

Before the
Administrative Hearing Commission
State of Missouri



JULIA BLAYLOCK,)	
)	
Petitioner,)	
)	
vs.)	No. 12-1254 RA
)	
MISSOURI REAL ESTATE APPRAISERS)	
COMMISSION,)	
)	
Respondent.)	

DECISION

We grant Julia Blaylock an unrestricted residential real estate appraiser certification, contingent on her payment of all necessary certification fees.

Procedure

On June 13, 2012, the Missouri Real Estate Appraisers Commission (“MREAC”) approved Julia Blaylock’s application for a real estate appraiser certification and informed Blaylock that her certification would be placed on probation for one year. Blaylock filed an appeal of the MREAC’s decision with this Commission on July 11, 2012. The MREAC filed an answer on August 13, 2012. We held a hearing on the complaint on January 11, 2013. The case became ready for our decision when the last written argument was filed on April 4, 2013.

Findings of Fact

1. On March 24, 2011, Blaylock submitted an application to the MREAC for a residential real estate appraiser certification.
2. At the time Blaylock submitted her application, she had completed all of the educational, testing, and experience requirements to become a certified residential real estate appraiser. She was working for a real estate appraisal firm in Columbia, Missouri, McDannold & Blaylock. The “Blaylock” in the name of the firm is her father.
3. Blaylock is a person of good moral character.
4. As part of the application process, the MREAC required Blaylock to submit two appraisal reports for further review. Those two reports were for property at 5740 East Eagle Trace, Hartsburg, Missouri (“Eagle Trace report”) and 4350 Highway 240, Rocheport, Missouri (“Rocheport report”). Blaylock also appeared and testified before the MREAC.

The Eagle Trace Report

5. Blaylock appraised the Eagle Trace property at \$395,000.
6. The customer for the Eagle Trace appraisal was The Callaway Bank.
7. In Blaylock’s appraisal, she stated that the site value was \$48,500. Site value is the value of the unimproved lot.
8. Blaylock stated in the appraisal that “site value is based on review of recent land sales and site-to-total value ratios.”¹
9. Blaylock’s work file² for the Eagle Trace appraisal included three lots from which she derived the site value of the property: 321 Eagle Lakes Drive, sold for \$42,000 in 2011; 328 Eagle Point, sold for \$49,000 in 2011; and an Eagle Knoll lot on the 18th hole fairway, sold in 2005 for \$47,500.

¹ Resp. Ex. A at 4.

² A work file is the file of information the appraiser researched and gathered in developing the appraisal, as well as analysis required for the report.

10. Blaylock used three comparable sales to calculate the value of the Eagle Trace property by the sales comparison approach: 15555 Hidden Woods Court in Hartsburg, 2012 Whitney Woods Drive in Jefferson City, and 505 Turnberry Drive in Jefferson City.

11. Blaylock listed the adjustments that she made for each property in the appraisal.

12. Blaylock arrived at these adjustments through a method called “paired data analysis.” This method relies on extensive data compiled by the professionals in her office after years of analysis. The data files are kept at her place of business.

13. Blaylock stated in the appraisal that the summary of the sales comparison approach was in an attached addendum. Blaylock included that addendum with the appraisal.

14. In the addendum, Blaylock described the adjustments as follows:

These sales that have been used for comparison are the best sales available. Adjustments were made to the sales that do not enjoy golf course location or view as does the subject. Other adjustments made for differences in overall interior/exterior quality finishes, for differences in age & conditions, for differences in bedroom/bathroom counts above grade, for differences in sq.ft. of finished living areas both above & below grade as well as for differences in garage amenities. The subject enjoys ground source heat pump system, which none of the sales enjoy, thus, adjustments are made to all of the sales. . . . It is noted that some of these sales did require substantial adjustments, however, this is very common in this type of property in this immediate marketing area, as there is a very limited number of homes that are currently offered and/or have been recently sold and sales used are in fact the best available known to the appraiser.^{3]}

15. Blaylock stated in the appraisal report that the Whitney Woods property backed onto a golf course.

16. The Whitney Woods property does not back onto a golf course.

The Rocheport Report

17. Blaylock appraised the Rocheport property at \$310,000.

18. The customer for the Rocheport appraisal was Landmark Bank, NA.

³ Resp. Ex. A at 8.

19. In addition to a home, there are two outbuildings on the property: a 40 by 60-foot “shop”⁴ and a 12 by 36-foot “boat storage building.”⁵

20. The Rocheport property was on 4.5 acres.

21. Blaylock gave the property a site value of \$27,750.

22. Blaylock stated in the appraisal report that the “site value is based on review of recent land sales and site-to-total value ratios” and that the “[s]ite value [was] based on research of lot sales in subject subdivision and other competing subdivisions.”⁶

23. Blaylock included in her work file three land sales: a ten-acre property in Harrisburg sold for \$47,000 in 2011; a six-acre property in Columbia sold for \$31,500 in 2011; and a 14-acre property in Harrisburg sold for \$69,800 in 2012.

24. Blaylock used three comparable sales to calculate the value of the Rocheport property by the sales comparison approach: 1820 N. Hemlock Ridge Road in Rocheport, 1825 N. Hemlock Ridge Road in Rocheport, and 2251 W. Oak Ridge Drive in Columbia.

25. Blaylock listed the adjustments she made for each property in the appraisal. She summarized her sales comparison approach in the appraisal report.

26. In the appraisal report, Blaylock stated:

Adjustments were made to the sales for differences in quality of construction, due to both interior and exterior finishes, for ages and conditions, as subject is newly constructed, for room counts and sq. ft. above and below grade. Additional adjustments were applied for heating/cooling, as subject enjoys energy efficient ground source heat pump, which none of the sales enjoy, for other amenities such as garages, outbuildings, and fireplaces. After adjustments, a realistic range of value is indicated for the subject property.⁷

⁴ The “shop” building includes a “wood shop.” Tr. 85. We understand this to mean a carpentry area where saws and other woodworking tools are used and kept.

⁵ Tr. 85.

⁶ Resp. Ex. C at 4.

⁷ Resp. Ex. C at 3.

27. Blaylock arrived at these adjustments through the “paired data analysis” method.

The MREAC’s Decision and Blaylock’s Subsequent Actions

28. The MREAC granted Blaylock’s application for certification on June 13, 2012, but also informed her that her certification would be placed on probation for one year because, in the MREAC’s judgment, the Eagle Trace report and the Rocheport report did not comply with the Uniform Standards of Professional Appraisal Practice (“USPAP”).

