



**REAL ESTATE APPRAISER COMMISSION
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243
615-741-1831**

**Board Meeting Minutes for May 16, 2016
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Real Estate Appraiser Commission met on May 16, 2016 in the first floor conference room of Davy Crockett Tower in Nashville, Tennessee. Ms. Johnson called the meeting to order at 10:03 a.m. and the following business was transacted:

BOARD MEMBERS PRESENT: Rosemarie Johnson, Nancy Point, Mark Johnstone, William Mackara, Randall Thomas.

BOARD MEMBERS ABSENT: Timothy Walton, Eric Collinsworth.

STAFF MEMBERS PRESENT: Nikole Avers, Cody Kemmer, Sarah Mathews, Zack Nitzschke.

ROLL CALL/NOTICE OF MEETING

Ms. Johnson called the meeting to order in Mr. Walton's absence. Director Avers read notice of the meeting into the record, as follows: "Notice of the May 16, 2016 meeting of the Auctioneer Commission was posted to the Auctioneer Commission's website on April 27, 2016."

AGENDA

Mr. Thomas motioned to adopt the agenda as written. This was seconded by Ms. Point. The motion carried by unanimous roll call vote.

MINUTES

Dr. Mackara made a motion to adopt the minutes from the February 8, 2016 meeting as written. Ms. Point seconded. The motion carried by unanimous roll call vote.

EXPERIENCE INTERVIEW

Mr. Thomas gave a brief report of his interview with Joshua Thurman earlier that morning. Mr. Thurman is currently a State Licensed appraiser seeking an upgrade to Certified Residential. Mr. Thomas was impressed by Mr. Thurman's answers and recommended that the board approve his experience. Ms. Point motioned to accept Mr. Thomas' recommendation and received a second from Dr. Mackara. Mr. Thurman was approved by unanimous roll call vote.

EDUCATION REVIEW

The commission then reviewed Dr. Mackara's recommendations for course approvals, as well as his recommendations for applicants seeking credit on an individual basis. Mr. Thomas motioned to accept

the recommendations of the education committee, Ms. Point seconded, and the recommendations were accepted by unanimous roll call vote.

DIRECTORS REPORT

Director Avers reviewed the board's expenditures and projected budget. Next she apprised the board of the recently completed legislative session, specifically the passage of SB 2469 HB 2201, or "Right to Earn a Living Act." This new law creates requirements that subject regulatory agencies to an annual review of their licensure procedures.

Director Avers advised the board of its abilities to suggest legislation for next year's session. She provided a list of necessary criteria that would meet the new guidelines. She highlighted the importance of developing criteria for licensing and regulating Appraisal Management Companies that would comply with the impending Federal mandate. The commission agreed that they would likely need to put a plan in place by the next legislative session.

VOTE: Mr. Johnstone put forward a motion to adopt the federal standards for AMC regulation as written. Dr. Mackara seconded the motion, and it passed unanimously.

Next, Director Avers gave a report on the recent conference of the Association of Appraiser Regulatory Officials (AARO). Mr. Thomas had also attended and cited some topics of discussion.

LEGAL REPORT

1. 20150222541

Licensing History:	Registered Trainee	2/28/1995 – 10/15/1996
	Certified Residential Appraiser	10/15/1996 – 7/16/2017
Disciplinary History:	200604267 Closed with Letter of Caution.	

This complaint was filed by a consumer and alleged that the Respondent used a real estate agents pictures and billed the Complainant more than told. The Complainant is okay with the amount the property was appraised for.

The Complainant's allegations and Respondent's responses are as follows:

(1) Complainant alleges that Respondent did not go into the house at all to do the appraisal.

Respondent stated did indeed go into the house to perform the appraisal as evidenced by the measurements supplied in the reports sketch and photographs of the interior. Respondent states a side by side comparison of the Realtor's MLS/photographs and Respondent's photographs included in report support claim.

(2) Complainant alleges that the appraisal cost was quoted at between \$475 and \$500, but Complaint was actually charged \$600. Respondent states that the appraiser neither sets prices nor actually charges the borrower anything. Respondent's client, the AMC, sets and approves the appraiser fee. Respondent states that the fee charged increased because the underwriter asked for a change in the scope of the work which required more extensive inspections upon renovation completion. Respondent states the change in terms took place after the original terms had been agreed upon.

(3) Complainant alleges Respondent came back to the property, but Respondent stated he could not get into the shed to check it out. Respondent states that yes, Respondent had to go back

and inspect the shed to complete the storage building interior inspection, but the shed did not change the value of the property. Respondent states the additional \$100 increase was not simply due to the return trip to inspect the shed, but it was due to the increased scope of work – a change requested not only after the original order terms were accepted, but also after the entire first report had been completed and submitted. Respondent stated that according to the guidelines, “on USDA orders the appraiser must take interior photos of all outbuildings. If the outbuilding is not accessible, the report must be completed subject to interior inspection/photos.” Respondent stated because this is a FHA loan and not a USDA loan, the interior inspection of the storage building was not a requirement per his client.

