

BEFORE THE STATE OF ALABAMA  
REAL ESTATE APPRAISER BOARD

IN THE MATTER OF THE  
COMPLAINT AGAINST:

CLAUD CLARK, III

Respondent.

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NO: AB 16-15

SUMMONS

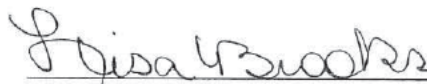
This service by certified mail of this summons is initiated by the State of Alabama Real Estate Appraisers Board pursuant to §41-22-12, Code of Alabama, 1975 and §780-X-14.04, State of Alabama Real Estate Appraisers Board Administrative Code, 1998 ed.

NOTICE TO:

Claud Clark, III  


This Notice and the Complaint which is attached to this Summons is important and you must take immediate action to protect your rights. You may, but are not required to mail or hand deliver a written answer either admitting or denying each allegation in the complaint to Neva C. Conway, Assistant Attorney General, the attorney for the Board, whose address is P.O. Box 304355, Montgomery, AL. 36130-4355. The original of the answer must be filed with the Executive Director of the State of Alabama Real Estate Appraisers Board, P.O. Box 304355, Montgomery, AL. 36130-4355.

Done this the 11th day of January, 2019 in Montgomery, Alabama.

  
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LISA BROOKS  
EXECUTIVE DIRECTOR

BEFORE THE STATE OF ALABAMA  
REAL ESTATE APPRAISER BOARD

IN THE MATTER OF THE )  
COMPLAINT AGAINST: )  
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CLAUD CLARK, III )  
 ) NO: AB 16-15  
Respondent. )

NOTICE OF HEARING  
AND COMPLAINT

The State of Alabama Real Estate Appraisers Board (hereinafter "Board") hereby notifies you that it will hold a hearing pursuant to §34-27A-5, §34-27A-21, §34-27A-22, and §41-22-12, Code of Alabama, 1975, on the **21st day of March, 2019 at 11:00 o'clock A.M.** in the RSA Union Building , 100 North Union, 3<sup>rd</sup> Floor Conference Room (Suite 300), Montgomery, AL. 36104, to determine whether disciplinary action should be taken against you for the reasons set forth below.

Legal Counsel will represent the Board at the hearing and you are entitled to hire an attorney at your own expense to represent you at the hearing. You and the Board's attorney will have the opportunity to call witnesses and present evidence. You and the Board's attorney may, upon application, obtain pre-hearing discovery in compliance with §780-X-14.05 State of Alabama Real Estate Appraisers Board Administrative Code, 2007 ed. [hereinafter Administrative Code, 2007 ed.]. This hearing will be conducted before a Hearing Officer or Administrative Law Judge. If you fail to appear at the hearing, you may be subject to an Order of Default and the Board, pursuant to §41-22-12(c), §34-27A-20, and §34-27A-22, Code of Alabama, 1975, may proceed with the hearing in your

absence and render its decision as to whether and in what manner you are to be disciplined. The hearing will be conducted in compliance with the evidentiary and procedural rules of §41-22-13, Code of Alabama, 1975, and §780-X-14.06, Administrative Code, 2007.

If found guilty of one or more of the charges alleged in the complaint herein described, the Board may impose any or all of the disciplinary penalties set forth in §34-27A-5(b)(10) and §34-27A-20(c ), Code of Alabama, 1975, including but not limited to probation, suspension, or revocation of your license to practice as a Certified General Real Property Appraiser, or otherwise as provided by law.

#### COMPLAINT

(1) The State of Alabama Real Estate Appraisers Board has considered allegations set forth in this complaint and has determined that probable cause exists to warrant the filing of a written complaint.

(2) Respondent is duly licensed as a Certified General Real Property Appraiser in the State of Alabama, holding License No. G00024 and was so licensed at all times relevant to the facts complained of herein.