29. The proposed probationary terms include, but are not limited to, the following: that Blaylock not supervise any real estate appraisal, or sign an appraisal as a supervisor; that she maintain a log of all appraisals completed, and submit the log to the MREAC every three months; that she comply with unannounced visits from the MREAC’s representatives and appear in person for interviews upon request; that she comply with all federal and state drug laws; and that she submit written reports to the MREAC every six months stating truthfully whether she had complied with the terms of the probationary order.

30. MREAC informed Blaylock that she was required to pay a \$100 fee in order to obtain a certificate. Blaylock did not pay that fee.

31. Since Blaylock appeared before the MREAC, she has performed nearly 200 additional appraisals. She has also taken an additional course in USPAP standards. She now includes more detail and analysis in her reports, and has researched and investigated the effects of unusual features or amenities, such as cell phone towers or solar power systems, on value for purposes of refining her adjustments.

Conclusions of Law

We have jurisdiction to hear Blaylock’s appeal.⁸ The MREAC has the burden to demonstrate the existence of the basis for imposing probation.⁹ We exercise the same authority

⁸ Section 621.045; 324.038. Statutory citations are to RSMo Supp. 2012 unless otherwise noted.

⁹ Section 324.038.

that has been granted to the MREAC.¹⁰ Therefore, we simply decide the application anew.¹¹

When an applicant for licensure files a complaint, the agency's answer provides notice of the issues; in this case, the grounds for imposing probation.¹²

A. Blaylock's failure to pay the fee for her certificate

The MREAC asserts that we must dismiss this case because Blaylock did not remit her certificate fee, and the MREAC has therefore not issued the order granting her a probationary license.¹³ It cites its rule 20 CSR 2245-5.020(1)(A),¹⁴ which states in part:

The following fees shall be paid . . . for original . . . issuance and renewal of certificates or licenses:

(A) Initial Certification/Licensure Fee[.]

Section 324.038 provides:

1. Whenever a board . . . may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. *The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation.* If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination.

* * *

¹⁰ *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20 (Mo. 1990).

¹¹ *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App. K.C.D. 1974).

¹² *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App. E.D. 1984).

¹³ We have already addressed this issue in our order dated October 25, 2012. We restate our analysis of this issue here for the sake of completeness.

¹⁴ All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

(Emphasis added).

A plain reading of § 324.038 allows an applicant to appeal within thirty days of the date of delivery or mailing by certified mail of the “written notice of probation.” The “notice” is not the same as the actual probated license, because it shall notify the applicant of the date the board’s action – the actual license issuance – shall become effective.¹⁵ Regardless of whether Blaylock paid her initial licensure fee, she was entitled to file an appeal within thirty days after she received the notice of probation, and she did so.

We will not dismiss the complaint because Blaylock did not pay the certification fee. We note, however, that she must pay all necessary fees before obtaining a certification from the MREAC.

B. Statutory Causes for Denial

The MREAC asserts there is cause for denial under § 339.532:

1. The [MREAC] may refuse to issue or renew any certificate or license issued pursuant to sections 339.500 to 339.549 for one or any combination of causes stated in subsection 2 of this section. . . .
2. The [MREAC] may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any state-certified real estate appraiser, state-licensed real estate appraiser, . . . or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

* * *

- (6) Violation of any of the standards for the development or communication of real estate appraisals as provided in or pursuant to sections 339.500 to 339.549;

¹⁵ We do not imply that an applicant may not also file an appeal within thirty days after a probated license has issued.

(7) Failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation;

(8) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(9) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(10) Violating, assisting or enabling any person to willfully disregard any of the provisions of sections 339.500 to 339.549 or the regulations of the commission for the administration and enforcement of the provisions of sections 339.500 to 339.549[.]

If cause for denial exists, the MREAC may issued a probated license pursuant to § 324.038, as it did here.

An applicant for certified general real estate appraiser must show that he or she:

- a. is of good moral character;¹⁶
- b. bears a good reputation for honesty, integrity and fair dealing;¹⁷
- c. completed 3,000 hours of appraisal experience;¹⁸
- d. obtained a bachelor's degree, or for certified general real estate appraiser examinations taken before July 1, 2007, satisfied the requirement of 180 hours of classroom instruction;¹⁹
- e. passed the certified general real estate appraiser examination;²⁰ and
- f. has knowledge and competence necessary to perform appraisals of residential and other real estate as demonstrated by the applicant's appraisal reports.²¹

The only qualification at issue as raised by the MREAC is the last one – Blaylock's knowledge and competence as demonstrated by her appraisal reports. Section 339.535 states:

State certified real estate appraisers and state licensed real estate appraisers shall comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation.

¹⁶ Section 339.511.3.

¹⁷ *Id.*

¹⁸ 20 CSR 2245-3.010(5)(A).

¹⁹ 20 CSR 2245-6.015(1)(A) and (2)(A) and 6.010.

²⁰ 20 CSR 2245-6.015(1)(A).

²¹ Section 339.511.4 and 20 CSR 2245-3.010(1), (3) and (5)(D)1.

Because the parties contest whether Blaylock’s appraisals show that she complied with the USPAP, we set out those standards in detail. The parties agree that the 2012 version of USPAP governs.

C. The USPAP Standards

The USPAP 2012 Standards and Standards Rules²² provide in part:²³

STANDARD 1: REAL PROPERTY APPRAISAL, DEVELOPMENT

In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.

Standards Rule 1-1

In developing a real property appraisal, an appraiser must:

- (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;
- (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and
- (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

Standards Rule 1-2

In developing a real property appraisal, an appraiser must:

* * *

- (e) identify the characteristics of the property that are relevant to the type and definition of the value and intended use of the appraisal, including:

- (i) its location and physical, legal, and economic attributes[.]

* * *

²² USPAP abbreviates “standards rule” as “SR.” We use that abbreviation and the word “rule” to refer to the standards rules throughout this decision.

²³ Resp. Ex. F. Footnotes and comments to the standards and rules have been omitted throughout.

Standards Rule 1-3

When necessary for credible assignment results in developing a market value opinion, an appraiser must:

* * *

- (b) develop an opinion of the highest and best use of the real estate[.]

Standards Rule 1-4

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.

- (a) When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.
- (b) When a cost approach is necessary for credible assignment results, an appraiser must:
 - (i) develop an opinion of site value by an appropriate appraisal method or technique;

* * *

- (iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).