- (4) Complainant states Realtor continually asked if Complainant had heard anything from Respondent and Complainant said no.** *Respondent stated by regulation, an appraiser is not allowed to contact the buyer director and only contacts the realtor to set appointments.*
- (5) Complainant alleges that upon review of the report, Complainant believes Respondent used the Realtor’s pictures.** *Respondent states submitted 29 total pictures of the property in report. Respondent states for continuity, Respondent added the realtor’s pictures of the property’s front and rear to show it all as one composition – the Respondent was unable to take a one photo of front and rear and therefore took two (2) and put them together. Respondent states if you compare photos from MLS listing and appraisal report, they are different.*
- (6) Complainant alleges that Realtor pulled out log sheets of each realtor or worker that enters the house is supposed to sign in and Respondent never once signed it.** *Respondent states it is not common practice for appraisers to sign in upon arrival, Respondent set appointments with realtor and realtor did not ask Respondent to sign any papers upon arrival.*
- (7) Complainant alleges that due to the house and loan type the Complainant’s had to be accurate on everything, so why shouldn’t the Respondent be accurate.** *Respondent states that he has a reputation for being thorough and accurate.*
- (8) Complainant alleges that the extension came about because the Respondent stated he had to go back a second time to inspect the shed.** *Respondent states for this type of loan, the interior storage inspection was not a prerequisite. The original report was ordered on 9/2/15, inspected and submitted on 9/4/15, the underwriter requested the change in contractor bid repair/improvements and storage building inspection on 9/8/15 and Respondent was informed of the approval of fee increase and request to proceed under the new terms/scope of work on 9/10/15. Respondent completed the revised report and submitted on 9/14/15.*

The complaint, response, and appraisal report were forwarded to an expert reviewer to analyze for compliance of USPAP.

REVEIWER CONCLUSIONS [alleged violations included within brackets]:

- Reviewer stated that the Respondent used MLS photographs in the appraisal report. Reviewer stated that if the Respondent is going to use MLS photographs, they should be identified as such in the report. The supplemental use of MLS photos by the Respondent did not affect value.
- Reviewer stated that based on her research, the Respondent had no ethical obligation to the Complainant to disclose the appraisal fee. The lender is responsible to communication the appraisal fee and any changes to the buyer.

- Based on the review of the information provided, the Respondent adequately inspected and photographed the subject property interior and exterior.
- Reviewer noted there were minor clerical errors, but the errors did not affect the value.
- Reviewer states that the appraisal complies with USPAP requirements.

Reasoning and Recommendation: Counsel recommends that this matter be closed.

Decision: The Commission voted to accept the recommendation of legal counsel.

2. 2016000121

Licensing History: Certified Residential Appraiser 2/04/1993 – 9/30/2016

Disciplinary History: 2004197331 Dismissed with No Action.

This complaint was filed by a consumer alleging that the Respondent appraised property in October 2015 for \$140,600. The same property was previously appraised in July 2015 for \$216,500. The Complainant alleges the Respondent made several errors in the appraisal report, including:

- (1) The house was built in late 2012, not in 1969 as stated in Respondent's report,
- (2) The house is heated by a new heat pump not propane, and
- (3) The insulation is well above average and could have easily been viewed through attic access.

Respondent stated in response that Respondent performed the usual inspection, took pictures of the property inside and outside, measured the home and drew a sketch. The home looked to be well maintained and of above average quality. Respondent printed off a copy of the public record and tax map for the property. Respondent stated that public record showed the home was built in 1969; Respondent believed that to be true due to the fact in Respondent's opinion the home looked to have been remodeled and updated in the last few years. Upon completion of the inspection, Respondent called the Complainant to inform Complainant that the Respondent had a few questions to ask about the recent home improvements, but the call went to voicemail and Respondent left a message for the Complainant. Respondent states the Complainant never called back. Respondent tried to call the Complainant for a second time, but with no answer. Respondent called the tax assessor to determine when the house was built, assessor pulled records for the subject property and it was the same as what Respondent had found – the home was built in 1969 and remodeled, therefore the Respondent pulled comps and worked on the report. The report was finished on 10/27/2015 and after submitting the report, Respondent states the Complainant called and was angry. Respondent states that Complainant stated an appraisal had been performed in July, prior to Respondent's, and the value of that appraisal was much higher. Respondent explained to the Complainant that Respondent attempted calling the Complainant to discuss the home improvements, but Complainant was still very angry over the value conclusion. Respondent stated there was no way for Respondent to know a prior appraisal had taken place, but Complainant could call his lender and explain the error and ask for a report correction and Respondent would be happy to correct the report and contemplate performing another market analysis, but this could not be done unless the lender/client submitted a formal request. Respondent also states that upon checking the report the heat source indicated was electric, not propane, but propane was in the site section which is believed to be typical for the area. Respondent states that typically Respondent does not inspect the attic area if it is accessible from a ladder through a scuttle hole or if the drop stairs requires moving furniture or household items to pull it down.

