

1 **BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE**
2 **STATE OF NEVADA**

3 SHARATH CHANDRA, Administrator,)
4 REAL ESTATE DIVISION,)
5 DEPARTMENT OF BUSINESS AND)
6 INDUSTRY, STATE OF NEVADA,)

6 Petitioner,)

7 vs.)

8 DAVID LYSNE)
9 (License No. A.0205479-CG),)
10 RESPONDENT.)

Case No.: AP15.048.N

COMPLAINT AND NOTICE OF HEARING

FILED

MAY 05 2017

NEVADA COMMISSION OF APPRAISERS

13 The State of Nevada, Department of Business and Industry, Real Estate Division
14 (“the Division”), by and through its counsel, ADAM PAUL LAXALT, Attorney General of
15 the State of Nevada, and PETER K. KEEGAN, Deputy Attorney General, hereby notifies
16 the RESPONDENT, DAVID LYSNE (“RESPONDENT”) of an administrative hearing
17 which is to be held pursuant to Chapter 233B and Chapter 645C of the Nevada Revised
18 Statutes (“NRS”) and Chapter 645C of the Nevada Administrative Code (“NAC”). The
19 purpose of the hearing is to consider the allegations stated below and to determine if the
20 RESPONDENT should be subject to an administrative penalty as set forth in NRS
21 645C.460 through NRS 645C.540, if the stated allegations are proven at the hearing by
22 the evidence presented.

23 **JURISDICTION**

24 The RESPONDENT is a certified general real estate appraiser licensed by the
25 Division and therefore is subject to the jurisdiction of the Division and the provisions of
26 NRS and NAC Chapter 645C. By availing himself of the benefits and protections of the
27 laws of the State of Nevada, the RESPONDENT has submitted to the jurisdiction of the
28 Division.

1 FACTUAL ALLEGATIONS

2 1. The RESPONDENT completed an appraisal of 3.37 acres of real property,
3 comprised of two parcels; a one-acre parcel, APN 6-630-10, and a 2.37-acre parcel, APN 6-
4 300-05, located on SR362 in Hawthorne Nevada ("Property").

5 2. The appraisal had an effective date of February 21, 2014, and a signature
6 date of February 27, 2014. The RESPONDENT concluded a value of \$370,000.00.

7 3. The RESPONDENT failed to clearly estimate the exposure time for the
8 Property and did not state a specific exposure time, but instead gave a range of 5 to 10
9 years.

10 4. The RESPONDENT failed to use the most recent area data available when
11 he conducted his Area Analysis and apparently copied an Area Analysis from a 2012
12 report, thereby ignoring data for the years 2011, 2012, and 2013.

13 5. The RESPONDENT misstated the zoning of the Property as "light
14 industrial" when, in fact, the Property had two separate zoning designations; M-1,
15 industrial, and M-3, open space. The RESPONDENT failed to disclose the M-3, open
16 space, zoning.

17 6. The RESPONDENT made an Extraordinary Assumption, which assumed
18 that the two parcels would be rezoned, thus allowing for the proposed truck stop.
19 However, this Extraordinary Assumption, created a Hypothetical Condition having a
20 definite impact on the value of the Property, which was not discussed on page 3 of the
21 report where the application of Extraordinary Assumption Rule was referenced.

22 7. Despite there being no need for a reconciliation, The RESPONDENT only
23 used the sale comparison approach to value the Property and failed to explain why this
24 was the only approach used in his analysis.

25 8. The RESPONDENT failed to discuss and make adjustments to the
26 comparable sales for zoning, particularly in light of the fact that many of the comparable
27 sales were zoned commercial and within existing shopping centers.

28 9. The RESPONDENT misstated that the Property has municipal water and

1 sewer lines, when, in fact, the site did not have water or sewer, and the closest water line
2 was 375-400 feet from the site and would have required the buyer to pay for an extension
3 of the line.

4 10. Subsequent to completing his appraisal of the Property, The RESPONDENT
5 filed a Complaint regarding a separate appraisal of the Property which stated that it
6 would cost \$30,000.00 to have the extension of the lines completed.

7 11. The RESPONDENT did not discuss or make adjustments to the comparable
8 sales used in the report, which did have gas, electricity, water meters, and cable.

9 12. The RESPONDENT's report contained a mathematical error on Comparable
10 #1, wherein he miscalculated the adjusted price as \$110,112.00, when, in fact, the correct
11 adjusted price is calculated is \$120,112.00. This miscalculation resulted in an incorrect
12 price/SF and Front Foot valuation.

13 13. The RESPONDENT failed to make adjustments to the Front Foot valuation
14 for Comparable Sales 1, 2, 3, 4, 5, 6, 7, and 8, which resulted in incorrect adjusted values
15 per Square Foot and Front Foot.