* * *

STANDARD 2: REAL PROPERTY APPRAISAL, REPORTING

In reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

Standards Rule 2-1

Each written or oral real property appraisal report must:

- (a) clearly and accurately set forth the appraisal in a manner that will not be misleading;
- (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly[.]

* * *

Standards Rule 2-2

Each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report.

* * *

(b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

* * *

(iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment;

* * *

(viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained[.]

The MREAC supports its allegations with the testimony of its expert, Randall Bryson.

Bryson is a well-qualified appraiser who has been licensed in Missouri as a general real estate appraiser since 1991 and has been doing appraisals since 1980. He has extensive experience as an appraiser and an expert witness in central Missouri. He owns his own real estate appraisal company. Blaylock counters with an expert of her own, Sandra McDannold. McDannold also is a well-qualified residential appraiser who was licensed in 1991.²⁴

Section 490.065, RSMo 2000, allows us to consider testimony from “a witness qualified as an expert by knowledge, skill, experience, training or education” when “scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.” Both Bryson and McDannold provided such knowledge and testimony. In addition, real estate appraisal is a highly subjective field, and differing opinions do

²⁴ We note that both experts have potential biases. McDannold was Blaylock’s employer and she signed the appraisals in question as a supervisory appraiser. Bryson testified as an expert in a case before this Commission in which the MREAC sought to discipline Blaylock’s father’s license. Bryson forwarded information that he received from the MREAC about Jack (Teddy) Blaylock to other appraisers in the Columbia area. We do not find either expert was unduly biased or that their biases rendered their testimony incredible.

not necessarily prove USPAP violations. For example, in *State of Alaska v. Wold*,²⁵ the Alaska Supreme Court reviewed a case brought by the Alaska Board of Certified Real Estate Appraisers (“the Alaska Board”) against Wold, a state-certified appraiser. The Alaska Board based its case on three of Wold’s appraisal reports. The court was critical of the Alaska Board’s expert testimony, particularly that of the following type:

The State thus urges us to infer, from Ferrara’s statement that “[y]ou would expect” the special purpose nature of the marina to be identified in the present context, the conclusion that Wold’s failure to explicitly identify the marina as “special purpose property” violated the USPAP. **But one expert’s statement of what he considers to be ordinary practice, without additional support, does not provide an adequate analytical basis for identifying the lower bound of acceptable professional conduct as defined by the USPAP.**^{26]}

Wold is not a Missouri case. However, we find its reasoning persuasive. Thus, we rely on the testimony of both the appraisers who gave evidence in this case – Bryson and McDannold – to elucidate the USPAP standards and rules at issue in this case. When there is a conflict between the two, we must simply choose which is more credible and convincing on the point at issue.²⁷

Our assessment of whether Blaylock violated USPAP in performing these appraisals is further complicated by the phrasing of USPAP itself, which both parties agree sets the governing standards. Because the USPAP standards are phrased in such general language – “credible” appraisals, “comparable” sales, “not misleading” conclusions – expert testimony is critical to apply them in a meaningful way. On the other hand, expert testimony cannot impose standards that USPAP does not.

²⁵ 278 P.3d 266 (Alaska 2012).

²⁶ *Id.* at 275 (emphasis added).

²⁷ *Harrington v. Smarr*, 844 S.W.2d 16, 19 (Mo. App., W.D. 1992).

In a case previously decided by this Commission, we stated:

At the hearing and in written argument, the MREAC argued many facts and provisions not set forth in its amended complaint. We can find cause for discipline *only* on the conduct and provisions cited in the amended complaint. *Duncan v. Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs*, 744 S.W.2d 524, 538-39 (Mo. App., E.D. 1988). We cannot find that any conduct is cause for discipline unless the amended complaint sets it forth. *Missouri Dental Bd. v. Cohen*, 867 S.W.2d 295, 297 (Mo. App., W.D. 1993). We cannot find that any provision allows discipline unless the amended complaint sets it forth. *Sander v. Missouri Real Estate Comm'n*, 710 S.W.2d 896, 901 (Mo. App., 1986).

This means that we will find cause for discipline only if the conduct proved violates the provision cited. For example, in many instances the MREAC alleges that Greenwood failed to include certain information in his report. Even if we find that Greenwood did not include that item in his report, and even if including such information is the *preferred* practice, we cannot find cause for discipline unless the amended complaint cites some provision that *required* Greenwood to include that item in his report.

For example, some SRs explicitly require Greenwood to include certain information in the report. If we find that Greenwood failed to include such information, then we have found that he has violated that provision. We will find cause for discipline in that instance.

Other provisions require him only to “collect, verify, analyze, and reconcile” or “consider” information in *preparing* his report, and do *not* require him to include the information in the report. If we find that Greenwood failed to collect, verify, analyze, reconcile or consider the information, we have found that he violated that provision. However, if we find that Greenwood merely failed to include such information in the report, then we have not found that he has violated that provision. We will not find cause for discipline in that instance. Failure to include information in the report does not violate any provision unless that provision required Greenwood to include the information in the report.^[28]

We include this lengthy excerpt from a previous decision not because we are bound by it; our decisions are not precedential.²⁹ But we find its discussion of how to apply USPAP standards to be helpful. We agree with *Greenwood* that a failure to include information does not, by itself, prove a failure to “collect, verify, analyze and reconcile” or “consider” such

²⁸ *Missouri Real Estate Appraisers Commission v. Greenwood*, No. 97-3031 RA (November 16, 2000) footnotes omitted).

²⁹ *Central Hardware Co. v. Director of Revenue*, 887 S.W.2d 593, 596 (Mo. 1994).

information. Nor does the failure to show all work, including the source of every fact, necessarily render a report inaccurate or misleading. SR 2-1 requires an appraisal to contain sufficient information to enable the intended users of the appraisal – not the general public – to understand the report properly.

On the other hand, we do not go so far as *Greenwood* to conclude that unless the USPAP Standard or Rule *explicitly requires* certain information, a failure to include it cannot be a violation. As noted before, the USPAP standards and rules are phrased very broadly and are obviously intended to provide a professional framework for appraisal practice that must necessarily be fleshed out in individual appraisals. We do, however, restrict our conclusions regarding Blaylock’s appraisals to those that may be fairly inferred from the relevant portions of USPAP.

In addition, we endeavor to read and apply the USPAP standards, if they are not otherwise defined, in accordance with the common dictionary meaning of their words.³⁰ As an example, USPAP uses the word “misleading” often, but does not define it. The word “mislead” means “to lead in a wrong direction or into a mistaken action or belief.”³¹ “Misleading” is “tending to mislead.”³² Under this definition, omitting an explanation or the reasoning for a value in an appraisal may, but does not necessarily, cause the appraisal to be misleading.