REVEIWER CONCLUSIONS [alleged violations included within brackets]:

Cost Approach

- The property was valued by the Cost Approach as set out on page 3 of the appraisal. The concluded value based on the Cost Approach was \$152,495. The land value component of the property was estimated at \$30,000. Under the Cost Approach comments, the statement is made that the site value estimate is based on comparable sales of similar sites. The work file included MLS copies of some land sales, but Reviewer did not see any analysis within the work file or the appraisal pertaining to derivation of the value estimate applicable to the site component.
- The Cost Approach is not credible as the appraiser was under the impression that the home was constructed in 1969 and had been remodeled. This information was based to some extent on reliance of the tax assessor data. The tax assessor data has not been updated and did not report the construction of the home in 2012. The improvement on the site listed on the tax card was for an old mobile home bearing dimensions of 24 x 52 reported as 1248 sq. ft. on one level. This structure was removed and the current structure built in 2012. The base floor plate for the new structure is smaller than that of the previous mobile home which would tend to indicate that their place structure was not as described on the tax card. In addition the tax card noted in one area that the improvement was "modular." It does not appear that the appraiser identified the current structure as modular but instead treated the structure as a 46 year old remodeled home with an effective age of 10 years rather than relatively new (2012) construction. A copy of the tax card illustrating the building dimensions as well as modular home identification is attached in the addenda.
- These differences likely lead to inaccurate estimates as to replacement cost and depreciation allowance.

Sales Comparison Approach

- The Sales Comparison Approach was conducted utilizing three (3) sales with adjustments made for various physical differences. The value conclusion based on the Sales Comparison Approach and the final conclusion within the appraisal was \$140,600.
- The sales comparison set out by this report is not credible as the base characteristics identified for the subject were not accurate and the adjustments are therefore inaccurate. For example sale one is shown to be 19 years old which would indicate a positive adjustment rather than no adjustment, sale 2 is shown to be 7 years old which would call for a positive adjustment rather than a negative adjustment and sale 3 is shown to be 9 years old and would require a positive adjustment as opposed the negative adjustment applied in the appraisal. It is probable that other more similar sales would have been used if the physical description of the property had not been in error. The application of the sale comparison approach is not credible.

Standard Issues

- USPAP requires the appraiser to not submit a substantial error of omission or commissions that significantly affects an appraisal and not render appraisal services in a careless or negligent manner.
- The appraisal did not correctly identify the characteristics of the property which lead to a lack of credibility in the applied approaches. **[SR 1-1(b)(c)]**.
- Opinion of site value was not developed by an appropriate method or technique. **[SR 1-4(b)i]**.
- Although not initially intended, the significant error as to correct identification of the property characteristics developed a misleading report. **[SR 2-1]**.

- “An appraiser must not perform an assignment in a grossly negligent manner.” **[Ethic Rule, U-7 Line 249]**
- The requirement for competency to include:
 - The ability to properly identify the problem to be addressed; and
 - The knowledge and experience to complete the assignment completely. **[Competency Rule, U-11]**
- Requirement includes discovery of relevant property characteristics **[Scope of Work Rule, U-13, line 415]**
- Acceptability notes alignment with expectations of peers and regular users **[Scope of Work Rule, U-14, lines 428-440]**

Respondent’s Response to Reviewer’s Conclusions

- Regarding the estimate of site value: Respondent honestly thought there was a sheet of paper in work folder or some notation on one of the MLS or scratch sheets that stated something to the effect that similar vacant lake view lots sales were very limited and the land comp that sold for \$30,000 was felt to be the most similar to the subject.
- Respondent stated to the building base floor place that it is not highly unusual for public record to be incorrect on the GLA that’s why Respondent always measures the home for a 1004 inspection.
- A true modular home and mobile homes such as single wide and/or double wide mobile homes are very different types of constructions and are not interchangeable terms. Mobile home is an outdated term and replaced by manufactured home.
- Respondent received appraisal order, pulled public record data with tax map, tax card and aerial map prior to visit. As stated, Respondent states public record showed a home built in 1969. The actual foot print was smaller in GLA but similar in shape to what public record had listed with a similar screen porch area. The home looked to have been completely remodeled and updated. Respondent states told Complainant to contact lender and tell them concerns and have lender ask for a report correction. Respondent feels public record is a credible source and is used every day by all appraisers everywhere.

Reasoning and Recommendation: The reviewer found that several USPAP deficiencies within the report that would warrant disciplinary action. 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. Such terms are to be settled by Consent Order or Formal Hearing.**

Decision: The Commission voted to accept the recommendation of legal counsel, plus require the Respondent take a seven (7) hour Manufactured Home course to be satisfied within one hundred eighty (180) days of execution of the Order. Such terms to be settled by Consent Order or Formal Hearing.

