

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

Zoom/Teleconference call Meeting Minutes – October 25, 2022

Chairperson Kost called the meeting to order at 1:00pm. Roll call was taken.

Board Members present online: Chairman Corey Kost, Vice Chair Matt Schlenvogt, Brock DesLauriers, Nikki Mertz, and Joe Sheehan

Staff Present: Jodie Campbell and David Campbell

Legal Counsel: Allyson Hick

Investigations:

Cases 218-186 and Case 218-187: Chairman Kost questioned Legal Counsel as to whether a motion is required to recuse himself from discussion and voting on the Weber Cases. Allyson Hicks, Legal Counsel for the Board, stated no additional motion is necessary as motions to this effect have been made at previous meetings. Chairman Kost turned the meeting over to Vice Chair Matt Schlenvogt.

Vice Chair Schlenvogt requested Legal Counsel provide an overview as to how the Board should proceed with the Weber Cases. Legal Counsel explained the Board has three options:

- 1) Accept the Administrative Law Judge's (ALJ) Recommended Findings of Fact, Conclusions of Law and Order of June 6, 2022. The ALJ did not include penalty findings in this order. Therefore, even if the Board agrees with everything in the Recommended Order, the Order will have to be modified to include a Penalty Provision.
- 2) Decline to adopt the Order and draft a new Order.
- 3) Meet in the middle. In this option, the Board could agree with portions of the Order, but find areas where they disagree with the findings. The Board would make the modifications and provide specific notation as to why they disagree those specific areas.

Legal Counsel further explained, the ALJ makes findings based on the testimony and documents included in the record. If the Board modifies any portion of ALJ Recommended Findings, the Board has to explain why the modification and provide a very thorough cohesive explanation; here is the change and here is what it is based on. Legal Counsel cautioned the Board, in coming up with a Penalty Provision, the Board can consider anything in the record. However, if it is not in the record the Board cannot consider it.

Legal Counsel recommended the Board review the Order page by page and decide whether or not you agree with what is in there or if there are specific things you want to change.

Joe Sheehan questioned whether Ron McLean, Legal Counsel for the Weber's could speak. Board Legal clarified this is not a hearing, this is a public meeting. Mr. McLean and his Client have the right to hear the Board's discussion. Just like all other public meetings they can observe but not participate.

Mr. McLean responded that he has a right to a hearing on what the Board has determined. Board Legal responded, if Mr. McLean would like to appeal the outcome he has that right to do so under NDCC 28-32. However, that hearing would not occur at this meeting. Mr. McLean reiterated that he has a right to a hearing. Board Legal Counsel further responded, the minutes will state Mr. McLean has lodged his objections that he would not be heard on the penalty provisions at this Board meeting.

Legal Counsel turned the meeting back to Vice Chair Schlenvogt, recommending the Board go through the Order page by page. If Board members object to any specific points in the Findings of Fact, note the change and provide an explanation. The end document will be the Order of the Board.

Board members began discussion of the Order:

Legal Counsel was directed to address typographical errors throughout the Order.

#54 pages 17-18

- There is no mention in the Order that Corey Kost has been recused from discussion and voting. A statement clarifying Mr. Kost's non-participation should be included in the Order.
- Remove ".but it is something the Board should be cognizant of in crafting penalty" (in last sentence) Board members question whether this statement belongs in the finding of fact. Legal Counsel was in agreement, it does not appear to be a fact. The ALJ finds there is no evidence of bias, furthermore he finds the appearance of bias is alleviated based on the thorough field review completed by David Campbell.

#7 b page 21:

- The Board DOES agree with the ALJ in that the highest and best use is a violation. However, the Board does NOT agree that is it a "minor" violation. The highest and best use provides a foundation for the market value of the appraisal; it determines the scope of work. If changed, it functionally changes the qualifying comparables and actual data used. It should NOT be considered a minor violation.

#15 page 25:

- USPAP requires appraisal reports include a signed certification identifying whether the appraiser inspected the property. Jerome Weber did not make a statement that he did not inspect the property. The ALJ found this to be a minor violation. The Board does NOT agree that this is a minor violation. This is a violation of USPAP, Standards Rule 2-3a. Board members were in agreement that Not inspecting a property could definitely have an impact on the appraisal assignment results. Furthermore, if the appraiser does not clearly identify on the certification page what he has done in the appraisal, this can call into question the validity of the appraisal and the value. While it is technical violation, the Board does Not consider it a minor violation.