Finally, it is easy to find fault with a particular aspect of an appraisal, but the Comment to USPAP’s SR1-1(c) states: “Perfection is impossible to attain, and competence does not require perfection.”³³ Thus, an isolated mistake or omission in an appraisal may, but does not

³⁰ *State v. Trotter*, 5 S.W.3d 188, 193 (Mo. App. W.D. 1999).

³¹ Webster’s Third New International Dictionary 1444 (unabr. 1986).

³² *Id.*

³³ Resp. Ex. F at 7.

necessarily, render the appraisal misleading or not credible, and does not necessarily prove a violation of USPAP.

D. Violation of USPAP Standards and Rules

The MREAC contends that Blaylock violated USPAP Standards 1 and 2 and Standards Rules 1-1(a), 1-1(b), 1-1(c), 1-4(a), 1-4(b)(i), 2-1(a), 2-1(b), and 2-2(b)(viii) in both appraisals. The MREAC further alleges that Blaylock violated USPAP Standards 1 and 2 and Standards Rules 1-2(e)(i), 1-3(b), 1-4(b) (iii), and 2-2(b)(iii) in connection with the Rocheport appraisal. For simplicity, we will set out the specific allegations and then address each Standard and Rule.

1. The Eagle Trace allegations and their underlying facts

The MREAC bases its first allegation (“the site value claim”) on the fact that Blaylock did not include support of analysis for how she determined the site value for the Eagle Trace property. The MREAC’s expert testified that omitting analysis or support for the site value made the appraisal not credible and misleading in violation of USPAP Standards 1 and 2. Blaylock’s expert testified that there was adequate support for the site value calculation because Blaylock included other sales of listings in her work file and because properties that back onto a golf course, such as the Eagle Trace property, sell at a higher price than lots that do not.

Blaylock stated in the appraisal that the site value was \$48,500 and that “site value is based on review of recent land sales and site-to-total value ratios.”³⁴ Her work file included three lots: 321 Eagle Lakes Drive, sold for \$42,000 in 2011; 328 Eagle Point, sold for \$49,000 in 2011; and an Eagle Knoll lot on the 18th hole fairway, sold in 2005 for \$47,500.

The MREAC bases its second allegation (“the adjustments claim”) on the fact that Blaylock did not include her analysis for how she determined the adjustment values she used in her comparable sales valuation for the Eagle Trace property. Blaylock used three comparable

³⁴ Resp. Ex. A at 4.

sales: 15555 Hidden Woods Court in Hartsburg, 2012 Whitney Woods Drive in Jefferson City, and 505 Turnberry Drive in Jefferson City. She listed the adjustments that she made for each property in the appraisal. She stated in the appraisal that the summary of the sales comparison approach was in an attached addendum, and she included that addendum with the appraisal. The MREAC's expert testified that omitting analysis or support for the adjustments made the appraisal not credible and misleading in violation of USPAP Standards 1 and 2. Blaylock's expert testified that there was adequate support for the comparable sales because Blaylock described her methods and adjustments in the appraisal.

The MREAC bases its third allegation ("the golf course error") on the fact that Blaylock incorrectly stated that one of the comparable sales backed onto a golf course. Blaylock stated in the appraisal that the Whitney Woods property backed onto a golf course. That statement was wrong.

The MREAC also argues in its proposed findings that Blaylock did not adequately describe the neighborhood and that Blaylock did not accurately describe the market conditions. When an applicant for licensure files a complaint, the agency's answer provides notice of the grounds for denial of the application, or in this case the imposition of probation.³⁵ "[T]he ... answer ... serves the basic function of 'notice' in the sense of due process to the applicant."³⁶ The MREAC did not include either of these grounds in its answer. Thus, the MREAC did not provide sufficient notice of these claims to Blaylock. We therefore will not consider them.

The MREAC also alleges that Blaylock violated Rules 1-1(a) and 2-1(b), quoting the relevant language. We will address those claims in the sections below.

³⁵ *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App. E.D. 1984).

³⁶ *Id.*

2. The Rocheport property allegations and underlying facts

The appraisal at issue was for the property at 4350 Highway 240 in Rocheport, Missouri. In addition to the home, there are two outbuildings on the property: a 40 by 60-foot “shop” and a 12 by 36-foot “boat storage building.” The Rocheport property was on a 4.5-acre site.

The MREAC first alleges, and its expert testified, that Blaylock failed to provide sufficient documentation for her site value determination (“the site value claim”). Blaylock gave the property a site value of \$27,750. She stated that “[t]he site value was based on review of recent land sales and site-to-total value ratios” and that it was “based on research of lot sales in subject subdivision and other competing subdivisions.”³⁷ Blaylock included in her work file three land sales: a ten-acre property in Harrisburg, a six-acre property in Columbia, and a 14-acre property in Harrisburg.

The MREAC bases its second allegation (“the adjustments claim”) on the fact that Blaylock did not include her analysis for how she determined adjustments for the comparable sales for the Rocheport property. The MREAC’s expert testified that omitting analysis or support for the adjustments to the comparable sales made the appraisal not credible and misleading in violation of USPAP Standards 1 and 2. Blaylock’s expert testified that there was adequate support for the comparable sales because Blaylock described her methods and adjustments in the appraisal. In the appraisal report, Blaylock stated:

Adjustments were made to the sales for differences in quality of construction, due to both interior and exterior finishes, for ages and conditions, as subject is newly constructed, for room counts and sq. ft. above and below grade. Additional adjustments were applied for heating/cooling, as subject enjoys energy efficient ground source heat pump, which none of the sales enjoy, for other amenities such as garages, outbuildings, and fireplaces. After adjustments, a realistic range of value is indicated for the subject property.^[38]

³⁷ Resp. Ex. C at 4.

³⁸ Resp. Ex. C at 3.

The MREAC also alleges that Blaylock did not adequately analyze the depreciation of the outbuildings. This claim falls only under Rule 1-4(b)(iii). As the facts underlying this claim are extensive, we discuss them in the section of this decision analyzing that rule.

The MREAC stated in its proposed findings that Blaylock wrongly stated that the Rocheport property was in the Harrisburg School District. The MREAC did not include this ground in its answer. For the reasons stated previously, we therefore will not consider it.