16 14. The RESPONDENT made lot size adjustments at \$1.50 to \$2.00 to the
17 Comparable Sales without discussion of the adjustments.

18 15. The RESPONDENT made an "improvements" adjustment for Comparable
19 Sale #1 at \$128,888.00 and Comparable Sale #4 at \$77,908.00. These adjustments were
20 made by using the depreciated cost new for the improvements. The remaining value was
21 considered land value; however, no zoning or utility adjustments were made.

22 16. The RESPONDENT failed to discuss access to the Property in the report and
23 failed to indicate whether the Property had legal access onto the adjacent highway.

24 17. The RESPONDENT failed to consider the pending sale of an adjacent parcel
25 of listed for \$245,000.00, which sold for \$150,000.00, and bordered the Property on three
26 sides. However, the RESPONDENT did consider two other listings in his appraisal,
27 Comparable Listing #12 and #13.

28 18. The RESPONDENT failed to include a statement in his Certification as to

1 whether he had performed any services as an appraiser on the subject property within the
2 preceding three years, as required by the Uniform Standards of Professional Appraisal
3 Practice ("USPAP"), since 2012.

4 **ALLEGED VIOLATIONS**

5 **First Violation**

6 The RESPONDENT failed to prepare the appraisal report for the Property in
7 Compliance with the Standards of the Appraisal Foundation. These Standards are
8 published in the Uniform Standards of Professional Appraisal Practice ("USPAP")
9 adopted by the Appraisal Standards Board of the Appraisal Foundation as authorized by
10 Congress and adopted in Nevada by Nevada Administrative Code ("NAC") 645C.400.¹ By
11 developing a real property appraisal and failing to be aware of, understand, and correctly
12 employ the recognized methods and techniques that are necessary to produce a credible
13 appraisal, the RESPONDENT violated USPAP Rule 1-1(a), as codified in NAC
14 645C.405(1). This is unprofessional conduct pursuant to NRS 645C.470(2), and grounds
15 for disciplinary action pursuant to Nevada Revised Statutes ("NRS") 645C.460(1)(a)
16 and/or (b).

17 **Second Violation**

18 By developing a real property appraisal and making numerous and substantial
19 errors through both omission and commission, which significantly affected the appraisal,
20 the RESPONDENT violated USPAP Standards Rule 1-1(b), as codified in NAC
21 645C.405(1). This is unprofessional conduct pursuant to NRS 645C.470(2), and grounds
22 for disciplinary action pursuant to Nevada Revised Statutes ("NRS") 645C.460(1)(a)
23 and/or (b).

24 **Third Violation**

25 By developing a real property appraisal in a careless or negligent manner, such as
26 making a series of errors that, although individually might not have significantly affected
27

28 ¹ The 2014-2015 edition of USPAP, effective January 1, 2014 through December 31,
2015, is applicable to and utilized for this Complaint.

1 the results of the appraisal, in the aggregate, did affect the credibility of the appraisal,
2 the RESPONDENT violated USPAP Standards Rule 1-1(c), as codified in NAC
3 645C.405(1). This is unprofessional conduct pursuant to NRS 645C.470(2) and grounds
4 for disciplinary action pursuant to NRS 645C.460(1)(a) and/or (b).

5 **Fourth Violation**

6 By developing a real property appraisal and failing to identify the subject
7 property's characteristics relevant to the type and definition of value and intended use of
8 the appraisal including its location and physical, legal, and economic attributes. which
9 includes access, utility availability, and topography, the RESPONDENT violated USPAP
10 Standards Rule 1-2(e)(i), as codified by NAC 645C.405(1). This is unprofessional conduct
11 pursuant to NRS 645C.470(2) and grounds for disciplinary action pursuant to NRS
12 645C.460(1)(a) and/or (b).

13 **Fifth Violation**

14 By developing a real property appraisal and failing to adequately identify the any
15 extraordinary assumptions necessary in the assignment and/or any hypothetical
16 conditions necessary in the assignment, the RESPONDENT violated USPAP Standards
17 Rule 1-2(f) and/or (g), as codified in NAC 645C.405(1). This is unprofessional conduct
18 pursuant to NRS 645C.470(2) and grounds for disciplinary action pursuant to NRS
19 645C.460(1)(a) and/or (b).

20 **Sixth Violation**

21 By developing a real property appraisal using a sales comparison approach, and
22 failing to collect, verify, and analyze all comparable sales available, and necessary to
23 reach a credible value conclusion at the time of the report, the RESPONDENT violated
24 USPAP Standards Rule 1-4(a), as codified by NAC645C.405(1). This is unprofessional
25 conduct pursuant to NRS 645C.470(2) and grounds for disciplinary action pursuant to
26 NRS 645C.460(1)(a) and/or (b).

