



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

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

The Tennessee Real Estate Appraiser Commission met on February 10th, 2014 in Nashville, Tennessee, at the Davy Crockett Tower in the first floor conference room. Mr. Green called the meeting to order at 9:15 a.m. and the following business was transacted.

COMMISSION MEMBERS PRESENT

Michael Green
Norman Hall
Nancy Point
Rosemary Johnson
Gary Standifer
Eric Collinsworth

COMMISSION MEMBERS ABSENT

Mark Johnstone
Tim Walton
Dr. Edward Baryla

STAFF MEMBERS PRESENT

Nikole Avers, Jesse Joseph, Keeling Baird, Dennis O'Brien

Chairman Green read the public meeting statement into the record which indicated the agenda was posted to the Tennessee Real Estate Appraiser Commission website on January 24th, 2014.

ADOPT AGENDA

Director Avers requested an amendment to allow senior counsel, Mr. Joseph, to present a supplemental legal report at the top of the agenda. Ms. Johnson made a motion to accept the amended agenda. It was seconded by Mr. Collinsworth. The motion carried unopposed.

SUPPLEMENTAL LEGAL REPORT

**1. Case No. L11-APP-RBS-2011030681
Docket No. 12.36-122431A**

This matter has been presented and re-presented several times. The Complainant is the attorney for the non-prevailing party in a prior TDOT condemnation trial, and the Respondent was the appraiser for the prevailing landowner.

A summary of the bulleted allegations of the State's reviewer are:

- Reporting option was not prominently stated under SR 2-2 and its Comment.
- Respondent uses the definition of market value set out in AO 22, and not the specific market value definition in condemnation cases included in the TDOT Guidelines for Appraisers (which incorporates the Tennessee Pattern Jury Instructions (TPI-CIVIL

11.03). (Violation of SOW Rule, Problem Identification Section)

- Respondent did not provide any specific legal descriptions, plats, or other specific information to sufficiently identify certain lots (SR 1-2(e)(i), and 2-2(b)(iii))
- Respondent's sales comparison approach was unsupported and not adequately completed. (SRs1-1(a) & (b) and 2-2(b)(viii))
- The reconciliation is not properly completed (SRs 1-6(a), 2-1(b), and 2-2(b)(viii))

Respondent has responded to the results of the review, and contends generally that his report was complete and reflected the specific needs of the client.

Specifically, in response to the bulleted allegations, a summary of the Respondent's position is:

- That proper terminology specific to TDOT appraisals was used and by including the specific term "summary" in describing his report, this is sufficient under SR 2-2.
- That the definition of market value he used from AO 22 included all of the elements of market value that are in the TDOT's Guidelines for Appraisers; that the trial judge in the condemnation case could have instructed him to use a different definition of value; and that in any event, the value definition which was used did not have the potential to mislead.
- That he identified the subject parcels by tax map reference, street names, right of way map and photographs – which is sufficient identification under SRs 1-2(e) and 2-2(b)(iii).
- That his sales comparison approach was adequate for the purposes of this assignment.
- That his reconciliation was appropriate given that he only utilized the sales comparison approach and only summarized that value.

This matter has been pending as a formal proceeding (contested case) for over six (6) months and is coming up for scheduled hearing later this year. The matter has been hotly-contested and aggressively litigated thus far on the part of both sides during discovery. Both sides have retained experts, and the case may take more than one day to litigate to conclusion if it goes to hearing.

The State cannot provide more detailed information or specifics on any evidence in this legal report, and it will suffice to say that neither party acquiesces in any suggestion that its respective case is weak.

As we all know, the outcome of any contested hearing is speculative and counsel has had many hearings before this Commission.

Recommendation and reasoning: Based on experience and the outcomes of prior hearings, litigation counsel has taken into consideration the fact that Respondent has had no prior discipline in 17 years of practice as a certified general appraiser, that there was no intentionally misleading conduct, and the fact that Respondent has demonstrated his own expertise in eminent domain matters and as an expert witness before the State Board of Equalization, other administrative agencies, and before several state and federal courts in Tennessee.

Based thereon, counsel respectfully requests that this Commission authorize the issuance of a letter of instruction (which is not discipline) to Respondent for these first-time infractions of the Scope of Work Rule (Problem Identification Section) (not setting out the proper definition of value in a condemnation appraisal involving TDOT) and of SR 2-2(b)(viii) for not supporting all of his analysis and conclusions in the sales comparison approach in the report or workfile.

It did appear, however, that the Respondent provided considerable support, analysis and explanation for his conclusions in his sales comparison approach within the transcript of his testimony at the condemnation trial.

Counsel for the State is of the opinion that Respondent will not have problems of this nature in the future with the Commission.

Authorizing this letter of instruction would enable the State to close this pending formal proceeding.

Note: Mr. Standifer recused himself from the discussion and vote.

Mr. Collinsworth made a motion to accept counsel's recommendation. This was seconded by Ms. Johnson. The motion carried by majority with Ms. Point and Mr. Hall in opposition.

**2. Case No. L12-APP-RBS-2012011771
Docket No. 12.36-123750A**

The Notice of Hearing and Charges in this matter has been pending for a few months and was previously set for a hearing this month. Approximately 10 days ago, Respondent signed an Agreed Final Order agreeing to pay a \$5,000 civil penalty and accept a 2 year period of probation as to her CR certificate. The payment terms are for Respondent to pay \$750 upon her signature of the Order (which she has done), and the \$4,250 civil penalty balance by 2/5/15.

The terms of the probation are that Respondent must submit an experience log to the Executive Director every 6 months (with the first such log due 8/5/14), that she must submit 3 reports to the Executive Director for review within 15 days of request for reports, and that she is not permitted to supervise any registered trainees during the 2 year probationary period.