(3) Respondent's appraisal report dated March 18, 2015, of a conservation easement, Black Bear Enterprises Tract 579.79 located at Saraland, Mobile County, Alabama contains violations of USPAP, 2014-2015 Edition, the Alabama Real Estate Appraisers Board Administrative Code and Chapter 27A of Title 34, Code of Alabama, 1975 as follows:

- a. The Discounted Cash Flow Analysis (DCF) method was used for "Before" valuation, contrasted with the Sales Comparison method used for the



“After” valuation. DCF is recommended to be a secondary method for land analysis to support a primary analysis based on verified and comparable sales transactions (evidence of demand) which in this case would be in the Before valuation. The DCF presented appears to overstate value due to lack of deducting time to approve, construct, market and close lot sales. Minimal evidence of demand via absorption in comparable subdivisions and no specific economic, (jobs), population and household growth was presented. The report states that a search was undertaken for appropriate “Before” land sales and “did not find any”. This is inconsistent with the data presented on comparable residential subdivisions active in the local market which would indicate past sales of these properties. Four of the Five “After” easement land sales indicated the property owner as the seller, and two of those sales indicated sales to related parties. P. 69 “built up” discount rate does not reflect current methodology and the rate relied upon appears inadequately supported. The report refers to value “estimate” throughout. The correct 2015 USPAP terminology is “value opinion”. The assumptions of economic feasibility of building extensive access roads, supporting inefficient non-contiguous development, apparent crossing of wetlands and floodlands (supplied maps are unclear), constructing stretches of road with no homes along it (because of extending across wetlands), constructing long cul-de-sacs with no second access, and less than one-acre lots, which would convey that public sewer can be extended in this layout, are not supported by factual evidence in the appraisal report nor evidence of sufficient housing and

economic demand data. **Ethics Rule, Standards Rule 1-1(a), Standards Rule 2-2, USPAP, 2014-2015 Ed.**

- b. P. 42 Says appraiser performed a diligent search for 'Before' sale comps for development properties; 'did not find any'. This shows the lack of new housing demand 'for development land'. The report later goes on to present "unencumbered sales" as described below. "After" sale comps analysis begins on p. 93. Initially four sales are analyzed. Sale 3 sale writeup is missing from the report. Page 107 says these sales are to analyze the "unencumbered fee value of the property..." However it was previously stated that no sales of the unencumbered "Before" value were found and this report section is labeled "After Value". The sales are in Florida and Georgia. The sale information on the grid for these sales, the property size and the dollar amount paid are all different on the grid. This section of the analysis is not correct and is misleading. Another section of valuation has 14 sales presented although the narrative on p. 153 says 17 sales. These are "Values assigned by the grantors prior to encumbrance" and percentage diminution by the conservation easements is attempted to be analyzed. After extensive sale writeups, a chart showing percent diminution estimated for each sale is presented. Percent diminution is a method discouraged by the conservation easement appraisal literature and recommended valuation methods. Through analysis of these sales, a median price per acre for the 14 sales is \$1,484 per acre. There is no sale adjustment grid presented. The appraiser then concludes a \$1,500 per acre from the median sale price. He then applies a

\$500 per acre unit price to estimate the encumbered value of the subject property. There is no explanation as to how he arrived at \$500 per acre "After". The final "After" value opinion is not rounded and reflects \$289,895. This entire "After" valuation section of the report is considered misleading. It is not the correct methodology and the voluminous number of out-of-state sales and percentage diminution narrative is confusing and not relevant to the valuation. Also, the first four sales (one writeup missing) do not match the grid information and contains material errors. **Ethics Rule, Standards Rule 1-1(a), Standards Rule 2-1, USPAP, 2014-2015 Edition.**

- c. No consideration of availability of sewer/public utilities or consideration of cost and time to extend to the property. No consideration of cost and time to construct "spine" roads linking the proposed subdivision to existing road. No time deducted for approvals of construction of any other site improvements such as public utilities/electric lines. Highest and Best Use incorrect as of date of value/donation. No approvals. Wet soil issues not addressed. P. 61 HBU "Demand in the city of Saraland for the developed residential properties appears to be on the rise. Subject NOT 'developed'. This statement is misleading. "The subject is deemed financially feasible". p. 61 HBU section says property is accessible from multiple public roads. This is misleading because it appears that roads need to be constructed to connect property with existing roads and also roads need to be constructed to provide frontage for the future lots. p.60 says "Black Bear Enterprises LLC has the rights to develop 131 residential lots". However, there are no



