



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

April 11, 2011
Second Floor Conference Room, Andrew Johnson Tower

The Tennessee Real Estate Appraiser Commission met April 11, 2011 at 8:00 a.m. in Nashville, Tennessee, at the Andrew Johnson Tower in the second floor conference room. Chairman, Thomas Carter, called the meeting to order and the following business was transacted.

COMMISSION MEMBERS PRESENT

Herbert Phillips
Thomas R. Carter
William R. Flowers, Jr.
Erik Sanford
Dr. Edward A. Baryla
Marc Headden
Nancy Point

COMMISSION MEMBERS ABSENT

James E. Wade, Jr.

STAFF MEMBERS PRESENT

Steven Majchrzak
Nikole Avers
Aminah Saunders
Jesse Joseph
Wayne Pugh
Eman Youssef

ADOPT AGENDA

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

MINUTES

The March 14, 2011 minutes were reviewed. Mr. Phillips made the motion to accept the minutes as written. It was seconded by Mr. Flowers. The motion carried unopposed.

Experience Interviews

Wayne Lee Mouser, Jr. made application to upgrade from a registered trainee to become a certified residential real estate appraiser. Mr. Phillips was the reviewer and recommended approval of his experience request. Mr. Headden made the motion to accept the recommendation and Ms. Point seconded the motion. The motion carried unopposed.

Edmund Todd Morison made application to upgrade from licensed real estate appraiser to become a certified residential real estate appraiser. Mr. Flowers was the reviewer and recommended approval of his experience request. Mr. Phillips made the motion to accept the recommendation and Ms. Point seconded the motion. The motion carried unopposed.

Alfred E. Paschall made application to upgrade from a registered trainee to become a certified residential real estate appraiser. Ms. Point was the reviewer and recommended approval of her experience request. Mr. Flowers made the motion to accept the recommendation and Mr. Phillips seconded the motion. The motion carried unopposed.

Education Committee Report

Dr. Baryla reviewed the education and submitted his recommendations to the Real Estate Appraiser Commission, as seen below. Mr. Phillips made a motion to accept Dr. Baryla's recommendations. Mr. Headden seconded the motion. The motion carried unopposed.

After discussions; Mr. Phillips made a motion to approve course number 1474 for 30+2 hours, CE course provided by IRWA. Ms. Point seconded the motion. The motion carried unopposed.

After discussions; Mr. Headden made a motion to approve course number 1475 for 15+1 hours, CE course provided by IRWA. Ms. Point seconded the motion. The motion carried unopposed.

After discussions; Mr. Headden made a motion to table the course number 4652, provided by Mark Thomas Haley for 30 hours QE course to be deferred to the next Commission Meeting. Mr. Flowers seconded the motion. The motion carried unopposed.

April 2011 Education Committee Report

Course provider	Course Number	Course name	Instructors	Hrs.	Type	Rec.
Denovo Learning	1472	On-line 2010-2011 7-hour Equivalent National USPAP Update Course	Timothy Detty	7	CE	for
Denovo Learning	1470	On-Line FHA & VA Appraisal Basics	Timothy Detty	7	CE	for
Denovo Learning	1469	On-line Mortgage Fraud: A Dangerous Business	Timothy Detty	7	CE	for
Denovo Learning	1471	On-line Appraisal of 2-4 Family and Multi-Family Properties	Timothy Detty	7	CE	for

IRWA	1474	Valuation of Partial Acquisitions C 421	Lawrence D. Dupree	30 +2	CE	for
IRWA	1475	Principles of Real Estate Negotiations C 200	Lawrence D. Dupree	15 +1	CE	for
McKissock, LP	1476	Deriving and Supporting Adjustments	Daniel A. Bradley, Wallace Czekalski, Kenneth C. Guilfoyle, Charles W. Huntoon, K.Tracy Martin, Richard D. McKissock, Larry Mcmillen, Steven W. Vehmeir, John De Forrest Willey, Susanne L. Barkalow, Paul Lorenzen	7	CE	for
The Awareness Group	1477	Recognition, Dangers, & Liabilities of Meth Labs	Ken Poteet	4	CE	for
Dennis Badger & Associates	1481	Appraisal Regulation & Guidelines Update	Thomas Veit, Dennis Badger	7	CE	for
Clarity Appraisal Management	1482	Residential Report Writing	Bryan Reynolds	15	CE	for
ASFMRA	1479	General Market Analysis and Highest & Best Use (a290)	Terry Kestner	28 +2	BOTH	for
ASFMRA	1478	Sales Comparison Approach for General Appraisers (A302)	Mark Lewis, LeeAnn Moss	27 +3	BOTH	for
Appraisal Institute	1480	The Uniform Appraisal Dataset from Fannie Mac & Freddie Mac	Dawn Molitor-Gennrich	7	CE	for