Some of the violations which Respondent has admitted committing in the subject 2008 URAR are as follows:

- Failing to analyze contract or to note analysis of contract or listing agreement in her report.
- Erroneously mischaracterizing this dense urban neighborhood as suburban and including inconsistent findings as to average marketing times in different sections of her report.
- Including unsubstantiated predominant price for 1 unit neighborhood housing and unsubstantiated claim that neighborhood property values were stable.
- Failing to include source with which details of comparable sales transaction could be verified given that none of the sales in her grid were listed in MLS, and including erroneous data as to characteristics of several of her sales.
- Including MAAR data sheets in her workfile but not listing MAAR data as a data source in her sales comparison approach, and failure to consider similar sales from the subject neighborhood which were listed in MLS.
- Providing incomplete prior sale/transfer history of comparable sales within 1 year of effective date.
- Utilizing Marshall & Swift cost data which was dated 15 months prior to the effective date of her report.
- Inconsistently stating that "reproduction cost" was utilized in her Multi-Purpose Supplemental Addendum, but stating in the cost approach section that "replacement cost" was estimated.
- Failing to maintain certain cost approach information in her workfile which she claimed she relied on.

- Failing to adequately reconcile the applicability and suitability of approaches and failure of her approaches to render credible results.

The Respondent admits within the Agreed Final Order, violations of the Ethics Rule, Conduct and Record Keeping Sections and Comment, the Competency Rule, the Scope of Work Rule and its Acceptability Section and Comment, and Standards Rules (SRs) 1-1(a), (b) & (c), 1-2(e)(i), Comment to 1-3(a), 1-4(a), 1-4(b)(i) & (ii), 1-4(c)(ii) & (iv), 1-5(a), 1-6(a) & (b), 2-1(a) & (b), 2-2(b)(iii), 2-2(b)(viii) and its Comment, all included within USPAP (2008-2009 ed.).

The Respondent received a prior consent order from the Commission on 4/26/12 and was assessed a \$500 civil penalty and required to successfully complete 2 corrective education courses (a 30 hr. Basic Appraisal Procedures course, and a 15 hr. Residential Report Writing course) within 180 days after the effective date of this Consent Order. Respondent did not comply with this deadline and was suspended from the practice in Tennessee until 7/9/13 – when she finally delivered evidence of having completed the required coursework.

The violations which occurred in the subject appraisal report occurred before Respondent had completed the 45 hours of corrective education, and the Commission previously voted last year to offer to Respondent a consent order imposing a \$5,000 civil penalty and 2 years' probation.

Recommendation and reasoning: Respondent had not accepted the consent proposal late last year, but after the filing of the formal proceeding, Respondent has indicated to litigation counsel that she could not afford to pay the \$5,000 in one lump sum and could only afford to pay a \$750 deposit toward this penalty presently. She has indicated that she will pay the balance in full in a year's time (by 2/5/15), and that she will fully comply with the terms of the 2 year probation.

Since the Respondent has completed the additional corrective education ordered by the Commission in 2012, it is hoped that she will commit no further violations of this type and counsel for the State desires to see the Respondent make a meaningful contribution to her profession. Respondent has indicated that she regrets not completing the corrective education required in the 2012 consent order in a timely fashion.

During that time period, she has indicated to litigation counsel that she encountered considerable difficulty enrolling in those classroom courses without having to travel approximately 200-250 miles from home, that she had difficulty getting away from her full time job to attend these courses, and also had temporary custody of her grandchildren which kept her at home most of the time.

She has apologized to the Commission for not meeting those previous deadlines in 2012. Further, she has recommitted herself to comply with this Agreed Final Order's deadlines as to payment of the balance of this civil penalty and complying with the conditions of her probation.

Based thereon, and given Respondent's cooperation with the State, litigation counsel does not seek a revocation of her certificate, and would respectfully request the Commission to approve this Agreed Final Order.

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

**3. Case No. L12-APP-RBS-2012017651
Docket No. 12.36-122430A**

Respondent is a certified general appraiser in 2 other states, and was employed to appraise an airport in Tennessee in early, 2012. Respondent inspected the subject property in March of that year, completed his report for the client in May, 2012, and transmitted the report in early June of that year.

Respondent did not apply for or have a non-resident temporary practice permit issued by this Commission at the time he inspected the property and completed his report. Respondent has indicated that he has performed similar appraisals in many states and that not all states require a temporary practice permit to perform this type of work.

The Complainant (involved in a business dispute with Respondent's client) submitted a complaint in this matter alleging unlicensed practice on Respondent's part in August of 2012, and Respondent admitted he did not have a temporary practice permit in his late August response. On September 10, 2012, the staff received Respondent's temporary practice permit and granted it on September 12, 2012. Respondent has stated that his client requested minor corrections and clarifications in the report which Respondent performed in September, 2012.

Respondent acknowledges that he should have ascertained the requirements necessary to practice real estate appraising in Tennessee on a temporary basis before he commenced work on this project, and the State does not believe he intended to violate Tennessee statutes.

It also appears as if there were only four (4) months in which it could be proven that Respondent engaged in this unlicensed practice in violation of Tenn. Code Ann. §§62-39-103(a) and 62-39-338(c) – March through June of 2012.

The Respondent and his counsel have signed an Agreed Final Order agreeing to the assessment of a \$2,000 civil penalty for this unlicensed practice (a \$500 penalty per month from March through June, 2012), and Respondent has agreed to deliver the civil penalty through counsel by close of business (4:30 p.m.) on Wednesday, February 12, 2014, if the Commission approves this agreement. Respondent has indicated he has the ability to pay immediately but wanted to obtain approval first. Litigation counsel for the State trusts that Respondent's counsel will deliver the payment promptly if this proposal is accepted.

Recommendation and reasoning: Litigation counsel for the State realizes that the Commission could impose civil penalties in the range of \$50-\$1,000 for each violation of the cited statutes, and that each day of continued violation could constitute a separate violation. However, the State does not have proof as to how many days Respondent worked on the project and does not know if there were continuous days.

However, the Respondent has been forthright with the State and apparently did not intend to violate Tennessee's laws. Litigation counsel for the State believes the amount of \$500 per month of unlicensed conduct is sufficient to protect the public and will be a sufficient economic deterrent to Respondent to not engage in this conduct in Tennessee again.

Accordingly, litigation counsel for the State respectfully requests that the Agreed Final Order negotiated in this matter for a \$2,000 civil penalty be approved by the Commission.

Vote: Mr. Hall made a motion to accept counsel's recommendation. This was seconded by Mr. Standifer. The motion carried by majority with Mr. Green in opposition.