approvals described. Demand statements are minimal, not adequate and not supported by any factual evidence. Minimal comparable project absorption data presented and not evidence presented that additional supply of residential lots presented by the subject would enjoy demand for those lots. "Road Access" summary P. 12; location says North of Martha Alley Drive Forest Ave Roads, east of Celeste Road and just west of I-65. In other words, no direct road access. p.61 says property located off Martha Allyn Drive and Deer Run Drive in Saraland, AL 36571 p. 14 vs. p. 16; road access- inconsistent statements. p. 14; map of access does not match p. 16 map of access Local Data Section-conflicting numbers, gross math errors such as population increase 686%. P. 14 vs. p. 16 road access point. Concept plan does not match road access point on p. 16 GIS map. p. 30-34: photos not marked at all. "Key" maps p. 17-29 are not marked. Does not show where separate lots are and how they are contiguous or not. Maps p. 21-33; Bottom half of p. 21 and rest of map, diagrams, photos and floodmaps are not marked as to subject property and some are unreadable as to road names. No marked wetlands map. Photos p. 34-38: Not marked, don't convey subject location and are misleading. P. 44; vague/inaccurate: "If there is a parent parcel, the appraisal of the Parent Parcel or Larger Parcel can be developed by a market comparison..." misleading P. 7-acreage chart under taxes- do not understand. p. 46- says Saraland school enrollment increased from 1,518 to 2,525 or 686%. It's actually 66.3%. It is misleading to allow that area plus not supply a date reference for this statistic. p. 52 the

“Saraland cost of living compares favorably to other southeastern states. The subject areas cost of living rate is 85.5 on a scale of 100”. There is no explanation of source of this statement or what it means. p. 50: “most subdivision developers are looking for an adequate sized parcel with adequate utilities available that can be developed into lots that could then be sold to homeowners”. This is an unsubstantiated statement. Comparable “After” Sales p. 93. Sale 3 writeup missing from report. Sale 1 says closed 1995, Sale date on Grid is 2007. Sale 1 says 125 acres, has 117 acres on grid. The sale price on writeup is not the sale price on the grid. Sale 2 says 200 acres, has 112 acres in writeup but 200 on the grid. The sale price on the writeup is not the sale price on the grid. Sale 3 writeup missing from report. Sale 4 says 537 acres, has 56 on the grid. The sale price on the writeup is not the sale price on the grid. **Ethics Rule, Standards Rule 1-1(b), Standards 2-1, USPAP, 2014-2015 Edition.**

- d. P. 12; location says North of Martha Alley Drive Forest Ave Roads, east of Celeste Road and just west of I-65, in other words, no direct road access. p.61 says property located off Martha Allyn Drive and Deer Run Drive in Saraland, AL 36571 P. 14,18: Development yield plan, 131- 15,000 SF lots, 100 ft. wide. Most lots strung along approximately 1.5 miles of cul-de-sac road, at fringe of flood hazard area. Secondary area to left of site is more feasible just based on length of cul-de-sac. Significant amount of new roadway must be constructed to provide this access and there is no estimated cost for such construction. No secondary ingress and egress for either



development site. 15,000 SF lots typically required public sewer. Development Yield Plan makes comment “this is a conceptual development plan and is subject to change. ....”one possible development scheme for the subject”. “there is no representation that this property will be developed as shown. “Wetland and flood plain data provided by the owner”. Road access; p. 61. Access from multiple public roads—If true, not reported how close to subject. P. 17-20 “GIS Maps”- of sections of site do not identify or label sections or show how they go together, no idea what these maps show. Same issue with Flood Maps on p. 21-25 and more of the “GIS Maps” p. 26. Identification of the subject is not accomplished and a report user does not see where the property is or the relevant sections. There is limited use of Exhibits, they are not to scale, not a survey. The Standard “Comment”: “When appraising proposed improvements....or other documentation sufficient to identify the extent and character of the proposed improvements”: Not clear if proposed improvements include public water and sewer. P. 57 says property access is “good”. Site located just north of Forrest Avenue, just west of I-65. Access is via an easement just west of Love Drive along Forrest Avenue. This is not described in detail and is typical inadequate access for 100+ dwelling units. p. 60 Has an “Environmental Checklist”. Under it is a statement declaring no liability for failure to detect or identify any environmental factors”. “The Environmental Checklist, as well as this entire report, must not be considered...an environmental site assessment of the subject”. p. 61 says part Zone A flood

area. However residential lots are said to be in Zone X. Need legible map to confirm- map supplied does not identify subject property. p. 57 says the public roads in the area are “two lanes primarily comprised of asphalt and tar and chip”. This description is inadequate to identify actual access. p. 59 says that “all utilities are currently available or can be made available to the property”. This is not documented, reliable information. **Ethics Rule, Standards Rule 1-1(b) and Standards Rule 2-1, USPAP, 2014-2015 Edition.**