Individual Course Approval

Mark Thomas Haley	4652	University of Memphis	FIR-4340- Real Estate Appraisal (to be matched with Principles. 45hs; req 30	30	CE	Deferred to next meeting
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Legal Report:

1. 201003261 Chairman Carter was the reviewer.

This complaint was filed by a home seller and alleges that the Respondent under valued a residential property by using comparable sales that were not comparable "in any true sense". The Complainant states that a neighboring property which has four (4) percent less square footage appraised for \$33,000.00 more than the subject property three months before the Respondent's appraisal. In further support of the allegation, the Complainant states that the fair market price was \$19,000.00 more than the Respondent's value conclusion.

The Respondent states that the comparables used in developing the appraisal were appropriate and the assignment was performed pursuant to USPAP and TN law.

REVIEWER CONCLUSIONS [alleged violations included within brackets]:

- There were no USPAP violations found in the appraisal report and the report was found to be complete and the work material well documented. The data provided in the report was adequate and the methods and techniques used were appropriate to form an opinion of value.

License History: Certified Residential 05/12/1994 - present

Prior Complaint / Disciplinary History: None.

Reasoning and Recommendation: Chairman Carter recommends the **DISMISSAL** of the complaint matter as there were no violations noted in the report.

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

2. 2010030271 Chairman Carter was the reviewer.

This complaint was filed by a consumer and alleged that the Respondent under valued a residential property by misreporting the bathroom count and the number of fireplaces.

The Respondent states that the basement was below-grade and the fireplace was unconventional and did not have a flue. The Respondent states that it was given some credit via the semi finished space adjustment.

REVIEWER CONCLUSIONS [alleged violations included within brackets]:

- There were no USPAP violations found in the report and the appraisal was found to be complete and the work material well documented. The data provided in the report was adequate and the methods and techniques used were appropriate to form an opinion of value.

License History: Registered Trainee 03/22/1999-03/21/2003
Certified Residential 01/18/2008-present

Prior Complaint / Disciplinary History: None.

Reasoning and Recommendation: Chairman Carter recommends the **DISMISSAL** of the complaint matter as there were no violations noted in the report.

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

3. 2010037111 Danny Wiley was the reviewer in this matter. This complaint was filed by a residential property seller (Construction Company) and alleged that the Respondent used inappropriate comparables and made no adjustment for the bonus rooms in the comparable properties. The net result was the drastic reduction of the price per square foot.

The Respondents states that the appraisal report is compliant with the guidelines and requirements of HUD/FDA, USPAP and the lender.

REVIEWER CONCLUSIONS [alleged violations included within brackets]:

- The report provides credible support for the reported conclusions.
- The complaint alleges that the subject property was under valued. The reviewer found no evidence to support that allegation. The MLS reports that the subject property sold on 12/20/2010 for \$168,634. The appraised value was \$168,000.
- The 1004MC form does not contain explanations for cells left incomplete

License History: Certified Residential 11/27/1991 - present

Prior Complaint / Disciplinary History: None.

Reasoning and Recommendation: Counsel and the Administrative Director recommend the **DISMISSAL** of the complaint matter as there are no significant violations warranting discipline.

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

4. 20100263111 Danny Wiley was the reviewer in this matter.

This complaint was by a lender and alleges that the Respondent committed fraud and possibly fabricated comparable sales data.

The Respondent defended the appraisal and indicated that the field review relied upon to support the allegation is unreliable as it contains contradictions, unsupported statements and errors. The Respondent states that the appraisal report was supported by the available data and a fair and unbiased opinion of value was reported.