DIRECTOR'S REPORT

Director Avers brought three pieces of pending legislation to the attention of the board. These were SB 1620, SB 0345 and SB 2081, covering the requirement of a background check for new appraiser applications, the extension of the Commission's sunset, and, the removal of the late fee if an appraiser did not renew at least 30 days before their license expiration date.

2015 rulemaking planning of background check criteria that would disqualify applicants from becoming registered, licensed or certified. Chairman Green requested that Ms. Baird provide the board with a rough draft of the rules which would include what the other states were doing as to background checks, to be presented to the board at the next regular meeting. He further suggested that Ms. Baird invite members of the Attorney General's office to attend the next meeting so they could perhaps help draft some of the new rules being pressed into effect, but that she also draft a letter to the Attorney General's office requesting that they process the rules already submitted in a timely manner, so the appraiser commission would not fall out of compliance with Federal regulations and the AQB, and thus avoid deregulation.

Vote: Mr. Hall made a motion that Director Avers request approvals to send the remaining members of the commission (who had not already been approved at the earlier meeting), to attend the AARO spring conference in San Francisco, CA. This was seconded by Mr. Standifer. The motion carried unopposed.

Vote: Mr. Hall made a motion that a letter be drafted by Ms. Baird to the Attorney General's office from the commission, requesting timely action on the pending rules. This letter would be signed by Chairman Green. This was seconded by Mr. Standifer. The motion carried unopposed.

In other rulemaking items, Director Avers covered the need for a clear definition to the trainee supervisor 'good standing' clause where the AQB definition could be used as a good example. The members also needed to define the number of hours required for supervisor/trainee courses with a specific portion dedicated to the Tennessee requirements.

As to licensing reciprocity, the members would have to define whether we accept continuing education from states which we have reciprocal agreements with, since our policy was an 'open door' one as to accepting applications and granting them on the strength of the education taken in their home state. To this end Director Avers recommended the commission favor all applicants from other states so long as they are in good standing in their home states. Mr. Green suggested that these recommendations be presented at the next meeting in March.

Director Avers presented additional material on distance education and the current approved course listing, noting that only one school offered qualifying education for the certified general credential and only one other offered qualifying education in a classroom on a regular basis, making it difficult for licensees to complete QE necessary to upgrade their credential by the current Tennessee standards. She further recommended that all 28hrs of continuing education be allowed online in Tennessee, since we already allowed licensees by reciprocity to take all 28hrs online. Mr. Standifer requested she make that recommendation in writing as well.

On the last item covering whether exam prep courses are allowed as CE, her recommendation was that such courses be allowed. Chairman Green requested that Director Avers add this recommendation to the draft on the rule making materials to be presented at the next meeting.

MINUTES

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

REPORT OF EXPERIENCE INTERVIEWS

Nici Corell Ward made an application to upgrade from a registered trainee to a certified residential real estate appraiser. Mr. Collinsworth was the reviewer and recommended that the experience credit request be granted. Ms. Point made a motion to approve the request. This was seconded by Ms. Johnson. The motion carried unopposed.

Darinda M. White made an application to upgrade from a registered trainee to a certified general real estate appraiser. Mr. Hall was the reviewer and recommended she electronically submit additional details on one of her reports to show more detail and analysis on what was covered in the appraisal report, after which he would review the report and convey his recommendation to Director Avers on allowing her to take the exam. Mr. Standifer made a motion to approve this recommendation. This was seconded by Ms. Point. The motion carried unopposed.

FEBRUARY 2014 - EDUCATION COMMITTEE REPORT

Director Avers reviewed the submissions and read the recommendations into the record, as below:

Course Provider	Course Number	Course Name	Instructors	Hours Requested by Provider	Type	Rec.
Dynasty School	1723	ON-LINE 2014-2015 Equivalent USPAP Update Course	Dr. R. Abelson	7	CE	For
TREES/TAPS	1728	ON-LINE Appraisal Review of Residential Properties	R.Oslin, V. Boyd, C. Carter	7	CE	For
TREES/TAPS	1729	ON-LINE Green in Residences & Appraisals	R.Oslin, V. Boyd, C. Carter	7	CE	For
TREES/TAPS	1730	ON-LINE Methodology & Application of Sales Comparison	R.Oslin, V. Boyd, C. Carter	7	CE	For

INDIVIDUAL COURSE APPROVAL REQUESTS

Licensee	Course Provider	Course Name	Hours	Type	Rec.
Robert P. Abbott (CG 1438)	Burt Baker School of Real Estate & Appraising	Louisiana Real Estate Contracts – 2013 Mandatory	4	CE	For
Robert P. Abbott (CG 1438)	Texas A&M University - Commerce	TREC Legal Update MCE And Ethics MCE	6	CE	Deny

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

FORMAL HEARING

Since the board heard and voted on recommendations from senior counsel in a supplemental legal report at the beginning of the meeting, there were no formal hearings as scheduled.

LEGAL REPORT

1. 2013017571

This complaint was filed by the attorney for Complainant and alleged that Respondent appraised the subject property with apparent errors, resulting in an inflated value opinion.

Respondent sent a response to the complaint stating that it is his opinion that the data presented was a correct representation of the subject property appraised.