Penalty-pages 26-28:

- The ALJ declined to make any recommendation on penalty. However, the ALJ provided observations. Legal Counsel clarified that the document before the Board is a Recommended Findings of Fact, Conclusions of Law, and Order. Legal does not feel the ALJ's observations are appropriate for this type of legal document as they are not a Findings of Fact or a Conclusions of Law, but rather a directive to the Board. Legal Counsel recommended the Board strike the ALJ's Observations from the Order. But Legal Counsel encouraged the Board to take the observations under consideration when coming up with a penalty.

Mr. McLean interjected. Mr. McLean would like it on record that at the meeting of August 23, 2022 the Board made the decision to send the Order back to the ALJ. Board Legal Counsel again reminded Mr. McLean to refrain from oral argument as this not a hearing.

Board discussion proceeded. Legal Counsel reminded the Board that they cannot discuss the Appraisal Foundation Voluntary Disciplinary Matrix, the previous offers the Board made to the Weber's, or any offers rejected by the Weber's, as these documents are not part of the Record. At a previous meeting, the Board decided they were not going to have a hearing to include the Appraisal Foundation Voluntary Disciplinary Matrix. Therefore, the Board has to disregard this document and only consider the Record. The Record does include the Board's prior disciplinary Cases and actions (attachment E to the Weber's findings).

Legal Counsel further explained, the penalty has to be based on the record and the facts. What were the violations? She encouraged the Board to consider the various factors the ALJ discussed in his observations:

- The Board should be consistent with previous cases.
- Has the Board taken previous disciplinary action on the Weber's licenses?
- What does the Board hope to achieve through the disciplinary action?
- Are the errors negligent errors or were they intending to mislead?
- Consider the fact that Kelly Weber and Jerry Weber are two different appraisers. They may have different violations and different levels of involvement, and the penalty should be drafted to each individual based on their own involvement

Again, Mr. McLean interjected to request a hearing. Legal Counsel reiterated that this request has already been noted.

Board discussion continued. Board members discussed past Cases and disciplinary actions taken. Vice Chair Schlenvogt commented that while the Board should consider historical cases, past actions are not the end all or be all, as each case is unique.

Board members were in agreement that the violations against Jerome A. Weber and Kelly Weber did not rise to the level of revocation. However, Board members were in agreement the violations against the Weber's did rise to the level of suspension, a probationary period, education and a fine. A detailed discussion took place.

Suggested courses included a 15-hour tested highest and best use course, a 15-hour tested sales comparison approach course, a 15-hour tested USPAP course and a course relating to reconciliation and report writing. Legal Counsel indicated the Board can do additional research on specific educational courses and add them to the Order at the time of final approval.

Vice Chair Schlenvogt made a motion to take the following disciplinary action against Jerome A. Weber:

- 1) A 90-day suspension.
- 2) A 24-month probationary period. Jerome Weber will be required to submit a monthly log of all appraisals he has completed. A selection of reports will be made from this log for review for compliance with USPAP. If additional valid complaints are found within this 24-month period the Board could consider further disciplinary action.
- 3) A fine of 50% of the review and administrative costs.
- 4) Education to be determined.

Brock DesLauriers seconded the motion. Vice Chair Schlenvogt called for the vote. Brock DesLauriers, Joe Sheehan, Nikki Mertz, and Matt Schlenvogt all voted yes. Corey Kost abstained from voting. The motion carried.

Vice Chair Schlenvogt made a motion to take the following disciplinary action against Kelly. Weber:

- 1) A 60-day suspension.
- 2) A 12-month probationary period. Kelly Weber will required to submit a monthly log of all appraisals he has completed. A selection of reports will be made from this log for review for compliance with USPAP. If additional valid complaints are found within this 24-month period the Board could consider further disciplinary action.
- 3) A fine of 50% of the review and administrative costs.
- 4) Education to be determined.

Nikki Mertz seconded the motion. Vice Chair Schlenvogt called for the vote. Nikki Mertz, Brock DesLauriers, Joe Sheehan, and Matt Schlenvogt all voted yes. Corey Kost abstained from voting. The motion carried.

Legal Counsel will draft the Order and the Board will have the opportunity to review the draft and make the final approval.

Vice Chair Schlenvogt turned the meeting back to Chairman Kost.

Future Meetings:

November 4th 9:00AM

November 10th 2:00PM

Chairman Kost closed the meeting at 3:07pm.

Respectfully Submitted,

Jodie R. Campbell