REVIEWER CONCLUSIONS [alleged violations included within brackets]:

- The complaint alleges fabrication of sales data. That allegation is without merit. The sales used can all be verified by MLS and/or online public records.
- The complaint alleges bias. The reviewer found no evidence supporting that claim.
- The report does not contain a summary of the analysis and reasoning that support the Gross Rent Multiplier (GRM).

License History: Certified Residential 09/09/2002 – present

Prior Complaint / Disciplinary History: None.

Reasoning and Recommendation: Counsel and the Administrative Director recommend the **DISMISSAL** of the complaint matter as there was no significant violations which would warrant discipline.

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

5. 2011000971 Danny Wiley was the reviewer in this matter.

This complaint was filed by a consumer and alleged that the Respondent under valued a residential property by giving no value to the below grade space even though it is only below grade by a few feet.

The Respondent defended the choice of comparables and indicated that there was a lack of good comparables at the time and that the below level basement was treated per FHA guidelines.

REVIEWER CONCLUSIONS [alleged violations included within brackets]:

- The allegation that the gross living area and bath count were incorrect is without merit. The room count and gross living area were reported in compliance with applicable requirements.
- Foreclosure activity in the area has not been adequately addressed.

License History: Certified General 01/11/1993 - present

Prior Complaint / Disciplinary History: None.

Reasoning and Recommendation: The reviewer found the appraisal report to be credible although foreclosure activity was inadequately addressed. In weighing the violation noted above Counsel considers the Respondent's eighteen (18) years of complaint free history and recommends the **DISMISSAL** of the complaint matter.

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

6. 2011000271 There was no reviewer in this matter.

The complaint was filed by the TREAC staff. The complaint alleges that the Respondent signed an appraisal report as a supervisor on November 8, 2010. The Respondent's Certified Residential credential was suspended on August 13, 2010.

License History: Certified Residential 05/17/1993 – 08/13/2010

Prior Complaint / Disciplinary History: 9449660 – Closed w/ Consent Order, 200314761 – Closed w/ LOW, 200504309 Closed w/ Consent Order imposing a \$500.00 civil penalty & 200901730 Suspended 08/13/2010.

Reasoning and Recommendation: As the Respondent is currently **SUSPENDED** Counsel and the Administrative Director recommend the **CLOSURE** and **REFERRAL** of the complaint matter to the local District Attorney's office for possible criminal prosecution.

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

7. 2010034171 Commissioner Flowers was the reviewer in this matter.

The complaint was filed by a home seller and alleges that the Respondent over valued a residential property and misreported the comparable data.

The Respondent states that the driving force behind the comparables selected was the high quality of the subject property. The Respondent states that the subject is in a rural county and that there is a wide variety of values in the area which makes choosing comparables difficult.

REVIEWER CONCLUSIONS [alleged violations included within brackets]:

The subject property is not a waterfront property, but has a seasonal obstructed view of the lake through trees. The appraiser failed to adequately analyze and report in a meaningful way to the client the view from the subject property. SR 1-2 (e), SR 2-1 (a)

The subject property is an average quality construction, but has some improved amenities such as hardwood floors, tile, and a jetted bathtub. The respondent reported the quality of the improvements as good and failed to indicate that the overall quality of the improvement is average. SR 2-1 (b)

The improvement contained angled measurements. Though the appraiser measured the dwelling, it appears his calculations were flawed and inconsistent with builder measurements, assessor measurements and the measurements of another appraiser. SR 1-1 (c)

The respondent used sales data for the sales comparison approach of properties that were lake front without adequate reconciliation of the location. SR 1-4 (a)

The site value of the subject property was not supported with sites of similar location. SR 1-4 (b) (i)

The reproduction cost of the subject property indicated in the cost approach is inconsistent with the quality of the improvements and cited source of information. The workfile contained no cost data to support the figures used which varied greatly from the Marshall and Swift source for cost data cited. SR 1-4 (b) (ii)

License History:	Registered Trainee	02/21/2003 – 04/21/2005
	Certified Residential	04/22/2005 – present

Prior Complaint / Disciplinary History: None.