REVEIWER CONCLUSIONS [alleged violations included within brackets]:

- Neighborhood: The appraisal does not provide support in the market condition section for the direction of property values or supply/demand. [SR 1-1(a); SR 1-3(a); SR 2-1(a)(b)]
- Site: The appraisal did not develop an opinion of the highest and best use of the subject property. [SR 1-3(b)]
- Description of Improvements: The appraisal states some of the interior features, i.e. stainless steel appliances, hardwood flooring, and ceramic tile flooring in the bathrooms. Based on the interior pictures observed in the appraisal and the 4 square boxy design, the subject property does not have the quality of features or exterior appointments or offsets typical of properties in this price range. The appraisal also shows the condition of materials in both the exterior and interior as average and the subject is new construction. [SR 1-1(a)(b)(c); SR 1-4(a); SR 1-6(a); SR 2-1(a)(b); SR 2-2(b)(viii)]
- Sales Comparison Approach: The appraisal shows lot adjustments for comparable #4. Comparable #5 shows equal, but does not explain to what. None of the other sales or listings were adjusted for lot size differences and all sales and listings are from the same development. The appraisal lacks the appropriate explanation, reasoning, and detail. [SR 1-6(a)(b); SR 2-1(b); SR 2-2(b)(viii)]
- Cost approach: The appraisal states under comments of the cost approach that the Modified Economic Age Life method was used to calculate depreciation. The appraisal does not support this method in cost approach and since the subject is new construction, there would not be Curable Physical depreciation or typically Functional Depreciation. The land value was not supported. There is no summary of land sales or other methods used for estimating the site value. [SR 1-1(a); SR 1-4(b)(i); SR 1-6(a); SR 2-1(a)(b); SR 2-2(b)(viii)]
- Reconciliation: The reconciliation of the three approaches was not provided. The appraisal did not discuss the income approach in the reconciliation section. The appraisal does not reconcile or explain the cost approach not supporting the opinion of market value. The appraiser states that “cost data” is reliable but does not discuss or explain the rationale for the \$120,000 cost difference as compared to the opinion of value in the sales comparison approach. [SR 1-6(a)(b); SR 2-1(a)(b); SR 2-2(b)(viii)]

Respondent’s Response to Reviewer’s Conclusions

Respondent sent a response to the reviewer’s conclusions, addressing each of the bulleted violations mentioned above. With regard to the neighborhood section, Respondent stated that list price, sale price, total number of sales, housing supply, days on market, median sale price as percentage of list price are all indicated in the market condition section as stable. The statement, “Supply and demand appears to be in balance” is made in the middle of the page. The property values were not increasing or decreasing, therefore, the stable box was checked. With regard to the issue of highest and best use, Respondent stated that he checked the “yes” box and that in every USPAP class he has attended, the instructors have taught that no explanation is necessary unless the “no” box is checked. With regard to description of improvements and sales comparison approach, Respondent stated that courses he has attended have taught him to determine the condition that is appropriate for the effective age (how old does the property look like it is). In this case the property condition was average for a new house. Respondent stated he used comparable sales he found on the same street as the subject. Two of the comparable sales that he chose were less than 10% difference in square footage, selling in the past six months. Based on information found in MLS and a visual inspection of the properties, they had similar finishes and materials as the subject. In the summary of sales comparison approach comments, there was an adjustment for the lot to comparable #4, but the rest were deemed to be equal in value to the subject. All adjustments and comparisons in the market grid compare each

comparable sale to the subject, and adjustments are made for marketable differences. With regard to the cost approach, Respondent stated the statement in the cost approach that the modified economic age/life method was used to calculate depreciation was in the report to explain if depreciation had been computed. The subject and all of the comparable sales were new construction; therefore, no depreciation computation was necessary. There were no land sales shown in the report that were used to determine the site value. However, the land sales used to compute the site value were enclosed in the response to the complaint. Local contractors who built in the area were consulted and because their costs were more specific to the area, more weight was given to their numbers. With regard to reconciliation, Respondent stated that regardless of what it cost to build a house, its market value is what a willing buyer will pay and a willing seller will sell. That is why more weight is given to the market approach than the cost approach. There is not a good rental data base for single family homes in the area. Therefore, the lack of income rental data renders this approach to value useless.

License History: Certified Residential 1/4/1993-Present

Prior Disciplinary History: 937640-Closed with Consent Order \$250 civil penalty ,and USPAP course; 941775-Closed with a Letter of Warning – Standard 2 ; 941784- Closed with a Letter of Warning; 945311-Dismissed; 200501674-Closed with Consent Order requiring a \$500 civil penalty; 200502460-Closed with a Consent Order requiring a \$1,000 civil penalty; 201000360 & 201001311-Closed with a Consent Order requiring \$2,500 civil penalty, a 30-day suspension, 1 year probation, and 75 hours of corrective education (USPAP, Site & Cost approach, Residential Report Writing)

Reasoning and Recommendation: The reviewer found that there was no support for the lot adjustments in the sales comparison approach and no opinion or summary of land value in the cost approach, which sets up concern that the sales comparison approach is overvalued. The reviewer also found that all the sales used in this appraisal are all from the same development, which is a violation of FNMA/Freddie Mac guidelines, in addition to all the other violations listed above. Respondent has been a certified residential appraiser for about twenty-one (21) years, with a rather extensive disciplinary history. The prior consent order from 2010 also included findings of overvaluing a lake property and failing to support site value and the costs data. The disciplinary history, along with the violations found in this appraisal report show a pattern of violation and should be considered as aggravating circumstances warranting a six (6) month suspension to be settled by Consent Order or Formal Hearing.

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

2. 2013017581

This complaint was filed by the attorney for Complainant and alleged that Respondent appraised the subject property with apparent errors, which resulted in an inflated value opinion.

Respondent sent a lengthy response to the complaint, in addition to a lengthy response to the reviewer's conclusions, so I will summarize the responses in the response to reviewer's conclusions section.

REVEIWER CONCLUSIONS [alleged violations included within brackets]:

The market conditions section does not contain any data, analysis or support for the opinion of one-unit housing trends. [SR 1-1(a)(b)(c); SR 1-2(e)(i); SR 1-3(a); SR 1-4(a); SR 1-6(a); SR 2-1(a)(b); SR 2-2(b)(iii)(viii)]

- The appraisal lacks detail and discussion regarding the exterior features and interior quality of construction and features that would support the subject's price point and help in the determination of the cost approach quality rating. [SR 1-2(e)(i)]
- The FNMA/Freddie Mac requires use of at least one sale from different development and from a different builder. None of the sales used in the appraisal were from a different subdivision or builder. Only listing #1 was located in a different development, but the MLS sheet indicated that it was pending on 3/8/2012 and listed on 3/8/2012 and was not an active listing and listing 2 was not found to be in the MLS system.
- The appraisal stated that "Paired Sales Analysis" and the "Extraction Method" were used in the determination of the cost approach. The 1004 form states, "Support for the opinion of site value" "(summary of land sales or other methods for estimating land value)". The appraisal does not provide support for the opinions and methods used in the appraisal. There was no summary of the sales or market data researched or the additional homes outside of the development that were utilized in the extraction method. [SR 1-1(a)(b)(c); SR 1-4(b)(i); SR 1-6(a); SR 2-1(a)(b); SR 2-2(b)(viii)]
- Based on the available information provided, the income approach is based only and solely on the data provided by the seller. A search of the rental data on the MTRMLS system did not indicate any properties, lake view or otherwise, that leased for the monthly amounts shown in the leases provided to the appraiser by the seller. [SR 1-1(a)(b)(c); SR 1-4(c)(i); SR 106(a)(b); SR 2-2(b)(viii)]