3. 2016000191

Licensing History: Certified General Appraiser 6/30/2009 – 6/30/2017
Disciplinary History: None.

This complaint was filed by TREAC Administrative Office based on a final order that was ordered by the NC Appraiser Board. According to Rule 1255-06-.01(5), if a licensee or certificate holder’s out-of-state real estate appraiser license or certificate has been revoked, suspended, denied renewal or restricted,

then the Commission may revoke, suspend, refuse to renew, or restrict the licensees or certificate holders State of Tennessee real estate appraiser license or certificate.

Respondent received a final order by the NC Appraiser Board for violations of the NC Appraiser statutes which hold Respondent made willful misrepresentations on his reports by indicating that Respondent had inspected the subject properties when Respondent did not do so. Additionally, Respondent violated the Ethics Rule of USPAP when Respondent communicated appraisal reports that Respondent knew were misleading.

Reasoning and Recommendation: The Respondent has filed an appeal in North Carolina. If the NC Appraiser Board's order is upheld, the Respondent's license will be suspended for a period of three (3) years in North Carolina. **Counsel recommends that the Commission discuss how we should proceed with this matter.**

Decision: The Commission voted to place this complaint on litigation monitoring pending the outcome of the current North Carolina appeal.

4. 2016000141

Licensing History: Certified Residential Appraiser 5/31/2010 – 3/31/2016

Disciplinary History: 201001790 Dismissed.

This complaint was filed by a construction company/builder and alleged that the Respondent undervalued a new construction build. The Complainant alleges that this is a new construction build that is listed and contracted for purchase at a sales price of \$319,900 and the Respondent appraised the property at \$305,000. Complainant alleged providing the Respondent with more recent and realistic comparables to view for reconsideration and that Respondent has said to two (2) people involved with this contract that Respondent does not use square footage as part of his calculations.

Respondent stated conducted an appraisal inspection on the property on 11/10/2015, after initial research was concluded; Respondent went back to the subdivision and took pictures of 19 sales and 2 listings for further analysis and consideration. Respondent finished the report "subject to completion" and submitted to the client on 11/19/2015. Respondent states on 11/23/2015, Respondent received a call (contact on appraisal order) asking him to reconsider the value estimate and Respondent stated would be glad to look at any sales she wanted to send to Respondent and received a list of sales that same morning. After reaching the sales, Respondent worked up the adjusted sales prices on the list. Respondent called contact the following day and informed her after looking over what she had sent, Respondent found no compelling reason to change the original value opinion. Respondent states contact kept repeating the cost per square foot price was less than \$100 per foot and could not believe that Respondent couldn't get the value up using her supplied figures and information, to which Respondent stated couldn't use that figure, as it is not an element of comparison. On 11/30/15, Respondent received a call from the builder, asking if Respondent would give another look at comps and pending sales, Respondent stated Respondent would be happy to look over whatever builder had to show him. Respondent received and reviewed the information from the builder and called builder that night to explain that Respondent saw no compelling reason to change the value. Respondent stated that you can telling by reviewing the report that Respondent does consider square footage in arriving at a value as there is a market derived adjustment on every sale and listing in report.

REVEIWER CONCLUSIONS [alleged violations included within brackets]:

Highest & Best Use

- Highest and Best use was stated as the present use of the subject property within the report. However summary of the rationale was not present within the report as required by USPAP. This is a violation however the credibility of the report is not decreased by the omission especially since the purpose of this assignment is to estimate the market value subject to completion. **[SR 2-1 (a)(x)]**

Conclusions

- The appraiser stated the intended use and intended users of this assignment within the Appraisal report. The intended use was for decision making regarding a mortgage transaction by the client. Neither the listing agent nor the builder, were stated intended users within this report and therefore the report may be inappropriate for their use.
- Highest and best use was developed by the appraiser and stated as the current use of the subject property. However the support and rationale for that opinion was not summarized within the report. The credibility of the report is not necessarily comprised by this omission, but is required by USPAP. **[SR 2-1 (a)(x)]**
- Overall the appraisal report was not misleading and was credible. Appropriate methods were used and no substantial errors were made that decreased the credibility of the report.

Summary

- The appraisal's report analyses, opinions and conclusions are credible. The report satisfies requirements for most lending work, with more than adequate data included within the report for the client to make a decision. The exclusion of a summary of highest and best use analysis was omitted from the report, which should be included according to USPAP, was noted. The exclusion was determined to not decrease the credibility of the report. In accordance with USPAP [SR 3-3] it is the appraiser's opinion that the entirety of the report is not misleading, is credible, and no reason for disagreement was found.