Reasoning and Recommendation: The Respondent, Counsel, the Administrative Director and Commissioner Flowers attended a meeting on March 15, 2011. After discussing the allegations in detail with the Respondent Commissioner Flowers recommends the resolution of the complaint matter by **CONSENT ORDER** imposing a one thousand dollar (\$1,000.00) civil penalty, a fifteen (15) hour Residential Report Writing course and a fifteen (15) hour Cost Approach & Site Valuation course to be completed within six (6) months of the execution of the order. The Respondent acknowledged errors in the appraisal report and indicates that the appraisal report does not represent the Respondent's best work. After discussion Commissioner Flowers is of the opinion that the violations noted are not indicative of intentional misconduct.

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

Request for relief from consent order for Mr. Thomas C Graves

Jesse Joseph, Assistant General Counsel, summarized the request for relief for the commission members. Mr. Graves consent order required he complete specific courses, pay a civil penalty and submit an experience log within six months in order to have his certified general license reinstated, if the requirements were not met within that time frame the downgrade to certified residential would continue indefinitely until Mr. Graves met the requirements established in 2008 for education, experience and examination to become a certified general appraiser. Mr. Graves failed to complete all the courses within the six month time frame. The attorney for Thomas Graves requested to relief Mr. Graves from the consent order and stated that Mr. Graves didn't realize he had to get it done in within six months, but that he thought whenever the courses were completed he could have his CG credential reinstated. He indicated he now understands that this was included in the order. Mr. Joseph indicated he did not know if Mr. Graves received the executed order immediately after execution of the order, but that he does have record of him receiving it in the fall of 2009. Ms. Avers indicated that she had certified mail receipt of sending him the downgraded credential, to indicate that the consent order had been executed. Mr. Graves completed four of the five requirements imposed upon him by the consent order within the 6 month period, but did not complete the final course until two years after the execution of the order. Mr. Graves indicated worked diligently to complete the final requirement but was unsuccessful in passing the exam until February, 2011 after re-taking the course.

Vote: Mr. Flowers made a motion to relief Mr. Graves from the consent order and Mr. Sanford seconded the motion. The motion carried unopposed. After much discussion; Mr. Headden recommended the respondent provide a six (6) month experience log through June or July of 2011. Ms. Avers would select a report and Ms. Point will review reports for USPAP compliance. If the Respondent completes the experience log and the reports are reviewed in July and found to be USPAP compliant, then Respondent can be considered for upgrade in July or August of 2011 without having to meet the upgrade requirements that went into effect in

2008. If the appraisal reports Mr. Graves submits to the Commission fail to comply with USPAP, a new complaint will be opened against Mr. Graves.

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

Complaint Investigation Process – Revisited from previous month's discussion

Ms. Saunders summarized the Standard Operating Procedure for complaint review. The Complaints are processed administratively and reviewed by an expert witness who in no way represents the Commission. Expert witnesses are contracted parties that serve the administrative needs of the Commission, and are selected at the discretion of the State. The expert witness is chosen by the State procurement agency and the legal department's responsibility is to use the contracts it has in place with such experts.

The Commission's duty is to perform as the jury in addressing administrative complaints. The expert witness is an independent party who testifies as to professional standards set forth by USPAP and this Commission's laws and rules. Members of this Commission cannot fulfill this role of expert witness pursuant to administrative law. The Director also should not hold this role due to the duality of the licensing and complaint processing. When the Commission is acting as the jury in an administrative formal hearing, they may elect to accept some, all, or none of the testimony of any expert witness. The legal counsel assigned to this Commission decides whether or not to use an expert if they weren't satisfactorily performing the services they were contracted for.

When a matter goes to a formal hearing, Counsel is not representing the Commission, they are representing the State, charge with protecting the public. The Administrative Law Judge charges the Commission at the beginning of each hearing with instructions as to the counsel's role in addressing the Commission.

The processing of complaints is an administrative function. The selection of investigators is State procurement function. The nature of the investigative report is a legal function outlined by counsel requirements. The above-referenced are not functions performed at the discretion of the Commission; however, ample consideration is given to Commission member recommendations.