The MREAC also alleges that Blaylock violated Rules 1-1(a) and 2-1(b), quoting the relevant language. We will address those claims in the sections below.

Finally, the MREAC alleges that Blaylock “failed to present sufficient information about the outbuilding on the subject property.”³⁹ The MREAC’s expert testified that Blaylock’s description of the outbuilding was sufficient. This allegation fails for a lack of proof.

3. Rule 1-1(a)

The MREAC alleges that Blaylock violated Rule 1-1(a) by failing to include details of how she calculated the site values for both properties and the adjustments to her comparable sales for both properties. The MREAC also alleges that Blaylock violated Rule 1-1(a) by failing to adequately investigate the Whitney Woods property before using it as a comparable sale in the Eagle Trace appraisal.

This rule requires that an appraiser “be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.” Blaylock’s appraisal reports stated that she based the site values on review of land sales and site-to-total value ratios. There is no dispute that these are recognized methods. There also is no dispute that Blaylock understands these methods. The MREAC’s expert did not find that Blaylock’s site values were incorrect. The MREAC’s expert did not testify that Blaylock did not

³⁹ Answer at ¶38(b).

correctly employ these methods. However, he faulted Blaylock for not including, in either the appraisal or the work file, her *analysis* of how she derived the values; in essence, for not “showing her work.”

The rule does not require such detail in order for a summary appraisal to be credible. Blaylock described her methodology – review of land sales and site-to-total-value ratios. She also included her data – other land sales. This satisfies the requirements of the rule to correctly employ recognized methods and techniques necessary for a credible appraisal.

With regard to Blaylock’s failure to include discussion or support for adjustments made to comparable properties, the MREAC’s expert stated that “[w]ithout the discussion or the support, in the work file or the appraisal, for the adjustments made, it does not meet this standard”⁴⁰ and that “[b]y not showing support, the analysis, the thought, the reasoning behind the adjustments, \and how and why they are made, it’s not the method that is normally used to produce a credible appraisal.”⁴¹ Blaylock and her supervisor testified to the source of her adjustment values. Blaylock testified that she arrived at these adjustments by consulting compiled data at her place of business. Blaylock testified that the business had compiled that data after years of analysis and that the “paired sales data” were extensive.⁴² We have no reason to believe that Blaylock did not understand the methods and techniques for producing credible adjustments.

However, Blaylock’s failure to explain how she determined the value of the adjustments was a failure to employ one of the recognized methods and techniques necessary to produce a credible appraisal – that of explaining her values and adjustments. Blaylock need not provide all of the mathematical calculations behind each adjustment. As with the site value analysis,

⁴⁰ Tr. 52.

⁴¹ Tr. 97.

⁴² Tr. 176.

however, she does need to identify the basis for her adjustments and the source of the data that she utilized. Her failure to do so violated Rule 1-1(a).

With regard to the golf course error, Blaylock's appraisal contained a section entitled "scope of work" that stated, in relevant part, the appraiser "must, at a minimum . . . inspect each of the comparable sales from at least the street."⁴³ The MREAC's expert testified that he could tell by driving by the property that it did not border on a golf course. We find that statement credible. Blaylock did not apply the technique that she stated she employed. This was a violation of Rule 1-1(a).

We find a violation of Rule 1-1(a) with regard to the golf course error and the failure to explain how Blaylock derived the adjustments.

4. Rule 1-1(b)

The MREAC alleges that Blaylock violated Rule 1-1(b) by failing to include details of how she calculated the site values for both properties and the adjustments to her comparable sales for both properties. The MREAC also alleges that Blaylock violated Rule 1-1(b) by committing an error in stating that the Whitney Woods property overlooked a golf course.

Rule 1-1(b) requires an appraiser to "not commit a substantial error of omission or commission that significantly affects an appraisal." The MREAC's expert testified that Blaylock violated this rule by not including the details of her calculations for the site value in both cases. The MREAC's expert did not state whether Blaylock's calculation of the site values in either report was reasonable or not. Blaylock's expert testified that the site values in the Eagle Trace report were properly calculated and that there was adequate support for the calculation in the work file because the work file contained the sale prices of other lots, and the difference in value between the appraised property and one of the other properties is because the appraised property

⁴³ Resp. Ex. A at 5.

backs onto a golf course. Blaylock's expert testified that the site value in the Rocheport report was supported by the sales in the work file.

We accept the testimony of Blaylock and her expert that the site values were accurate. Because the site values were accurate and the source of the data and the description of her methodology were in the work file, the lack of detailed calculations did not significantly affect the appraisal. Additionally, the work file contained enough information for the users (two commercial banks) to understand the appraisal and make any necessary inquiries.

With regard to Blaylock's failure to include discussion or support for adjustments made to comparable properties, the MREAC's expert testified that the lack of analysis in the Eagle Trace report and the work file violated Rule 1-1(b). The MREAC, however, failed to show how that lack of analysis affected the appraisal. The MREAC's expert did not identify any analysis that was wrong, and Blaylock's expert testified that the appraisal values were accurate.

Blaylock's omission did not "significantly affect" the appraisal, as required for a violation of Rule 1-1(b). The MREAC presented no evidence about Blaylock's adjustments in the Rocheport report. We find that the MREAC failed to prove that Blaylock's failure to explain the adjustment values violated Rule 1-1(b).

With regard to the golf course error, the MREAC's expert testified that golf course views were adjusted for in the appraisal and that Blaylock's error "affected" the appraisal. The question under the rule, however, is whether the error "significantly" affected the appraisal. The adjustment for not having a golf course view was \$5,000. The comparable value for the Whitney Woods property with that adjustment would have been \$399,260.⁴⁴ The difference between that value and the value Blaylock gave the property—\$394,260—is 1.25%, and the error was made

⁴⁴ The adjusted sale price of the Whitney Woods property was \$394,260. Resp. Ex. A at 3.

on one comparable property. We do not find that the error was a substantial error that significantly affected the appraisal.

We find no violation of Rule 1-1(b).