27 **Seventh Violation**

28 By developing a real property appraisal and failing to reconcile the quality and

1 quantity of data available and analyzed within the approaches used, the RESPONDENT
2 violated USPAP Standards Rule 1-6(a), as codified in NAC 645C.405(1). This is
3 unprofessional conduct pursuant to NRS 645C.470(2) and grounds for disciplinary action
4 pursuant to NRS 645C.460(1)(a) and/or (b).

5 **Eighth Violation**

6 By failing to set forth, within the written appraisal report, in a clear and accurate
7 manner that was not misleading, the RESPONDENT violated USPAP Standards Rule 2-
8 1(a), as codified in NAC 645C.405(1). This is unprofessional conduct pursuant to NRS
9 645C.470(2) and grounds for disciplinary action pursuant to NRS 645C.460(1)(a) and/or
10 (b).

11 **Ninth Violation**

12 By failing to include, within the written appraisal report, sufficient information to
13 enable the intended users of the appraisal to understand the report properly, the
14 RESPONDENT violated USPAP Standards Rule 2-1(b), as codified in NAC 645C.405(1).
15 This is unprofessional conduct pursuant to NRS 645C.470(2) and grounds for disciplinary
16 action pursuant to NRS 645C.460(1)(a) and/or (b).

17 **Tenth Violation**

18 By failing to clearly and accurately disclose, within the written appraisal report, all
19 assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions
20 used in the assignment, the RESPONDENT violated USPAP Standards Rule 2-1(c), as
21 codified in NAC 645C.405(1). This is unprofessional conduct pursuant to NRS
22 645C.470(2) and grounds for disciplinary action pursuant to NRS 645C.460(1)(a) and/or
23 (b).

24 **Eleventh Violation**

25 By preparing an appraisal report which failed to clearly and conspicuously state all
26 extraordinary assumptions and hypothetical conditions and state that their use might
27 have affected the assignment results, the RESPONDENT violated USPAP Standards
28 Rule 2-2(a)(xi), as codified in NAC 645C.405(1). This is unprofessional conduct pursuant

1 to NRS 645C.470(2) and grounds for disciplinary action pursuant to NRS 645C.460(1)(a)
2 and/or (b).

3 **Twelfth Violation**

4 By failing to disclose to the client in the Certification, any services regarding the
5 subject property performed by the appraiser within the three-year period immediately
6 preceding acceptance of the assignment, as an appraiser or in any other capacity, the
7 RESPONDENT violated the Conduct Section of the Ethics Rule of USPAP, as codified in
8 NAC 645C.405(1). This is unprofessional conduct pursuant to NRS 645C.470(2) and
9 grounds for disciplinary action pursuant to NRS 645C.460(1)(a) and/or (b).

10 **Thirteenth Violation**

11 By failing to include a provision in the Certification included in his appraisal report
12 that certified whether the RESPONDENT had performed services, as an appraiser or in
13 another capacity regarding the property that is the subject of this report within the three-
14 year period immediately preceding acceptance of this assignment, the RESPONDENT
15 violated USPAP Standards Rule 2-3, as codified in NAC 645C.405(1). This is
16 unprofessional conduct pursuant to NRS 645C.470(2) and grounds for disciplinary action
17 pursuant to NRS 645C.460(1)(a) and/or (b).

18 **Fourteenth Violation**

19 By preparing a report with multiple errors and/or omissions and/or incorrect and/or
20 misleading and/or conflicting information, the RESPONDENT failed to ascertain or
21 include in his appraisal report all pertinent facts that may be reasonably ascertained
22 concerning the subject property, in violation of NAC 645C.405(3), which is unprofessional
23 conduct pursuant to NRS 645C.470(2), and grounds for disciplinary action pursuant to
24 NRS 645C.460(1)(a) and/or (b).

25 **Fifteenth Violation**

26 By preparing a report with multiple errors and/or omissions and/or incorrect and/or
27 misleading and/or conflicting information, the RESPONDENT failed to acquire
28 knowledge of all material facts that are reasonably ascertainable and/or are of customary

1 or express concern, and/or has failed to convey that knowledge to the client in the
2 appraisal report, in violation of NAC 645C.405(8), which is unprofessional conduct
3 pursuant to NRS 645C.470(2), and grounds for disciplinary action pursuant to NRS
4 645C.460(1)(a) and/or (b).

5 **DISCIPLINE AUTHORIZED**

6 NRS 645C.460 establishes grounds for disciplinary action. NRS 645C.470(2)
7 provides that an appraiser is guilty of unprofessional conduct if he violates any provision
8 of or any regulation adopted pursuant to Chapter 645C. NRS 645C.460(2) provides that if
9 grounds for disciplinary action against an appraiser are found to exist, the Commission
10 may revoke or suspend the certificate, place conditions upon the certificate, and/or impose
11 a fine up to \$1,000.00 per violation. If the Commission finds that any claims for relief are
12 time barred pursuant to NRS 645C.510(3), they may impose any discipline except
13 suspension and revocation.