Respondent's Response to Reviewer's Conclusions

- Respondent stated on page 3 of the original appraisal report the report is for the sole use and benefit of client (intended user) to make a decision regarding a mortgage transaction. Respondent noted that the property to which the report is related was never listed in the MLS and remains unlisted and unsold to this day.
- Subsequent to submission of this report, Respondent attended a continuing education class, "Avoiding Mortgage Fraud for Appraisers" where it was covered at length regarding Highest & Best Use and the need to more fully explain the reasoning behind that opinion. Respondent has since begun utilizing a statement supporting whatever opinion is expressed.
- Respondent states that Respondent was not engaged to provide a final inspection to this subject to completion of appraisal report.
- Respondent additionally notes in the class attended, participants were encouraged to be more specific when asked to analyze and report rather than simply checking a box on the form. Respondent has since adopted this in current reports.

Reasoning and Recommendation: Counsel recommends this matter be closed with a Letter of Instruction pertaining to USPAP SR 2-1(a)(x).

Decision: The Commission voted to accept the recommendation of legal counsel.

5. 2016007761

Licensing History: Registered Trainee 04/05/2007 – 04/30/2017

Disciplinary History: None.

This complaint was filed by the Tennessee Real Estate Appraiser Commission (TREAC) alleging that Respondent failed to disclose a conviction on his Tennessee Appraiser- Registered Trainee application and renewals.

Respondent stated in response that Respondent was found guilty of domestic dispute in 1997, which is a misdemeanor. Respondent states that Respondent paid all fines and completed all probationary obligations pertaining to this event. Respondent has moved forward and trying to provide for family. Respondent states it was a mistake on his behalf and not intentional to not disclose this information to the Board, it was merely an oversight and Respondent apologizes.

Reasoning and Recommendation: T.C.A § 62-39-326, states in part that, *“The rights of any applicant or holder under a certificate as a state licensed or certified real estate appraiser may be revoked, suspended or restricted, or the owner of the certificate may be assessed a civil penalty of up to one thousand dollars (\$1,000) per violation, or otherwise disciplined in accordance with this chapter, upon any of the following grounds: (1) Procuring or attempting to procure a license or certificate pursuant to this chapter by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for a license or certificate or through any form of fraud or misrepresentation.”* **Counsel recommends the authorization of a civil penalty in the amount of Two Hundred Fifty Dollars (\$250) to be satisfied within thirty (30) days of execution of the Consent Order. Such terms are to be settled by Consent Order or Formal Hearing.**

Decision: The Commission voted to accept the recommendation of legal counsel.

6. 2016008531

Licensing History: Certified Residential Appraiser 7/30/2004 – 2/28/2018

Disciplinary History: 2015022157 Authorized a thirty (30) hr. basic appraisal procedures course.
201000266 Dismissed.
200901055 Letter of Warning.
200706227 Closed with no action.

This complaint was filed by a consumer and alleged that Respondent undervalued residential property. The Complainant alleged that the property was constructed approximately sixteen (16) years ago in a high-end residential area. In 2007, the property was appraised for \$1,200,000. In late 2015, the Respondent appraised the property for \$850,000. Complainant alleges that Respondent simply added \$50,000 to the Metro tax assessment. Complainant alleges challenging the appraisal and was told that real estate values declined in 2008. Complainant alleges that Respondent’s appraisal forced an application to another financial institution, which then obtained an accurate appraisal of \$1,250,000.

Respondent stated in response that upon entering the subject property, the Complainant told Respondent that a realtor came through the property recently and off the top of her head, stated the home was worth about \$1.2 million. Respondent stated his research of homes, similar to the subject property, did not support a value of \$1.2 million. Respondent stated that it was interesting that the home owner had a second appraisal performed and that appraisal came in very near the value mentioned by the realtor.

REVEIWER CONCLUSIONS [alleged violations included within brackets]:

- **Site Value:** An opinion of site value is provided in the cost approach. The following statement is provided in support of the site value opinion: “estimated site value was derived by a combination of the extraction method of newer home sales and a discussion with local realtors.” There is, however, no evidence to support that either the extraction method was used or any summaries of interviews with realtors. No support for this is found either in the report or the workfile and no reference to where this data is located is mentioned in the workfile. There is no summary of support and no reconciliation of data to support any site value at all. A list of land sales is found in the workfile information, but the date of the sheet indicates that it was only recently placed in the file and did not exist as of the date of the appraisal report. Since an opinion of site value is, by definition, an appraisal, all applicable standard rules in Standard 1 and 2 are required of an appraiser. An unsupported opinion of site value limits the credibility of the results and is potentially misleading. **[SR 2-1(a-c); SR 1-3 (b) relating to the highest and best use of the site as though vacant; SR 1-6; SR 2-1 (b); SR 2-2(a)(viii); Record Keeping Rule, Line 321].**
- **Unsupported and Unexplained Adjustments in the Sales Comparison Approach:** Adjustments are made in the sales grid for site differences, condition, bath, GLA at \$55 per sf, basement area, garage, fireplace and pool. Comps 4-5 were also adjusted for sale-to-list price differences. No support is found for these adjustments in the report or in the workfile. **[SR 2-2(a)(viii); Record Keeping Rule, Line 321]**
- **Highest and Best Use:**
 - An opinion of site value is provided in the cost approach of the report but there is no opinion given for the highest and best use of the site as-vacant. The opinion of site value is an opinion of market value which requires an opinion of highest and best use. **[SR 1-3(b)]**
 - The content of the appraisal report must contain a summarization of the support and rationale for the appraiser’s opinion of highest and best use; this is not provided in the appraisal report. **[SR 2-2(b)(ix)]**
- The Respondent did not include, in the certification, a statement regarding any previous performance of services related to the subject within the previous 3 years as required. **[Ethics Rule, Line 255ff; SR 2-3, Line 822]**
- The reviewer concludes that the quality of the Respondent’s work under review is deficient in its compliance with the Uniform Standards of Professional Appraisal Practice and, therefore, the credibility of the assignment results is somewhat impaired due to the type and extent of non-compliance as specified in this report and summarizes above.