5. Rule 1-1(c)

The MREAC next contends that Blaylock violated Rule 1-1(c) by failing to include details of how she calculated the site values for both properties and the adjustments to her comparable sales for both properties. The MREAC also alleges that Blaylock violated Rule 1-1(c) by failing to personally inspect the Whitney Woods property. This rule requires that appraisers “not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.” “Careless” is defined as “not taking ordinary and proper care.”⁴⁵ Negligence is defined as “the failure to use that degree of skill and learning ordinarily used under the same or similar circumstances by members of [the] ... profession.”⁴⁶

The MREAC’s expert testified with respect to the Eagle Trace report that “not producing or supplying support within the appraisal or the work file as to how we arrived at a site value is careless and negligent.”⁴⁷ He made similar assertions about Blaylock’s failure to include discussion or support for the site value in the Rocheport report and adjustments made to comparable properties in both reports. We disagree. The expert did not state that any of Blaylock’s calculations were inaccurate or wrong. Blaylock described in the reports how she came to the site values and the foundational points she used. She set out the specific adjustments she made in the appraisal. Blaylock testified that she arrived at these adjustments by consulting

⁴⁵ Webster’s Third New International Dictionary 339 (unabr. 1986).

⁴⁶ *Mirth v. Regional Bldg. Inspection Co.*, 93 S.W.3d 787, 789 (Mo. App. E.D. 2002); § 334.100.2(5).

⁴⁷ Tr. 43.

compiled data at her place of business. Blaylock testified that the business had compiled that data after years of analysis and that the “paired data sales” were extensive. Blaylock based her adjustments on data that her company had acquired. She was not careless or negligent in doing so.

The golf course error is a different matter. Blaylock either did not drive past the Whitney Woods property or did not see that it did not border a golf course. Either of these actions was careless and negligent. The MLS report that Blaylock included for the Whitney Woods property stated that it is backed up to a golf course. If Blaylock relied on the MLS report instead of visually observing the property, she also was careless and negligent.

However, one such careless or negligent error does not make for a violation of Rule 1-1(c), which by its terms requires carelessness or negligence on a greater scale, such as “a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.” Thus, we find no violation of Rule 1-1(c) here.

6. Rule 1-3(b)

This rule requires than appraiser develop an opinion of the highest and best use of the real estate. The MREAC alleges that Blaylock violated this rule in developing the Rocheport property appraisal, but presented no evidence to support this allegation. Therefore, we do not consider this claim.

7. Rule 1-4(a)⁴⁸

Rule 1-4(a) requires that” [i]n developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results. (a) When a sales comparison approach is necessary for credible assignment results, an appraiser must

⁴⁸ The MREAC does not challenge Blaylock’s site value calculation under this rule.

analyze such comparable sales data as are available to indicate a value conclusion.” The MREAC’s expert again testified that the lack of discussion about how Blaylock arrived at the adjustments violated this rule. We disagree. Blaylock analyzed three comparable sales in both reports. The MREAC challenges the fact that she did not document the analysis. The rule does not require her to do so, only that she “collect, verify, and analyze” the information necessary for the analysis. Further, Blaylock testified that the adjustments came from years of paired sales data kept by her business. An appraisal need not contain every mathematical operation contained in the analysis in order to be usable. We find no violation of Rule 1-4(a) with regard to the site value analysis.

The golf course error requires a different outcome. Rule 1-4 requires that an appraiser verify “all information necessary for credible assignment results.” Blaylock did not verify that the Whitney Woods property bordered on a golf course. Blaylock violated Rule 1-4(a) with regard to the golf course error.

8. Rule 1-4(b)(i)⁴⁹

The MREAC alleges that Blaylock violated Rule 1-1(4)(b)(i) by failing to include details of how she calculated the site values for both properties. Rule 1-4(b)(i) requires that “an appraiser must collect, verify, and analyze all information necessary for credible assignment results” “in developing a real property appraisal.” Further, “when a cost approach is necessary for credible assignment results, an appraiser must develop an opinion of site value by an appropriate appraisal method or technique.” The MREAC’s expert testified, without more explanation, that Blaylock’s failure to provide support for her site value calculation violated this rule.

⁴⁹ The MREAC does not challenge Blaylock’s adjustments or the golf course error under this rule because this rule applies only to the cost approach.

We accept Blaylock's testimony and her expert's testimony that the site values were accurate. Blaylock's appraisal stated that she based the site values on review of land sales and site-to-total value ratios. There is no dispute that these are appropriate methods. The MREAC's expert did not find that Blaylock's site values were incorrect. There is no evidence that Blaylock did not collect, verify, or analyze the information. Additionally, the work file contained enough information for the users (two commercial banks) to understand the appraisal reports and make any necessary inquiries. We find that there was no violation of Rule 1-4(b)(i).

9. Rule 1-4(b)(iii)⁵⁰

The MREAC alleges that Blaylock violated Rule 1-4(b)(iii) by failing to adequately address the depreciation of the outbuildings in the Rocheport report. Rule 1-4(b)(iii) states that “[w]hen a cost approach is necessary for credible assignment results, an appraiser must: ... (iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).” Blaylock stated in the cost approach section of the appraisal report that the cost of the outbuildings was \$85,000.

The MREAC's expert testified that, according to Blaylock, the new cost of the shop outbuilding for the cost analysis was \$45,000. He then noted that Blaylock adjusted the price of comparable property number 2 by \$15,000 because that property did not have an outbuilding. The expert concluded that the value of the shop was \$15,000 and that Blaylock failed to give any reasons for the additional depreciation. He opined that Blaylock's failure to explain how she derived the adjustment of \$15,000, given the new cost of \$45,000, violated Rule 1-4(b)(iii).

The MREAC's expert's testimony is confusing for several reasons. First, the \$45,000 figure appears nowhere in the appraisal report; it came from Blaylock's prior testimony before the MREAC. Second, the cost approach looks to the cost to build a new building identical to the

⁵⁰ The MREAC does not allege that Blaylock violated this rule in preparing the Eagle Trace report. The MREAC does not challenge Blaylock's site value calculation under this rule.

property at issue (Rule 1-4(b)(ii)) and estimates the depreciation between the new cost and the present value (Rule 1-4(b)(iii)). The \$45,000 number the MREAC's expert cites is the cost approach value for the outbuilding. The sales comparison approach, on the other hand, looks to valuing a property based on the sale price of other similar properties and adjustments based on the differences between the appraised property and the similar properties. The \$15,000 the expert cites is not the value of the outbuilding. It is the value of the adjustment to a comparable property in order to make up for the fact that the property did not have an outbuilding. In other words, the two values represent two different things. The expert's testimony, therefore, was unconvincing on this point. The MREAC presented no other evidence challenging Blaylock's depreciation calculations. We find no violation of Rule 1-4(b)(iii).

10. Standard 1

We have found that Blaylock violated Rules 1-1(a) and 1-4(a) with regard to the golf course error and 1-1(a) by not explaining the source of her adjustment values. We now must determine whether Blaylock violated Standard 1 itself: “[i]n developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.”