Respondent's Response to Reviewer's Conclusions

Respondent sent a response to both the complaint and the reviewer's conclusions stating that with regard to the market conditions section, the Market Conditions Addendum to the appraisal report, Fannie Mae form 1004MC utilized the information available to the appraiser in the normal course of business as required by USPAP and provided an appropriate disclaimer noting the limitations of the data available to the appraiser under the Fannie Mae guidelines, therefore, there has been no violation of the applicable rules and regulations. With regard to bullet point number 2, Respondent stated that additional detail and discussion regarding the exterior features and the interior quality of construction and features were not required by the USPAP Standards or Fannie Mae guidelines beyond that which was included in the report, therefore, there has been no violation of the applicable rules and regulations. With regard to bullet point number 3, Respondent stated that the aforementioned FNMA requirements do not apply to his appraisal, and, therefore, there has been no violation of the applicable rules and regulations. With regard to bullet point number 4, Respondent stated that details of the methodology used in the Paired Sales Analysis and the Extraction Methods would typically only be provided at the lender's preference. Such detailed discussion is not required by either the USPAP or the Fannie Mae guidelines when utilized in considering the cost approach, therefore, there has been no violation. With regard to bullet point number 5, with regard to the income approach, Respondent stated he took reasonable measures according to standard business practices to obtain accurate lease information and made proper disclosures as to where he obtained said leasehold information, therefore, there has been no violation. Respondent stated he conducted a reasonable appraisal using the data available to him in the usual course of business in order to complete his evaluation of the subject property.

License History:	Registered Trainee	11/13/2002-10/28/2007
	Certified Residential	10/29/2007-Present

Prior Disciplinary History: 201200545-Closed with a Letter of Warning

Reasoning and Recommendation: The reviewer found that the appraisal lacks research of the immediate and surrounding lake communities sales, listings, lots, etc., and has possible

violations of the Ethics Rule Conduct section, which states “must not advocate the cause or interest of any party or issue” and “must not perform an assignment in a grossly negligent manner”. The reviewer also found that the **subject’s value is overstated** by comparison of the other sales surveyed and retained in the workfile for this review. All sales and listings used in the original appraisal were from the same subdivision and not a reflection of the lake community markets. Respondent has been a certified residential appraiser for almost 7 years with one prior matter that was closed with a Letter of Warning specific to failing to support the site value and cost data included in the cost approach [SR 1-1(a); SR 1-4 (b)(i)(ii); SR 2-1 (b); SR 2-2 (b) (viii)]. USPAP deficiencies were identified in this complaint and the past complaint reviewed by a different reviewer, which seems to illustrate a pattern of deficiency in the cost approach. The review cited an Ethics Rule-Conduct section violation for overvaluation. As such, Counsel recommends the authorization of a Two Thousand Five Hundred Dollar (\$2,500) civil penalty to be satisfied within thirty (30) days of execution of this Consent Order and a fifteen (15) hour Residential Site Valuation and Cost Approach course to be completed within one hundred eighty (180) days of execution of the Order. Such terms are to be settled by Consent Order or Formal Hearing.

Note: Ms. Point made a motion to change the civil penalty to one thousand dollars (\$1,000) to be paid within thirty (30) days, and take the fifteen (15) hour Residential Site Valuation and Cost Approach course to be completed within one hundred eighty (180) days of execution of the Order, said course not to be used as continuing education. This was seconded by Mr. Collinworth. The motion carried unopposed.

3. 2013017791

This complaint was filed by a consumer and alleged that Respondent under-valued a residential property by using inappropriate comparable sales data. In addition, the complaint also alleged that Respondent did not consider in his value opinion improvements made by the owner, which had a cost of \$90,000.

Respondent sent a response to the complaint, stating that she did perform an appraisal of the subject property, and that she utilized the best comparable sales from within the subject’s subdivision and one additional sale from an outside competing development. Respondent stated she listed all upgrades that were provided to her from the owner and contractor/agent. The owner feels that since she spent over \$90,000 in upgrades, her home should be worth what she paid for it, plus the amount of upgrades she has put into the home. The subject was not considered to be similar to new construction and was not therefore considered any higher than a C3 rating. Respondent stated she took the amount of upgrades into great consideration, and, therefore, the final value opinion was at the high end of the adjusted value range. The final value opinion was bracketed by all comparable sales utilized in the appraisal. An opinion of value is not based upon a list price or sales price.

The Respondent was also given the opportunity to respond to the reviewer’s conclusions; however, no response was received by this office.

REVEIWER CONCLUSIONS:

- Neighborhood: The appraisal does not provide support in the Market Conditions section for the direction of property values or supply/demand. The 1004MC form is not accurately stated, the number of settled sale has increased, DOM for the sales and listing has declined. The appraisal shows stable in all categories and does not have a Market Research Analysis of REO’s/Foreclosures in the market. [SR 1-3(b); SR 2-1(a)(b); SR 2-2(b)(ix)]