Reasoning and Recommendation: The reviewer found that several USPAP deficiencies within the report that would warrant disciplinary action. 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. Such terms are to be settled by Consent Order or Formal Hearing.**

Decision: The Commission voted to accept the recommendation of legal counsel, plus require the Respondent to a fifteen (15) hour Report Writing course and a fifteen (15) hour Highest & Best Use course to be satisfied within one hundred eighty (180) days of execution of the Order. Such terms to be settled by Consent Order or Formal Hearing.

Licensing History: Certified Residential Appraiser 12/31/1991-12/31/2017
Disciplinary History: 200704768 Dismissed.
201200084 Closed with Letter of Warning.

The complaint was filed by a consumer and alleged that there was contribution between the Respondent's work and a land surveyor's work. Complainant alleges that in 2009, an attorney agreed to take on the task of settling the estate of Complainant's late father between Complainant and two (2) other heirs. Later three (3) Commissioners were appointed to facilitate the settling of the estate, when one of the Commissioners became sick, the Respondent was appointed to replace him. Respondent and other Commissioner consulted with the two heirs, not Complainant, to seek approval on the Report of Division prior to forwarding everything onto the Chancellor. Complainant alleges that there are pictures showing damage to the portion of property Complainant was to receive. Complainant alleges there were a total of three (3) appraisals performed on the property, the first two by Appraiser 1 and the third by Respondent. Appraiser 1 performed first appraisal on 6/5/09 and appraised the property as a whole and the second appraisal took place on 5/17/10 and was appraised in three parts – part 1 was to be the Complainant's. Appraiser 1 appraised Complainant's portion of the property at \$312,500 (acreage plus \$40,000 for house, barn and buildings). The other two parts were appraised at \$361,000 each. Respondent appraised Complainant's portion of the property with only 100 acres and a house totaling \$256,000 (\$47,000 of that to the house only), with the other two parts appraising at \$255,500 and \$254,500. Complainant alleges that she has been deprived use and possible income from this property for the past seven years, while the other heirs have profited from hay that has been removed from the property.

Respondent stated that Respondent was appointed to a three person court appointed commission to assist in subdividing the property in three near equal parts on September 4, 2014. Since that date, Respondent has made two visits to the property to inspect the property in order to prepare the requested appraisal report, which was completed on November 30, 2014. Respondent states the basis of this complaint is from a misunderstanding from an invoice from one of the commissioners which indicated that Respondent attended an eight (8) hour meeting on the property in October 2014. Respondent states did not attend this meeting and his visit to the property was on November 13, 2014, the effective date of appraisal report.

On 2/25/2016, we received a request from the Complainant to withdrawal the complaint against the Respondent.

REVIEWER CONCLUSIONS [alleged violations included within brackets]:

- After review of the report and verification of the date, there are no standards issues to report in this review.

Reasoning and Recommendation: Counsel recommends that this matter be closed.

Decision: The Commission voted to accept the recommendation of legal counsel.

8. 2016014711

Licensing History: Registered Trainee 9/18/2002 – 2/27/2005
Certified General Appraiser 2/28/2005 – 8/31/2017
Disciplinary History: None.

This complaint was filed by a consumer and alleged undervalued a riverfront property. Complainant alleges that the Respondent prepared an appraisal of residence for the City, who plans to use the property to expand the current Greenway. Complainant alleges that Respondent gave the home a zero valuation and labelled it personal property. Complainant alleges that the tax records classify it as a single family, ranch-style home with a notation as "houseboat" a designation given by the City's department of taxation for lack of other definition as it was unique for the day in 1983. The structure is more common now in flood prone areas, where designated as permanent structures that move up and down on spud poles during floods and return to set foundation when flood water recedes. Complainant alleges that the structure was tax assessed at \$83,200 and a value of zero defies logic. The house was designed to sit on land and to float on rare occurrence that flood waters might reach it, due to its location in a flood plain. Complainant alleges that the Respondent devalued the property by 90% due to be in in a flood plain and also determined it has limited use potential. Complainant alleges that while the CORP can flood part of the property under easement, none of the property is owned by the CORP.