We find that Blaylock did not violate this standard. There is no evidence that Blaylock did not “identify the problem” or “determine the necessary scope of work.” She made one error, but we find that, in its totality, the Eagle Trace appraisal report, even considering the golf course error, was credible. The Comment to USPAP's Rule 1-1(c) states: “Perfection is impossible to attain, and competence does not require perfection.”⁵¹ Thus, an isolated mistake or omission in

⁵¹ Resp. Ex. F at 7.

an appraisal may, but does not necessarily, render the appraisal not credible. The error here resulted in a 1.25% change in the valuation of a comparable sale. The use of comparable sales is an aid in the sales comparison approach. There is no showing that this single error rendered the final appraised value or the appraisal report itself not credible. We conclude that Blaylock did not violate Standard 1.

11. Rule 2-1(a)

The MREAC alleges that Blaylock violated Rule 2-1(a) by failing to include details of how she calculated the site values for both properties and the adjustments to her comparable sales for both properties. The MREAC also alleges that Blaylock violated Rule 2-1(a) by committing an error in stating that the Whitney Woods property overlooked a golf course.

Rule 2-1(a) states that “Each written or oral real property appraisal must clearly and accurately set forth the appraisal in a manner that will not be misleading[.]” “Misleading” is defined as “tending to mislead.”⁵² “Mislead” is “to lead in a wrong direction or into a mistaken action or belief.”⁵³

The MREAC’s expert stated that “[I]acking the support for the site value [in the Eagle Trace report] is misleading.”⁵⁴ He gave a similar explanation for why Blaylock’s failure to include discussion or support for the site value in the Rocheport report and the adjustments made to comparable properties in both reports violated this rule. We find that there was no violation of Rule 2-1(a) here. Blaylock provided sufficient information about how she developed the site value and what the site value was. She included in her work file the other properties that she used to compute the site values. Blaylock’s expert stated, and the MREAC’s expert did not dispute, that Blaylock’s site value calculation was appropriate. Further, Blaylock included a

⁵² Webster’s Third New International Dictionary 1444 (unabr. 1986).

⁵³ *Id.*

⁵⁴ Tr. 45.

detailed list of the adjustments she made to each comparable sale. We find no violation of Rule 2-1(a) with regard to these allegations.

With respect to the golf course error, we find that the Eagle Trace report, in total, was not misleading. Rule 2-1(a) refers to the “manner” of how the appraisal is set forth. In other words, the form of the appraisal must not be misleading. The MREAC does not contend that the appraisal was not clear or that the form of the appraisal itself misled the user of the appraisal. Instead, the MREAC’s expert relies solely on the fact that Blaylock erred in stating that the Whitney Woods property bordered on a golf course.

Inclusion of an error may, but does not have to, render an appraisal misleading. Here, the MREAC’s expert testified that the error “might have changed” the indicated value of the appraisal.⁵⁵ The MREAC’s expert never testified that the appraisal value itself was inaccurate or wrong. We conclude it did not tend to lead its intended users into a “mistaken action or belief;” thus, the appraisal was not misleading. We find no violation of Rule 2-1(a).

12. Rule 2-1(b)

The MREAC alleges that Blaylock violated Rule 2-1(b) by failing to include details of how she calculated the site values for both properties and the adjustments to her comparable sales for both properties.

Rule 2-1(b) provides that “[e]ach written or oral real property appraisal must: ... contain sufficient information to enable the intended users of the appraisal to understand the report properly[.]” The MREAC alleges that Blaylock violated this Rule by failing to document how she calculated the site values and adjustments to comparable sales in both reports. Blaylock included information in both reports about how she developed the site values, what the site values were, and what adjustments she made. She included a detailed list of the adjustments she made

⁵⁵ Tr. 62.

in each report. There was sufficient information to allow the users—in this case, two commercial banks—to understand the reports. We find no violation of Rule 2-1(b).

13. Rule 2-2(b)(iii)

Rule 2-2(b)(iii) states that “[t]he content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum: ... summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment.” The MREAC alleges that Blaylock violated this rule with respect to the Rocheport report, but introduced no evidence of how she did so. We deny this claim based on a lack of proof.

14. Rule 2-2(b)(viii)

The MREAC next contends that Blaylock violated Rule 2-2(b)(viii) by making the golf course error and by failing to include how she computed the site values and the adjustments to comparable properties. Rule 2-2(b)(viii) provides that “[t]he content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum: ... summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained[.]”

The clear language of this rule requires, in the Summary Appraisal Report, a *summary* of the information analyzed, the reasoning, and the appraisal methods and techniques. A summary, by definition, does not include a complete recitation of all of Blaylock’s calculations. Blaylock’s reports state that she based the site value on review of land sales and site-to-total value ratios. The appraisal reports contain a list of all the adjustments made to the comparable properties. However, as previously discussed, Blaylock did not describe her methodology or the source of her data in making her adjustments, nor did she provide any such summary. This is a failure to

“summarize the . . . reasoning that supports the analyses” of those adjustments. Her failure to include this explanation violated Rule 2-2(b)(viii).

On the other hand, the golf course error does not violate this rule. Rule 2-2(b)(viii) looks at the content of the appraisal report and states the requirements for the contents of an appraisal report. As discussed above, the appraisal reports contain the necessary information. The fact that Blaylock made an error may be a violation of other rules, but it is not a violation of Rule 2(b)(viii).

13. Standard 2

Standard 2 requires that “[i]n reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.” The MREAC’s expert testified that Blaylock’s failure to sufficiently explain her adjustments, as well as the golf course error, violated this standard. Because this standard speaks to “*each* analysis, opinion, and conclusion,” we consider them on an individual basis rather than their impact on the appraisal as a whole. We do not consider that Blaylock’s failure to explain her adjustments or her methodology rendered her analysis or opinions on those topics misleading, even if she should have provided further information on those topics in her appraisal. The golf course error, however, made Blaylock’s analysis of Comparable 2 for the Eagle Trace property misleading, albeit its minor impact on the appraisal as a whole. Thus, we conclude that she violated Standard 2 with respect to the golf course error only.

E. Whether the MREAC has cause to deny certification based on the USPAP violations

Section 339.532.1 states that the MREAC may “refuse to issue . . . any certificate or license . . . for one or any combination of causes stated in subsection 2 of this section.” The

MREAC alleges that Blaylock is subject to denial under § 339.532.2(7), (8), (9), and (10). We will analyze each in turn.