Assistant Commission Majchrzak spoke to the Commission regarding the standard operating procedures (SOP) for processing complaints within the regulatory boards division. He said that the SOP has been modified for this Board to allow for a second response from the Respondent after the expert review. Mr. Phillips asked if the staff can dismiss a complaint. Mr. Majchrzak said no, they could not except when the complaint was referred to the wrong board. Mr. Carter stated that he felt the Respondents should be notified when their matters were to be presented on the agenda. General Counsel, Wayne Pugh said the legal report is a summary of probable cause for discipline. From the legal report, which is presented without the names of the Complainants and Respondents, the Commission can close, dismiss, warn through letters, offer to settle a matter by consent order or authorize formal hearing. If a formal hearing is filed, the Respondent is notified through a notice of hearing and charges. Mr. Carter asked why Respondent's cannot be invited to attend Commission meetings as a practice within the division and he indicated that he felt that all complaints should be initially reviewed by a Commission member. Mr. Majchrzak indicated that to do such requires an extraordinary amount of volunteer work by Commission members, using the Board members for their expertise in reviewing complaints causes that member to be recused from any formal hearing that may occur, it increases the likelihood that the Commission won't have enough members for quorum, and, it is hard for Board members to divorce themselves from the recommendations of a reviewing Board member if that member were testifying as an expert witness. He also explained that the legal report is presented without the names of

Complainants and Respondents because it is only a probable cause summary. It may taint the jury if the Respondents were in the room during this present during the legal report and it would be difficult for a Respondent to remain silent when their matter is presented.

General Counsel, Wayne Pugh, indicated that it was his understanding that the Real Estate Appraiser Commission just managed to get a compliance review from the ASC that indicated no violations of the policy statements. He expressed that this Board has complaints that are very technical and legal counsel needs an expert to testify as to standards of practice for appraisers. He referenced Martin v. Sizemore, ASC and State performance measures regarding compliance.


Mr. Carter asked for clarification that the expert witnesses won't be asked to make recommendations. Mr. Majchrzak confirmed that legal counsel makes recommendations for consistency, but the Board makes the final determination of severity of discipline. Mr. Carter wanted further clarification of the investigators; Mr. Pugh indicated that the expert witnesses are not "investigators".

Mr. Carter felt that the Commission needs the complaint process mapped for investigation and review and he reinstated his feeling that reviewers need to hold a certified general credential. Ms. Avers indicated that USPAP describes peers as those competent to perform the same or similar assignment and that the current contract only allows for residential reviews. Mr. Headden reiterated that a policy needs to be communicated to the reviewers about not talking about complaints. Mr. Carter indicated he felt that the reviewers should be exempt from compliance with Standard 3 of USPAP. Mr. Pugh stated that USPAP compliance is required by State law, for any exemption to occur it would have to be through a change in the law.

Mr. Carter indicated that the Commission will need both residential and non-residential (general) RFP's in place for complaint reviews. He felt that the Commission didn't have any input on the current RFP. Mr. Majchrzak indicated he canceled one previous RFP because of communication with the Commission on the parameters of the proposed contract. Ms. Point wanted to emphasize the need to encourage women and minorities to apply for these contracts. Mr. Phillips indicated that there is a public perception that the expert witnesses are a part of the Commission, legal or staff. Mr. Flowers indicated that he wanted it clear that the expert witnesses aren't representing the Commission and felt maybe more than one witness should be obtained to get another perspective in a hearing. Mr. Majchrzak indicated it is not the State's role to present opposing views. Ms. Avers indicated that the Respondent is allowed to present their own expert witness as a second opinion or opposing position at a formal hearing. Mr. Majchrzak concluded that the Commission can provide negative feedback to the reviewers during a formal hearing if they don't find testimony credible. Mr. Carter indicated that the website should reflect that complaints pertaining to AMC's won't be processed until after July 1, 2011.

Mr. Headden asked some questions about the current reciprocal agreements Tennessee has in place.

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Being no further business, the meeting was adjourned at 11:20 a.m.


Chairman, Thomas Carter


Nikole Avers, Executive Director