- e. Whether “Hells Swamp Mitigation Bank” adjoining the property Will be an encumbrance is not addressed. **Ethics Rule, Standards Rule 1-1(a), Standards Rule 2-1, USPAP, 2014-2015 Edition.**
- f. p. 58 has three statements regarding assumptions regarding flood information, soils, and future surveys or title searches presented in the report. The statements regarding flood info and future surveys say that if different information becomes available, the appraiser reserves the right to amend this report. None of these three statements are presented as an Extraordinary Assumption. The flood information presents the subject as being in both the X (outside of flood zone) and A (inside of flood zone areas). No differentiation on the flood map as to these different areas. Elsewhere in the report, it is stated that the homes are in the Zone X area. This is inconsistent information that is not credible or reliable. P. 11- Assumptions for Proposed Improvements paragraph : “improved subject property does not yet, in fact, exist as of the date of appraisal”, P. 13:

Assumptions and Limiting Conditions ALC: Has extreme contingent language” including the following and other excerpts below: “No responsibility is assumed for the accuracy of information furnished by the client, his designee, or public records. We are not liable for such information or the work of possible subcontractors. Be advised that some of the people associated with the Real Estate Appraisal Office of Clark-Davis PC and any associates possibly signing the report are independent contractors. The comparable data relied upon in this report has been confirmed with one or more parties familiar with the transaction and/or public records, and/or some other form of affidavit; all are considered appropriate for inclusion to the best of our judgment and knowledge.” P. 12: “grantor reserves unrestricted right to sell credits or entitlements or interests in the Protected area to carry out the purpose of a wetlands mitigation bank”. Does not appear these rights were valued and deducted from the easement value. p.14: Land appears firm but exact character of the soil and subsoil is not known.” Assumes “all permits have been obtained”; “full compliance with all environmental ordinances “. Misleading because property not appraised “as is” as of the value date. p.15: “Assumptions for Proposed Improvements: “user of report is fully aware that improved property does not in fact exist as of the date of appraisal”. Analysis based on a hypothesis. Certain events need occur, as disclosed in the report, before the property appraised with proposed improvements will in fact exist...” P. 15: “Words used herein whether in the singular and plural shall be considered both.....” P. 10:”The land or soil



of the area being appraised appears firm; however the exact character of the soil and subsoil is not known. The appraiser does not warrant against problems arising from soil or subsoil conditions”. **Ethics Rule, Standards Rule 1-1(b), Standards Rule 2-1, USPAP, 2014-2015 Edition.**

- g. P. 38 Due to special topography, some properties ‘lend themselves well to development’ but ‘sales may be limited because of physical or locational aspects’. It is unclear if this includes subject. Per p. 46. “Growth patterns”: Describes a proposed “Mobile Infirmary” development at the NW corner of I-65 and State Rt 158. Also Adjacent 40 acres with “retail”. There is nothing on Population, Income and Employment growth to support this statement. p. 53 . Discusses the county economy and major employers. No jobs figures are provided. Shipbuilding, aircraft assembly and steel production dominate. Several companies have plans to expand. The Carnival cruise line terminal has been vacant since 2010. p. 65 says “Demand in the City of Saraland for the developed residential properties appears to be on the rise”. This statement is not supported in the report by any clear jobs, population or household trends. p. 66 says “Competing developed properties have sold out or are enjoying strong sales”. The subject is raw land where roads and public utilities don’t exist. It is not comparable to “developed properties”. P. 67 Presents statistics in a Market Profile which indicate that as of 2013, there is an excess supply of 390 dwelling units. Population 13,803 /2.51 persons per household = 5,500 households (demand). There are 5,890 housing units = 390 units market oversupply. p. 70 Has charts of sold units in four

competing subdivisions. The total sales for all four have been 26 to 33 per year over the past three years (demand). The supply via expected new building permits is expected to double the 2013 building permits which were approximately 39. There is no demand increase. **Ethics Rule, Standards Rule 1-1(b), Standards Rule 2-1, USPAP, 2014-2015 Edition.**