Respondent stated that during the inspection, Respondent was accompanied by client and upon arriving at the home no one answered and the Respondent could therefore not inspect the interior. Responded stated that the structure appeared to be constructed to flood in the event of a flood and according to the Dictionary of Real Estate, personal property is defined as "movable without damage to itself or the real estate." Respondent therefore determined that was the case for this structure. Respondent stated a bulk of the property is located within an easement to the US Army Corps of Engineers. Respondent states that this easement does not allow for habitable buildings. Respondent states the lack of ability to build habitable structure has a significant negative impact on the value of this property.

REVEIWER CONCLUSIONS [alleged violations included within brackets]:

- After review, the reviewer's opinion is that the appraisal complies with USPAP requirements.

Reasoning and Recommendation: Counsel recommends that this matter be closed.

Decision: The Commission voted to accept the recommendation of legal counsel.

9. 2016016471

Licensing History:	Registered Trainee	11/18/1998-4/3/2001
	Certified Residential Appraiser	4/4/2001-6/30/2017
Disciplinary History:	201003685 Dismissed	
	201102497 Dismissed	
	201201556 Closed with Letter of Caution	

This complaint was filed by a consumer and alleged under-value of cabin house by miscalculating the number of square footage. Complainant alleges that Respondent's appraisal report stated the cabin had a value of \$230,000 with square footage 1,228, which is \$187.30/sq. ft, but Complainant produced a copy of the original appraisal documents from when Complainant built the home showing the cabin had a square footage of 1,429, which using the Respondent's \$187.30/sq. ft would value the cabin at \$267,652. Complainant alleges that contacted both realtors with the information, the Seller's realtor agreed there was an error in square footage and contacted the appraiser, who also agreed there was an error. Complainant alleges that Respondent proceeded to amend the original appraisal and changed the square footage to 1,412 but also changed the value per square foot to \$169.97, making the amended appraised value \$240,000. Complainant had an agreed upon contract price of \$245,000, but since the

Respondent's appraised value was only \$240,000 the Complainant alleges they were unable to finalize the sale and the buyers withdrew the offer.

Respondent stands by the appraisal and opinion of value and states that Complainant's complaint has no basis or merit. Respondent states the square footage scenarios presented by the complainant are based on improper assumptions, erroneous information and or faulty analysis based on the lack of knowledge of forces that drive the market. Respondent states the following points are provided to substantiate the claim:

(1) The subject property was measured incorrectly and subsequently corrected. *Respondent strives for perfection and when Respondent realized a mistake had been made, Respondent corrected the report immediately. A new comparable was included to provide the intended user, Respondent's client, with a competing property that was similar in size. Respondent states the revised report was prepared in a competent manner.*

(2) The original MLS listing for the subject property advertised the property at 1730 square feet with an original contract price of \$245,000. *Respondent states client's borrower attempted to purchase the property at a price per square foot of \$141.62 based on the MLS listing. By applying the same rationale as the Complainant, the price based on the actual square footage of 1412 sq. ft. would indicate a price of \$199,967.44. The appraised value was much higher. The basis for this complaint has no merit and is not supported by applying the same scenario to the listing. The Complainant did not advertise the property with the correct square footage.*

(3) The basis of this complaint does not provide for economies of scale. *Economies of scale are a reduction in cost of production per unit due to a large number of items produced. In other words, as properties get larger, the price per square footage goes down. Conversely, smaller properties will have a higher price per square foot than larger properties.*

REVEIWER CONCLUSIONS [alleged violations included within brackets]:

- The Complaint is primarily based on the appraisal value conclusion which was short of the contract price. The original appraisal conclusion was \$230,000 but was based on incorrect square footage for the cabin. The appraiser prepared a new appraisal using a correct square footage and concluded value at \$240,000. The difference in the original square footage and the corrected square footage is 200 square feet. The difference in the appraisal amount is \$10,000. This implies a size adjustment on correction at \$50 per square foot.
- **Cost Approach:** A Cost Approach was conducted in the corrected appraisal using 1,429 square feet. Land value was estimated at \$50,000 based on a listing of area transactions. The Cost Approach value indication was \$282,689.
- **Sales Comparison Approach:**
 - The revised appraisal utilized six (6) comparable sales that sold in the range of \$225,500 to \$259,000. After the appraiser's adjustments, value indication for the subject ranged from \$227,280 to \$251,680. For most of the comparables outside of those with basements, the primary adjustment made was for size. Square footage differences were adjusted for size at \$15 per square foot. Comments within the appraisal under supplemental addendum reported adjustments based on paired sales. However, there was no information in the work file related to room count or square footage adjustment derivation.