14 If discipline is imposed, the Commission may order that costs of this proceeding,
15 including investigative costs and attorney's fees, be awarded to the Commission pursuant
16 to NRS 622.400. Therefore, the Division requests the Commission to impose such
17 discipline as it determines is appropriate under the circumstances and to award the
18 Division its costs and attorney's fees for this proceeding.

19 **PLEASE TAKE NOTICE** that a disciplinary hearing has been set to consider this
20 Administrative Complaint against the above-named RESPONDENT in accordance with
21 Chapter 233B and Chapter 645C of the Nevada Revised Statutes and Chapter 645C of the
22 Nevada Administrative Code.

23 **THE HEARING WILL TAKE PLACE** at the Commission meeting scheduled
24 for June 6, 7, and 8, 2017, beginning at approximately 9:00 a.m. each day, or
25 until such time as the Commission concludes its business. The Commission
26 meeting will be held at the State of Nevada, Department of Business and
27 Industry, Division of Insurance, 1818 East College Parkway, 1st floor Hearing
28 Room, Carson City, Nevada 89706, with videoconferencing to the Nevada State

1 Business Center, 3300 West Sahara Avenue, Tahoe Room, Suite 430, Las Vegas,
2 Nevada 89102.

3 **STACKED CALENDAR:** Your hearing is one of several hearings that may
4 be scheduled at the same time as part of a regular meeting of the Commission
5 that is expected to take place on June 6-8, 2017. Thus, your hearing may be
6 continued until later in the day or from day to day. It is your responsibility to
7 be present when your case is called. If you are not present when your hearing
8 is called, a default may be entered against you and the Commission may decide
9 the case as if all allegations in the Complaint were true. If you need to
10 negotiate a more specific time for your hearing in advance because of
11 coordination with out of state witnesses or the like, please call Claudia Rosolen,
12 Commission Coordinator, at (702) 486-4606.

13 **YOUR RIGHTS AT THE HEARING:** Except as mentioned below, the hearing is an
14 open meeting under Nevada's open meeting law and may be attended by the public. After
15 the evidence and arguments, the Commission may conduct a closed meeting to discuss
16 your alleged misconduct or professional competence. A verbatim record will be made by a
17 certified court reporter. You are entitled to a copy of the transcript of the open and closed
18 portions of the meeting, although you must pay for the transcription.

19 As the RESPONDENT, you are specifically informed that you have the right to
20 appear and be heard in your defense, either personally or through your counsel of choice.
21 At the hearing, the Division has the burden of proving the allegations in the Complaint
22 and will call witnesses and present evidence against you. You have the right to respond
23 and to present relevant evidence and argument on all issues involved. You have the right
24 to call and examine witnesses, introduce exhibits, and cross-examine opposing witnesses
25 on any matter relevant to the issues involved.

26 You have the right to request that the Commission issue subpoenas to compel
27 witnesses to testify and/or evidence to be offered on your behalf. In making this request,
28 you may be required to demonstrate the relevance of the witnesses' testimony and/or

1 evidence. Other important rights you have are listed in NRS Chapter 645C, NRS
2 Chapter 233B, and NAC Chapter 645C.

3 The purpose of the hearing is to determine if, based upon the factual allegations
4 herein, the RESPONDENT has violated any of the provisions of NRS Chapter 645C of
5 NAC Chapter 645C, and, if the allegations contained herein are substantially proven by
6 the evidence presented, to further determine what administrative penalty is to be
7 assessed against the RESPONDENT, if any, pursuant to NRS 645C.460 through NRS
8 645C.540.

9 DATED this ___ day of May, 2017.

10 NEVADA REAL ESTATE DIVISION


11
12
13 By:

SHARATH CHANDRA, Administrator
2501 East Sahara Avenue
Las Vegas, Nevada 89104-4137
Telephone: (702) 486-4033

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16 DATED this 2nd day of May, 2017.

17
18 ADAM PAUL LAXALT
Attorney General

19
20 By:


PETER K. KEEGAN, ESQ.
Deputy Attorney General
Nevada Bar No. 12237
100 North Carson Street
Carson City, Nevada 89701-4717
Telephone: (775) 684-1153
Attorneys for Real Estate Division

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9 DATED this 2 day of May, 2017.

10 NEVADA REAL ESTATE DIVISION

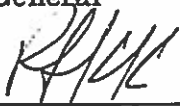
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12
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16 DATED this 2nd day of May, 2017.

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