- Site: The appraisal did not develop an opinion of the highest and best use of the subject. The subject backs up to a common area. There is no discussion of site appeal relative to the site location in the development or if external obsolescence was noted or if there was an effect on value. [SR 1-1(a); SR 1-3(a)(b); SR 2-2(b)(ix)]
- Sales Comparison Approach: The appraisal does not support the reasoning or show the development for the bedroom adjustments made on sales 2 and 4 and listings 4 and 5. Also, listing comparable 5 does not show both the covered and open patio areas and does not indicate the lack of a fenced rear yard when the subject and comparable sales 1, 2, 3, and 4 all have fenced yards. [SR 1-1(a)(b)(c); SR 2-2(b)(viii)]
- Cost Approach: The appraisal stated that no lot sales were available in the market area/s, and that due to the lack of lot sales, the extraction method was employed. The appraisal does not provide the breakdown used or the support for the opinion of land value. The appraisal does not provide analysis, data from any workfile provided, or supporting materials or breakdown to substantiate the lot value provided. There were six other sales that sold starting at \$135,000 going to \$254,900 and none were considered comparable to the subject. [SR 1-1(a); SR 1-4(b)(i); SR 1-6(a)(b); SR 2-1(b); SR 2-2(b)(viii)]
- No statement regarding prior service to the subject property was located on the certification page. [SR 2-3]

Licensing History: Certified Residential 3/14/2007-Present

Prior Disciplinary History: None

Reasoning and Recommendation: The reviewer found that there was no analysis of highest and best use provided in the appraisal. The appraisal lacks support for the bedroom adjustments and has missing information in the sales comparison approach. There is no breakdown or support of the extraction method in the cost approach for the determination of site value. Respondent has been a certified residential appraiser for almost seven (7) years with no prior disciplinary action. As such, Counsel recommends **Closure of this matter with a Letter of Caution** regarding the violations noted by the reviewer.

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

4. 2013019961

This complaint was filed by a consumer and alleged the undervaluing of a residential property by using inappropriate comparable sales data. Complainant alleged that the appraisal was unfair because the home was compared to three (3) homes that were recently foreclosed.

REVEIWER CONCLUSIONS:

- The appraiser did not complete the 1004MC form. [Scope of Work Rule]
- Conclusions presented in the "neighborhood" section of the report are not supported. The "Market Conditions Addendum to the Appraisal Report" was not completed. If the information is not readily available, the appraiser must explain what attempts were made to gather the information and *"regardless of whether all the requested information is available, the appraiser must provide support for his or her conclusions regarding market trends and conditions.* There were conclusions noted in the "Neighborhood" section of the report, however, there was no supporting information provided. [Scope of Work Rule – Scope of Work Acceptability, line 406-427, page U-14; SR 1-2(h); SR 2-2(b)(vi)]

- The analysis of sales and opinions/conclusions were not supported in the sales comparison approach. Sale #1 was verified through data and MLS. The report indicates this property sold March 2013 for \$52,500. It was noted in the report that this property previously sold March 21, 2013 for \$56, 929. This information is not accurate. It is also noted in the prior sale transfer comments section that, “*comparables used are not shown to have been sold in the 12 months prior to their sales dates used in the report.*” This statement contradicts the previous information provided in the report. The same contradictory statement applies to Sale #2. The comparable sales selected were not properly researched, analyzed, or considered. There is also no indication that previous sales of the sales used were adequately reported, analyzed, or discussed. [SR 1-1(b); SR 1-4(a); SR 2-2(b)(viii)]
- Site value was not supported. The report notes, “*Site value obtained from extraction method*”. No supporting information was found in the report or the workfile information provided, indicating that the opinion of site value was completed by an appropriate appraisal method or technique. [SR 1-4(b)(i)]
- The reconciliation does not address the quality or quantity of data in arriving at the final value. Adequate reasoning has not been provided in the sales comparison approach and sufficient analysis has not been provided to support the opinions and conclusions provided, reducing the credibility of this approach, and reducing the credibility of the final value opinion. [SR 1-6(a); SR 2-2(b)(viii)]

The Respondent was given an opportunity to respond to the reviewer’s conclusions; however, no response has been received by this office.

Licensing History:	Registered Trainee	7/5/1994-6/19/1996
	Certified Residential	6/20/1996-Present

Prior Disciplinary History: (200500447-Dismissed; 200801287-Dismissed; 200902722-Dismissed; 201102423-Closed with a Consent Order requiring a \$500 civil penalty and 30 hours of corrective education (Procedures); 201200328-Closed with a Consent Order requiring a \$500 civil penalty and 30 hours of corrective education 15 Site Value& Cost; 15 Market Analysis & H&B use)

Reasoning and Recommendation: The reviewer found that the inconsistencies throughout the report diminish the reliability of the report. The information provided and the opinions reported in this appraisal report do not provide adequate support for the conclusions rendered. Respondent has been a certified residential appraiser for almost eighteen (18) years and has been disciplined twice in the past. The Respondent completed the terms of his last consent order in June 2012. The subject appraisal has an effective date of July 1, 2013. As such, Counsel recommends the authorization of a civil penalty in the amount of One Thousand Dollars (\$1,000) to be satisfied within thirty (30) days of execution of the Consent Order and fifteen (15) hours of Residential Report Writing and Case Studies to be completed within one hundred eighty (180) days of execution of this Order. Such terms are to be settled by Consent Order or Formal Hearing.

Vote: Mr. Hall made a motion to waive the civil penalty and have the respondent only take the (15) hours of Residential Report Writing and Case Studies course, to be completed within one hundred eighty (180) days of execution of the Order. This was seconded by Ms. Point. The motion carried unopposed.

5. 2013020171

This complaint was filed by an appraiser and alleged that Respondent Appraisal Management Company engaged her to complete four (4) appraisals in 2013. However, Respondent surrendered its registration as an AMC in November of 2012, thus, Respondent was not registered at the time it engaged Complainant for appraisal services. In addition, the Complainant alleged that Respondent failed to pay for the four (4) appraisals completed by Complainant. Complainant included unpaid invoices in the complaint file as proof.

Respondent controller sent a response to the complaint stating that it paid Complainant in full for her services and apologized for the delay in payment. Respondent stated it originally requested the surrender of its license after its President resigned in August 2012. Respondent stated its AMC staff was informed that it was no longer licensed in Tennessee, and, therefore, could not place any appraisal orders moving forward. A new President was hired in the Fall of 2012, and unknown to Respondent controller or owner, the AMC placed appraisal orders in the state of Tennessee. The new President has since resigned. As a result of the resignation of the second President, Respondent ceased all operations as an AMC as of June 30, 2013. Respondent stated it will not be renewing its license or surety bond. There is proof of payment for Complainant's services in the file, and Complainant did file a response saying that Respondent has paid her in full, with the exception of the late fees it owes her.