- It is noted that the difference between the original square footage and the corrected square footage indicated a value difference of \$10,000 over a size difference of 200 square feet which would indicate that the size on reappraisal was adjusted at essentially \$50 per square foot.
- Most of the comparables appear to offer furnishings as part of the selling price. The addendum to the appraisal states that no personal property is considered in the valuation process. However, no negative adjustments for furniture relative to the comparable sales. The listing for the subject property noted that the furniture was to be included in the sale price. The contract sale appears to be silent as to inclusion or exclusion of furniture.
- **Income Approach:**
 - The appraisal states that the value conclusion is based on the Sales Comparison Approach. In the Income Approach it is stated to be not a reliable indicator due to the nightly rental aspect of the community with rates that vary according to season and very high management fees (average fee is 40% of the gross rental).
 - On review of the comparable data it is noted that many of the comparables were rented and furnished. Generally, information is available for rental history and development of a gross income multiplier would likely have been possible. The local management fee of 40% is typical and appears pretty much the standard rate across the board so that utilization of the high rate as a reason for the income approach not to be applicable is not warranted. Typically the 40% management fee includes essentially the reservation system, leasing, cleaning and all expenses related to the overnight rental market. Additional expenses that owners typically assume include taxes, insurance and replacements. However, it is likely that the scope of work anticipated by the client would not include an income analysis and a reasonable estimate of market value is reflected by the eventual sale prices as used in the appraisal.
- The comparable sales appear to include personal property in many cases. The appraisal stated that the conclusion did not include any personal property. It would follow that adjustments would be made to those sales that included personal property. The appraisal was silent as to the contribution of personal property for the comparable sales where applicable. **[SR 1-2(e)].**
- An analysis of the contract pending at the time of the appraisal to include what items were to be included would likely have been helpful inasmuch as it appears the pending sale price including the contribution of furniture which the value opinion set out in the appraisal was represented to not include any personal property. **[SR 1-4(g)].**
- A substantial error was made in the original appraisal but that was corrected by a second appraisal. The substantial error related to the square footage miscalculation of approximately 16%. **[SR 1-1(b)].**

Respondent's Response to Reviewer's Conclusions:

- Sales Comparison Approach:
 - There was data analyzed to arrive at the adjustment and a range was concluded. There is evidence of the adjustment amount on the CRS Data page 2 of 2 within the work file that

stated a range for gross living area (GLA) adjustments from \$13-20 per square foot in which Respondent conducted a paired sales analysis. However, there was no specific information in Respondent's work file that would indicate exactly how the number was arrived. Moving forward, the Respondent stated this could easily be remedied by providing that data. Respondent stated the validity is not minimized by the lack of specific data regarding the gross living area calculations and is not misleading.

- The residential cabin rental market in Sevier County is complex. Historically, both peers and Respondent have adjusted for the contribution of personal property (or lack of contribution) in two ways. One way is to assume that there is no personal property being included and subtract an amount for furnishings/personal property from the comparable sales that are sold furnished. Another way, as indicated by others, is that the properties are all sold "ready to rent" and furnished and the contribution is considered within the reconciliation total. According to the contract for the subject property, the only items to remain are the dishwasher, range, microwave, refrigerator and oven. Respondent statement within the amended that no personal property is considered was correct. However, if that was the case an adjustment should have been made to all the comparables to reflect the personal property/furnishings. Respondent understands the point of the review and can be more descriptive moving forward. Respondent again stated that the point is understood and Respondent will clearly communicate findings regarding personal property moving forward and make adjustments if warranted. Respondent states the lack of adjustment was not misleading as the subject property was more than likely sold furnished as well as all of the comparable sales.
- Income Approach:
 - The Respondent states it is agreed that the scope of work did not include an income analysis and the gross income multiplier could have been produced. However, the rate of variable risk is increased or decreased by the expertise of the management company and produces unreliable data. Respondent states it is very difficult to analyze the management company's expertise in regards to promotion of rentals and the extent of their recapture of past clients. Respondent personally owned a rental cable and can attest that the expertise of a management company makes a huge difference to the bottom line. Respondent stated finding data from the gross income multiplier, or gross rent multiplier, to be unreliable. Moving forward, Respondent will use more descriptive statement as to why the income approach was not utilized.
- Respondent believes the review of the appraisal was an accurate and fair assessment.

Reasoning and Recommendation: Counsel recommends a **Letter of Instruction** of the above-noted USPAP violations.

Decision: The Commission voted to accept the recommendation of legal counsel, plus require the Respondent to take a seven (7) hour Supporting Your Adjustment course to be satisfied within one hundred eighty (180) days of execution of the Order. Such terms to be settled by Consent Order or Formal Hearing.

NEW BUSINESS

There being no other new business, Ms. Johnstone concluded the meeting at 11:12 am.