** regarding providing the wrong photos. Counsel believes the Chairman concurs with the new recommendation.

This Respondent has been a Certified General Appraiser since 1991. Respondent advised that he has been in the appraisal business for 38 years.

**Recommendation and Reasoning:** Counsel for the State and the Administrative Director respectfully recommend if Commissioner Members concur that the Commission approve the revision as set forth above.

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

**14. 200901748 Danny Wiley was the Reviewer.**

On March 8, 2010 the Commission approved a consent order imposing a \$1,000.00 civil penalty and completion of thirty (30) hours of education.

An informal conference was conducted with Respondent on March 30, 2010. The Respondent addressed and provided reasonable and appropriate responses to the allegations contained in the consent order. Specifically, Respondent was alleged to have violated the Scope of Work Rule: Problem Identification Section by failing to analyze relevant data pertaining to prior transfers. Respondent provided credible evidence that the public records data found by the expert reviewer was not available at the time of the report. Respondent was alleged to have been in violation of the Disclosure Rule by including the names of several individuals that "may" have contributed to the appraisal. Respondent indicates that the statement

was included and it referred to clerical staff, Respondent states no "significant appraisal assistance" was provided as described in USPAP.

The consent order alleged that the Respondent violated USPAP by failing to provide copies of all data sources in the work file. Respondent states that moving forward he will print all data used in the report, in this instance, Respondent states that he reviewed data but failed to print a copy for the file.

The Respondent adequately explained and supported his market value opinion and has had no prior disciplinary history. This appraiser has been certified since licensing laws of appraisers went into effect and states that he has been in the business for 25 years. This Respondent has no disciplinary history. Counsel and the Administrative Director recommend that the matter be closed with a **LETTER OF WARNING** pertaining to his failure to maintain copies of the CRS data in the workfile.

**Recommendation and Reasoning:** Counsel for the State and the Administrative Director respectfully recommend if Commissioner Members concur that the Commission approve the revision as set forth above.

**Vote:** Mr. Wade recommended dismissal of this complaint. Mr. Carter seconded the motion. The motion carried unopposed.

**15. 2008025191 & 2009007901 Commissioner Woodford and Danny K. Wiley were the Reviewers**

These cases were presented initially to the Commission in November of 2009. In both of these complaints, Respondent, who was certified as a Certified Residential appraiser in 2006, was acting in his capacity as a Registered Trainee at the time the reports were prepared. The supervising appraiser at that time allowed his certificate to expire completely (date of expiration 5/31/08), and is working out-of-state in a completely different occupation. The two reports at issue were prepared in late 2004 and early 2005.

The two complaints opened against the former supervisor in this matter were closed (*not dismissed*), only because the former supervisor is totally lapsed and has no certificate at all. *Those complaints are flagged for reactivation should the former supervisor ever re-apply for a license, certificate, or for trainee status.*

The initial recommendation in this case was for a consent order imposing a 4 year suspension and a \$7,500 civil penalty against Respondent due to the gravity of the USPAP violations noted, *and largely due to the fact that the supervising appraiser executed an affidavit in September, 2009 stating he knew nothing about the 2005 report, and that Respondent, or some other individual acting with Respondent's knowledge, forged the supervisor's digital signature to the 2005 report.*

The other major USPAP violations noted were:

(2005 report – Case No. 2008025191)

- The appraisal report did not contain some of the identifications required by USPAP(intended use, reporting option).
- The subject property was reported to be under contract, but the report contains no analysis of the sales contract.

- The subject property was listed for sale as of the effective date of the appraisal, but the report contains no analysis of the listing. The asking price of the home was far less than the appraised value.

(2004 report – Case No. 2009007901)

- The owner reported in the appraisal report was not the owner of record as of the effective date. On the effective date of the appraisal the home was owned by a financial company.
- The subject property was reported to be under contract, but there was no analysis of the sales contract.
- The subject property was listed for sale in MLS system at the time of the appraisal, but there was no analysis of the listing in the appraisal report.
- The report did not include analysis of all sales of the subject property in the three years prior to the effective date of the appraisal.

The proposed Consent Order was issued in December of last year and Respondent has accepted some responsibility, but denies vehemently any forgery or knowledge of forgery. Accordingly, he did not accept the first consent order.

*Counsel for the State has continued the investigation of this matter and has had 2-3 additional phone conversations and e-mails with Respondent and with the former supervisor this winter and spring. The former supervisor now admits that Respondent did not have authority to place the supervisor's digital signature on any reports at any point while Respondent was a trainee, and that Respondent did not have access to the supervisor's digital signatures. Both Respondent and the former supervisor admit working out of 2 separate locations approximately 90% of the time, and the process was that Respondent would e-mail a draft report to the supervisor for review, editing, and for the supervisor to place his own digital signature on the report and e-mail it back to the Respondent. Respondent would then e-mail the completed report by PDF to the client.*

*The former supervisor has also admitted to counsel that in many reports (including these two), he made a false statement by stating on the Form 1004 that he "inspected" the subject property as supervisor, when he knew that only Respondent as the trainee performed the inspection.*