Licensing History:	Registered AMC	1/13/2012-11/21/2012
	Surrendered	11/21/2012

Prior Disciplinary History: None

Reasoning and Recommendation: Respondent has surrendered its AMC registration and informed us that it is no longer in business and has no intention of renewing its registration or surety bond in the future. Respondent did pay Complainant for her services. However, Respondent still practiced unregistered activity by engaging an appraiser in appraisal services during a time in which its registration was expired. As such, Counsel recommends the authorization of a Consent Order for revocation of Respondent's registration. Such terms are to be settled by Consent Order or Formal Hearing.

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

6. 2013000831 (RE-PRESENTATION)

This complaint was presented at the December 2013 meeting, during which the Board voted to obtain an additional review from another reviewer and compare the findings. The following information is what was presented to the Board at the December 2013 meeting.

This complaint was filed by a consumer/potential homeowner and alleged that Respondent over-valued a residential property by misreporting the gross living area. The complaint also alleged that Respondent did not report a mold issue in his appraisal report as a health and safety risk.

Respondent sent a response to the complaint stating that the Complainant was not his client in the appraisal matter. With regard to the mold allegation, Respondent stated that the stains noted on the concrete block of the garage are common place in the market and are not mold. The concrete block wall of the detached garage showed mineral stains from moisture seepage. This was noted upon the original inspection but is not considered to present any adverse impact on the subject's overall marketability as originally appraised. Respondent stated it does not present a health or safety risk, as alleged by Complainant. Respondent also stated that according to

USPAP, porches cannot be included in computation of gross living area. The subject's gross living area was measured as of the effective date of the report and is correct as documented in the appraisal. The building sketch clearly differentiates the square footages of the covered porch, deck, attached garage, and detached garage, as separate from the subject's gross living area. The Complainant's claim that the porches were included in the gross living area is plainly wrong. Respondent states that based on all the documented evidence, the complaint submitted by Complainant is baseless.

The Respondent was also given the opportunity to respond to the reviewer's conclusions; however, no response was received by this office.

REVEIWER CONCLUSIONS:

- The neighborhood characteristics have not been accurately described. Assuming that the neighborhood statistics would be for the subject city, there were 62 sales in the year prior to the effective date ranging between \$20,000 and \$650,000, with an average sales price of \$189,184. Respondent reported the average as \$110,000. [SR 2-2(b)(iii)]
- The description of improvements is inaccurate. Condition rating of C3 for subject does not consider missing light fixtures, appliances, etc. The range oven and dishwasher noted were not present. All comparable sales also were rated C3 with no adjustments. [SR 2-2(b)(iii)]
- The effective age was not consistent with the physical deterioration and functional obsolescence estimates. An effective age of 4 is too low considering the missing fixtures and dirty carpeting. [SR 2-2(b)(iii)]
- The complaint stated that the garage door was missing from the detached garage. This was not stated in the appraisal, and there was no mention of area above detached garage. [SR 2-2(b)(iii)]
- External obsolescence, physical deterioration, and functional obsolescence has not been explained. Some physical deficiencies were noted but others exist that were not noted, such as dirty or stained carpeting, missing appliances, and missing garage door. [SR 2-1(a)(b)]
- No land sales were provided to substantiate land value in the cost approach. [SR 1-4(b)(i); SR 2-2(b)(viii)]
- \$10 per square foot for 1181 square feet of garage space is too low. [SR 1-4(b)(ii)]
- The effective age of 4 is too low with the needed updates/replacements. [SR 1-4(b)(ii)]
- A functional adjustment should have been added for the missing items. [SR 1-4(b)(iii)]
- In the comparable sales adjustment, the needed updates/replacements are not included in the grid, although Respondent states he considered that by going to the low end of the range. No condition or quality adjustments were made for any sale. [SR 1-4(a)]
- The range of the square foot cost for each sale is between \$86 and \$113 per square foot, yet the adjustments for size difference were made at \$25 per square foot and the unfinished basement adjustment was less than \$5 per square foot. These are lower than typical for this market considering the range of the six comparable sales. At least two of the sales required size adjustments of over 400 square feet each. [SR 1-4(a)]
- No condition adjustments were made, and all were rated equal as being C3. No financing adjustments were made, and no concessions were stated. [SR 1-4(a)]

Licensing History:	Registered Trainee	9/2/1998-9/19/2002
	Licensed RE Appraiser	9/20/2002-9/10/2008
	Certified Residential	9/11/2008-Present

Prior Disciplinary History: (200707096-Closed with Consent Order with \$2,500 civil penalty; 2008026518-Closed with Letter of Instruction; 201002118-Closed Final Order 2/27/2012, imposing 18 month probation, 30 hours of education, and \$2,935 in costs)

Reasoning and Recommendation: Respondent's license is inactive, currently, due to illness. He has already been disciplined, and the appraisal was done on December 31, 2012. It appears that Respondent did not benefit from the probationary period listed above. As Respondent has already had a significant disciplinary history, but his license is currently inactive, Counsel recommends the authorization of a thirty (30) day suspension to take effect immediately upon the execution of the Consent Order. Such terms are to be settled by Consent Order or Formal Hearing.

In lieu of the previously authorized recommendation by the Board to obtain an additional review and compare the findings, it is the recommendation of Counsel that the Board makes a recommendation based on the information that it has in the matter, currently, rather than obtain the additional review. Obtaining another review would serve to complicate the litigation process, if it were to move forward to that stage; in that it would place a burden on counsel and litigation counsel to have two different reviews for the same matter. The Respondent may decline a settlement offer and, in a formal hearing, dispute the alleged violations. The State would present proof to the commission, including testimony of an expert witness would then be called in the formal hearing to support the opinions and conclusions contained in their review. The Commission as the decider of fact in a formal hearing has the authority to accept or reject testimony from any witnesses.

Vote: Mr. Collinsworth made a motion to accept counsel's recommendation. This was seconded by Ms. Point. The motion carried unopposed.