1. Section 339.532.2(7)

Section 339.532.2(7) allows for denial of certification when an appraiser does not comply with the USPAP. Because we have concluded that Blaylock violated various portions of the USPAP, there is cause to deny Blaylock a license on this ground.

2. Section 339.532.2(8)

Section 339.532.2(8) allows for the denial of a license based on “failure ... to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.” Reasonable diligence is defined as:

A fair, proper and due degree of care and activity, measured with reference to the particular circumstances; such diligence, care or attention as might be expected from a man of ordinary prudence and activity.^{56]}

Most of Blaylock’s errors—failure to properly document the sources for her adjustments—are minor. These errors do not show that Blaylock was not attentive or that she did not exercise a fair degree of care in performing the appraisals and do not form a basis for denial of a license under this section.

The golf course error, while significant, does not lead us to a different result. Under this subdivision of § 339.532.2, we look to the licensee or applicant’s failure to exercise reasonable diligence in preparing an appraisal report as a whole; an isolated error does not prove a lack of reasonable diligence. We do not find cause to deny Blaylock a license under § 339.532.2(8).

⁵⁶ BLACK’S LAW DICTIONARY 457 (6th ed. 1990).

3. Section 339.532.2(9)

Section 332.532.2(9) allows for the denial of a license when an appraiser shows “negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal.”

Negligence is defined as “the failure to use that degree of skill and learning ordinarily used under the same or similar circumstances by members of [the] . . . profession.”⁵⁷ Incompetence is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability, to perform in an occupation.⁵⁸ Incompetency is a “state of being” showing that a professional is unable or unwilling to function properly in the profession.⁵⁹

This subdivision of § 339.532.2 provides cause to discipline upon a finding of negligence or incompetence in developing *an* appraisal, in preparing *an* appraisal report, or in communicating *an* appraisal; it does not require an assessment of overall performance. It does, however, require that we look at the *appraisal at issue* as a whole.

Despite the fact that we have found minor deficiencies in Blaylock’s appraisals, when we view each appraisal as a whole, we do not find Blaylock was negligent or incompetent in developing either appraisal. We find no cause for denial under § 539.532.2(9).

4. Section 339.532.2(10)

This section allows denial for violating any statutes or regulations applying to real estate appraisers. Section 339.535 requires real estate appraisers and appraiser trainees to comply with USPAP. As described above, we have found that Blaylock failed, in several minor ways, to comply with USPAP standards and rules. We find cause for denial under § 339.532.2(10).

⁵⁷ *Mirth*, 93 S.W.3d at 789.

⁵⁸ *Tendai v. Missouri State Bd. of Reg’n for the Healing Arts*, 161 S.W.3d 358, 369 (Mo. 2005).

⁵⁹ *Albanna v. State Bd. of Reg’n for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. 2009)

F. Discretion

Under § 324.038.1, when there is cause to deny a license, a licensing board such as the MREAC may, at its discretion, issue a probated license. It may also deny a license, or issue it without restrictions. Blaylock's appeal vests in this Commission the same degree of discretion as the Board, and we need not exercise it in the same way.⁶⁰

Our task, as defined by the court of appeals in *Missouri Real Estate Appraisers Comm'n v. Funk*⁶¹ is to determine whether, at the time of the hearing, Blaylock met the requirements for an unrestricted certification as a real estate appraiser.

As the court stated in *Funk*:

Though the issue of whether Funk demonstrated competence and knowledge in his commercial appraisals was the rationale for the denial of his general real estate appraiser's certification by the MREAC, the scope of the AHC's hearing was not restricted to this issue. **Instead, the AHC was entitled to conduct a fresh inquiry into whether Funk was deserving of certification, based upon the entire record of relevant admitted evidence pertaining to certification** [emphasis added]. *Dep't of Soc. Servs., Div. of Med. Servs. v. Senior Citizens Nursing Home Dist. of Ray County*, 224 S.W.3d 1, 15 (Mo.App. W.D. 2007) (“The commission actually steps into the department's shoes and becomes the department in remaking the department's decision. This includes the exercise of any discretion that the department would exercise.”). Thus, the inquiry of the AHC was whether, **at the time of the AHC hearing**, Funk met the requirements for general real estate appraisal certification as outlined in sections 339.511.3 and 339.535 [footnotes omitted].⁶²

From the time Blaylock submitted her appraisal log to the MREAC until the time of our hearing, she had performed almost 200 additional appraisals. She had also taken additional classes in USPAP standards. McDannold testified that since Blaylock had testified in front of the MREAC, she has noticed that Blaylock's appraisals had changed to include more analysis.

⁶⁰ *Finch*, 514 S.W.2d at 614; *Trueblood v. Board of Regis'n for the Healing Arts*, 368 S.W.3d 259, 264-67 (Mo. App. W.D., 2012).

⁶¹ 306 S.W.3d 101 (Mo.App.W.D. 2010).

⁶² *Id.* at 105.

Blaylock also testified at the hearing that she now includes more information in her appraisal reports than she did previously, and does more research and investigation.

Many of the terms of probation the MREAC wishes to impose on Blaylock are not tailored to address its concerns about her compliance with the standards of USPAP. For example, there is no evidence in the record that there is a danger of her violating the drug laws of this state, or that there is any need for unannounced visits from the MREAC's representatives.

Other terms, such as the requirement that Blaylock not supervise real estate appraisals for the duration of her probationary period, are more tailored and logical. We must determine whether, based on the evidence in the record of Blaylock's competence and ability to comply with USPAP as of the date of the hearing, such terms are necessary to protect the public interest, for such is the purpose of the professional licensing laws.⁶³

We conclude that Blaylock substantially complied with the USPAP in her appraisals and is entitled to an unrestricted certification. She made some errors in developing the Eagle Trace and Rocheport appraisals, but the evidence shows that she has learned from those errors and improved her practices. This is a close case, because at the time of the MREAC's decision to place Blaylock on probation, such a probationary period and further supervision might have been warranted. But, under *Funk* and *Trueblood*, we are allowed to consider whether, at the time of the hearing, her qualifications and competence have improved since the MREAC's initial decision. As discussed, we conclude that they have. We therefore grant Blaylock's request for an unrestricted certification upon her payment of all necessary fees to the MREAC.

SO ORDERED on July 23, 2013.

/s/ Karen A. Winn
KAREN A. WINN
Commissioner

⁶³ *Lane v. State Comm. of Psychologists*, 954 S.W.2d 23, 25 (Mo. App. E.D. 1997).