*Counsel considers that the proof of forgery is conflicting, and that there are substantial concerns about the former supervisor's credibility. In any event, the former supervisor had substantial responsibility for the content of these reports, and seemingly, the severity of the violations against Respondent are substantially mitigated by the fact that Respondent was a trainee at the time, and that as to these two assignments, the Respondent was not given proper direct supervision by the former supervisor.*

Accordingly, counsel has recommended a revised consent order which Respondent has signed setting forth the following disposition:

1. Respondent's TN certificate will be placed on 6 months' probation based on the violations noted by the State's expert (except that we make no finding of a forgery of the former supervisor's signature to the 2005 report), and Respondent will be assessed and will pay to the State of Tennessee a civil penalty of \$2,000.00 and reimburse the State the amount of Mr. Wiley's fees



(\$1,150.00). The civil penalty and reimbursement of Mr. Wiley's fees must be received by the end of the 6 month probationary period.

2. The 6 month probationary period will be revoked **and Respondent will have to begin to immediately serve a full 6 months' actual suspension if either of the following occurs by the end of the 6 month probationary period:**
  - (i) Respondent fails to pay the civil penalty and reimbursement of Mr. Wiley's fees in full;
  - (ii) the State receives documentation that Respondent has received a disciplinary sanction from any other jurisdiction in which he is credentialed for conduct unrelated to these 2 appraisal assignments; or
  - (iii) this Commission disciplines Respondent in an unrelated complaint regarding an unrelated matter, during the 6 month probationary period.

**Prior Complaint/Disciplinary History:** None

**Recommendation and reasoning:** Based on the additional investigation and the considerable mitigation which Respondent appears entitled to, and his remorse and cooperation with Counsel for the State, Counsel for the State and the Administrative Director recommend that the revised consent order described above placing Respondent on probation for six (6) months, and imposing a \$2,000 civil penalty and reimbursement of Mr. Wiley's fees, be accepted by this Commission.

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

**16. 2009020491 There was no Reviewer.**

On March 8, 2010 the Commission approved a Consent Order imposing **VOLUNTARY SURRENDER** of the Respondent's appraisal credential. The complaint was submitted as five (5) anonymous complaints that alleged misconduct and included an allegation that the Respondent was abusing drugs and had committed theft. In his response to Counsel, the Respondent admitted that he had pled guilty to a misdemeanor theft charge and possession of a controlled substance.

As to the specific criminal charge, according to Respondent's Counsel, Respondent had lawful access to a family owned office. Respondent provided his key to the office to another individual who entered the premises with Respondent's permission and instruction to retrieve certain office equipment. That individual removed certain office equipment that the Respondent did not have rights to. According to Counsel, Respondent was not aware that this individual had taken the wrong equipment until he was notified by the authorities. Respondent cooperated with the investigation and disclosed his participation. As a result of the criminal charge, the Respondent pled guilty to a misdemeanor theft charge and a misdemeanor drug charge, the Respondent was in possession of a single pill of diazepam, a prescription drug.

An informal conference was conducted with the Respondent and his Counsel on April 1, 2010. Respondent's Counsel advised that Respondent completed a 28 day in patient drug treatment program in November 2009 and since that time, Respondent has been required to have monthly random drug screens, none of which have indicated drug use. Respondent will continue to have those screenings for

the next nine (9) months. Respondent indicates that he is in recovery and has received a great deal of support from his family. Several family members were present to show their support at the informal conference. Counsel received a call from the District Attorney General in Respondent's Judicial District indicating that he wanted to put in a "good word" and "knows and appreciates the family".

Counsel communicated to the Respondent the Commission's concern regarding the protection of the public and specifically having access to homes given his apparent issues. Counsel and the Administrative Director believe that the interest of the public could be immediately protected by imposing a ninety (90) day suspension where Respondent would be required to forward all results of his monthly drug screens to the Administrative Director for review. This ninety (90) day suspension period would allow the Respondent to establish some history of clean drug screens with the Commission. At the end of the 90 day period Respondent's license would be reinstated pursuant to the following conditions – Respondent would be placed on a one (1) year probation, Respondent would be required to continue to submit monthly drug screens for the duration of the Probation, the Respondent would be required to pay the maximum fine available under the statute which is \$1,000.00. Should Respondent face additional criminal charges or have a drug screen that indicates illicit drug use at any time during the probation, the Respondent's credential could be immediately suspended. Counsel and the Administrative Director believe that the above conditions would act to bring the Respondent into immediate supervision by the Commission and thereby act to immediately protect the public.

**Recommendation and Reasoning:** Counsel for the State and the Administrative Director respectfully recommend if Commissioner Members concur that the Commission approve the revision as set forth above.

**Vote:** Mr. Flowers made a motion to approve Legal's recommendation. Mr. Carter seconded the motion. The motion failed. Mr. Wade, Mr. Woodford, Ms. Coleman, and Mr. Sanford voted no. Mr. Carter, Mr. Phillips and Mr. Flowers voted yes. There was some discussion on whether an alternate recommendation should be made. Mr. Woodford stated that the previous recommendation for voluntary surrender or proceeding to formal hearing was already in place and that no further action was needed at this time.

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

---

Chairman, Herbert E. Phillips

---

Nikole Avers, Administrative Director