7. 2013022991

This complaint was filed by a consumer and alleged that Respondent under-valued a residential property and did not visit the property. Complainant alleged that Respondent appraised it by using photos from MLS, and there are no comparable sales listed in the appraisal report.

Respondent responded to the complaint by sending a copy of his workfile, report, and documentation that this office requested.

REVIEWER CONCLUSIONS:

This matter was sent to an expert reviewer, and the reviewer found that the subject of this review was intended to be an evaluation and not an appraisal report. The reviewer stated that it is written by a state licensed appraiser who states in the comments under "Purpose of Report", that, "This is NOT an appraisal." Also, as stated in Purpose of Report section, "It is the purpose of this real estate inspection report to provide basic information concerning the subject property that is being taken by the lender as collateral. The inspection will provide information needed by the lender to make a prudent loan-making decision."

Licensing History: Licensed RE Appraiser 10/25/1994-Present

Prior Disciplinary History: None.

Reasoning and Recommendation: T.C.A. 62-39-104(d) allows evaluations under certain circumstances and does not prevent state-licensed appraisers from performing the evaluation. The specific language of T.C.A. 62-39-104(d) is as follows: (d) (1) "This chapter does not apply

to any evaluation of the value of real estate serving as collateral for a loan made by a federally regulated financial institution or to any evaluation of the value of the assets of a trust held by the institution, provided that: (C) The evaluation shall be labeled on its face “this is not an appraisal.” The reviewer in this matter expressed concern that the Code states that the evaluation must be labeled on its face, “this is not an appraisal.” A statement to this effect is made in the report under review, but it is in a sentence format in the comments section and is not in a label format as required by the Code. Counsel recommends that, since the Respondent did indicate that this assignment was NOT an appraisal within the report itself, Respondent has taken the proper steps as identified by the Code and, thus, falls under the exemption language in the statute. Respondent has been a licensed real estate appraiser for almost twenty (20) years with no prior disciplinary history. As such, Counsel recommends that this matter be **Closed with no further action.**

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

Pertinent to this case, Mr. Standifer shared that because of the new regulatory changes; borrower applicants must receive a copy of the appraisal or the evaluation even if the loan does not close on a dwelling. Based on this he felt that going forward, borrowers would start giving out evaluations that they are having problems with, which might very well be used as the basis of a complaint.

8. 2013002801

This complaint was filed by a consumer and alleged that Respondent under-valued a residential property. This consumer had his property appraised several times since purchase. He included with his complaint the last two appraisals and the appraisal review, which contained an opinion of value he felt, was inappropriately low. The original appraiser estimated the property value at Two Hundred Eighty-Five Thousand Dollars (\$285,000), and the review appraiser estimated the property value at One Hundred Fifty Seven Thousand Dollars (\$157,000). The subject property is a rural residential property with a lake view, but not lake access. The complaint file contained the original appraiser’s rebuttal letters and explanations, and the Respondent-review appraiser responses. The Respondent communicated a Standard 3 appraisal, which contained an opinion of value, so, therefore, it also had to comply with Standard Rules 1 & 2 of USPAP.

Respondent sent a response to the complaint stating that as it was stated in the report, the field review was based on an exterior inspection of the subject property from the street and per information from public and/or MLS records and other information available to Respondent as of the effective appraisal review date. Also stated in Respondent’s report; any value indicated by Respondent, as the review appraiser, was not based on an actual interior inspection of the subject property, which could have a positive or negative impact on the subject’s current estimated market value. Since verification and lack of information was provided to Respondent, as the review appraiser, her conclusions were based on “an assumption” that the subject was in average condition. Respondent stated she included additional comparable sales that were available as of the effective appraisal date for the client to consider because the original sales utilized were not the best indicators of value. Respondent stated that the original comparable sales did not have water views, as did the subject, so they were not the best indicators of value. Respondent stated that she noted in the report that any value indicated by the review appraiser is not based on an actual interior inspection of the subject property, which could have a positive or negative impact on marketability, as well as value of the subject property.

Although the reports had very different value opinions, the development of the opinions were essentially the same process and had the same data pool. The choice on which sales were “comparable” to these appraisers came down to what each determine were the relevant characteristics of the subject property. The original appraiser selected based on lake access and lake view, and amenities (in ground pool) the Respondent review appraiser selected based on proximity and size. The review appraisal was subject to the extraordinary assumption of the condition being “average”. It appeared from the complainant comments that there may have been improvements that exceeded “average,” but the reviewer could not have reasonably been expected to know this performing an exterior only appraisal. Both appraisals, given the context of intended use and intended user appear to have been developed and reported credibly.

Reasoning and Recommendation: Based on the above comments, it is the recommendation of staff and counsel that this matter be **closed with no further action.**

Vote: Mr. Hall made a motion to accept counsel’s recommendation. This was seconded by Mr. Standifer. The motion carried by majority with Mr. Collinsworth and Mr. Green in opposition.

9. 2013023431

This complaint was filed by an Appraisal Management Company and alleged that Respondent lacked consistency throughout the report, manipulated numbers, and used sales outside the county when similar sales were available. Complainant alleged that this information affected the credibility of the report and the stated value.

The only response to the complaint received from Respondent was a copy of the appraisal report. Respondent requested an extension of time to submit the response and the workfile, however, Respondent never submitted the workfile.

It should be noted that Respondent let her license expire, and it has been expired since October 4, 2013. Her grace period to renew will end April 4, 2014. Respondent is eighty-seven (87) years old and has never had any other complaints filed against her. She does not hold a credential anywhere else in the country. In her brief response to the complaint, Respondent stated that she retired earlier in 2013, and she strongly disagrees with the Complainant’s comments.

Licensing History: Licensed RE Appraiser 10/4/1991-Present

Prior Disciplinary History: None

Reasoning and Recommendation: Due to the mitigating circumstances surrounding this complaint matter and the fact that Respondent has stated that she has retired, and her license expired in October 2013, Counsel recommends that this matter be **closed with no further action.**

Vote: Ms. Point recused herself from the discussion and vote. Mr. Hall made a motion to accept counsel’s recommendation. This was seconded by Mr. Standifer. The motion carried unopposed.

Having no further business, Mr. Green adjourned the meeting at 2:35 p.m.