- h. P. 42 Says appraiser performed a diligent search for 'Before' sale comps for development properties; 'did not find any'. This shows the lack of new housing demand 'for development land' "After" sale comps analysis begins on p. 93. Initially four sales are analyzed. Sale 3 sale writeup is missing from the report. Page 107 says these sales are to analyze the "unencumbered fee value of the property..." However it was previously stated that no sales of the unencumbered "Before" value were found and this report section is labeled "After Value". The sales are in Florida and Georgia. The sale information on the grid for these sales, the property size and the dollar amount paid are all different on the grid. This section of the analysis is not correct and is misleading. Another section of valuation has 14 sales presented although the narrative on p. 153 says 17 sales. These are "Values assigned by the grantors prior to encumbrance" and percentage diminution by the conservation easements is attempted to be analyzed. After extensive sale writeups, a chart showing percent diminution estimated for each sale is presented. Percent diminution is a method discouraged by the conservation easement appraisal literature and recommended valuation methods. Through analysis of these sales, a median price per acre for the 14 sales is \$1,484 per

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- i. DCF analysis is used for "Before" analysis and Sales Comparison for "After" analysis. DCF should be supported by sales transactions (evidence of demand) in the Before valuation. DCF has overstated value due to lack of deducting time to construct and commence sales and no evidence of demand via absorption in comparable properties. p.68 DCF makes deduction of \$12000/lot for private roads (no support); doesn't include spine roads, side roads or access roads. There is no discussion whether building substantial roads is financially feasible. DCF assumes density based on lots; there is no discussion whether there is any possibility of public water and sewer. The development plan is strung out on long stretches of road that must be built, and utilities extended- it is not definite if financially feasible DCF- no deductions for development approvals, security expense, insurance/holding



costs, contingencies, etc. DCF has no time allocated for obtaining development approvals, marketing the project, constructing site infrastructure and beginning to sell lots. P. 72 DCF-Absorption analysis and DCF figures do not consider about competing supply although it is mentioned that building permits are expected to double compared to the past three years of absorption data presented. - comparable absorption says will be 5 year sell out; Yr 1= 30, Yr 2 = 30, Yr 3= 30, Yr 4= 24, Yr 5= 17 No evidence of supportable demand. No employment data, household growth, recent population growth. Statistics presented from Site to Do Business show an existing housing oversupply. P. 72 DCF Says 579.79 ac. total; 89.1 ac developable, avg 0.63 ac per lot. **Ethics Rule, Standards Rule 1-1(b), Standards Rule 2-1, USPAP, 2014-2015 Edition.**

### **CHARGES**

#### **COUNT ONE**

The Board charges that each of the facts alleged in paragraphs 3a. through 3i. above constitute one or more violations of §34-27A-20(a)(5), Code of Alabama, 1975.

#### **COUNT TWO**

The Board charges that each of the facts alleged in paragraphs 3a. through 3i. above constitute one or more violations of §34-27A-20(a)(6), Code of Alabama, 1975.

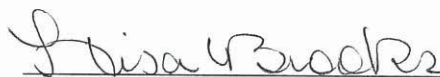
#### **COUNT THREE**

The Board charges that each of the facts alleged in paragraphs 3a. through 3i. above constitute one or more violations of §34-27A-20(a)(7), Code of Alabama, 1975.

#### **COUNT FOUR**

The Board charges that each of the facts alleged in paragraphs 3a. through 3i.  
above constitute one or more violations of §34-27A-20(a)(8), Code of Alabama, 1975.

Done this the 11th day of January, 2019 in Montgomery, Alabama.



LISA BROOKS

ACTING EXECUTIVE DIRECTOR

ADDRESS OF BOARD:

P.O. Box 304355  
100 North Union Street, Suite 370  
Montgomery, Alabama 36130-4355

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