

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

Zoom/Teleconference call Meeting Minutes – December 1, 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 Hicks and Josh Amundson

Josh Amundson, with the Attorney General's office has been assigned as new Legal Counsel to the Board. On behalf of the Board Chairman Kost welcomed Mr. Amundson.

Investigations:

Case 219-191 and 219-192: At the meeting of April 19, Chairman Kost disclosed a conflict of interest with the respondent, Chris Chase. At that meeting the Board voted to recuse Mr. Kost from discussion and voting on Cases 219-191 and 219-192. Based on this recusal, Chairman Kost turned discussion on these Cases over to Vice Chair Matt Schlenvogt.

The Board Reviewer has requested to be recused from further discussion to avoid the perception of conflict of interest. No motion is required.

At a previous meeting the Board moved to elevate Case 219-191 and Case 219-192 to a complaint. The Board also moved to offer Mr. Chase a Settlement Agreement. Mr. Chase forwarded a request to address the Board. At the meeting of 9/30/22, Mr. Chase addressed the Board with concerns relative to the Reviewer's findings. At that meeting Legal Counsel requested Mr. Chase address his concerns in writing.

In a letter dated October 12, 2022, Mr. Chase addressed his concerns. Mr. Chase is requesting the Board reverse the complaint against him. He believes a number of the allegations filed against him are unfounded and/or not violations of USPAP. Mr. Chase is in attendance and provided comment:

The Reviewer has summarized eight USPAP violations in his review. Mr. Chase indicated he disagrees with the Reviewer's findings and addressed a few points detailed in the review:

- Improper use of restricted report: The property owner was not a client nor an intended user. The fact that the property owner was given a copy of the appraisal was beyond his control. Mr. Chase confirmed that he did state in his report that the intended use of the appraisal was for internal decision and the value should not be used for any other purpose.
- Fee Simple: Throughout the review, there are statements that an appraiser cannot appraise the building without the land. Mr. Chase does not agree and referenced Standards 1-2 (e) line 552 and 553.
- No highest and best was addressed. He did not develop a highest and best use as he did not see the need to determine a highest and best use when just dealing with the value of an improvement. Mr. Chase stated that no highest best use was developed, therefore it was not reported.
- Reviewer challenged his competency: The Reviewer referenced outdated definitions. Mr. Chase does not feel it is a USPAP violation to reference an outdated definition. He clarified that it was not the definition that was outdated, but the new edition. He further explained that the definitions were the same in the two different editions.
- Certification: The Reviewer stated that the certification indicated assistance by another appraiser, but a description of the extent of assistance was not included. Mr. Chase confirmed "yes" there was assistance by another appraiser, and this was stated in the certification. But in his research, he found that it was not until a later edition of USPAP that "describing the extent of the assistance" was required. He felt he should be held to the Standards applicable at the time the appraisals were completed.
- Outstanding Offer of Settlement. He requests a condition of dismissal based on the fact that the complainant was not a client or user of the report. He feels how the report got to the Board plays an important part as to why he asking for conditional dismissal. Mr. Chase would agree to complete the education, as any education would make him a better appraiser, but requests there be no monetary fine.

- Mr. Chase concurred with the Reviewer and the Board that he could have provided more detail and support. He had one client in mind when writing the report and the client was even more knowledgeable about the project than he was. He believes that everything USPAP requires of the Scope of Work was included in his report.

Mr. Chase closed with a concern as to how disciplinary action will impact his career and his credibility. He requests dismissal of the cases, or if the Board feels some type of action is required, removal of the complaint and consideration of a conditional dismissal.

Discussion took place. The Board concluded that it does not appear Mr. Chase included everything in the report he should include, and his work file was lacking. However, the review report states that Mr. Chase does have an understanding of the methods and techniques to produce a credible appraisal.

Based on Mr. Chase's additional comments and today's discussion, Joe Sheehan moved to offer a conditional dismissal of the complaint. The terms of the conditional dismissal to include:

1. Mr. Chase must complete courses: Scope of Work and Documentation of Work File.
2. Payment of a \$3000 fine to assist in recovering review costs.
3. No further allegations within the next 6 months.

The motion seconded by Nikki Mertz. Vice Chairman Schlenvogt called for discussion.

Discussion took place. If the Board is going to offer a conditional dismissal the Board will need to revise the motion to move the complaint to an allegation and offer a conditional dismissal. No further allegations within the next 6 months should read no further valid complaints within the next 6 months. Revise the education to the courses the Board determined appropriate in the original offer drafted. The Board needs to set a timeframe for payment of fine and completion of education.

Joe Sheehan moved to amend his motion to move the complaint against Chris Chase to an allegation and offer Mr. Chase a conditional dismissal, with the terms to include:

1. Within the next 6 months Mr. Chase must successfully complete:
 - 2-day tested USPAP course
 - 4-hour course on Scope of Work Appraisal and Inspections
 - 4-hour course on Ethics Competency and Negligence
2. Payment of \$3000 fine within the next 6 months
3. No valid complaints within 6 months

Mr. Chase has 30 days to accept the offer of conditional dismissal.

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

Vice Chairman Schlenvogt turned the meeting back to Chairman Kost.

Case 221-117: Mr. David Aaland, the respondent, is in attendance. The allegations, the appraisal in question, and Mr. Aaland's response to the allegations have been reviewed by Board Investigative Reviewer, Joe Ibach and submitted to the Board for consideration.

Chairman Kost turned to Mr. Ibach to provide a summary of the allegations, his findings and recommendation.

Allegations: In brief, the appraisal did not support the contract price. Seller was not in agreement with the appraised value, questioned the neighborhood description, the improvements to the house, and whether the comparable sales were the appropriate comparable sales.

Board Reviewer's Findings: Some of the issues noted in the review report and discussed by the Reviewer included:

- In assembling the comparable sales, the appraiser failed to define the market search parameters.
- Appraiser did not provide reasoning as to why he did not use the cost or income approaches to value.
- A number of issues were noted in the sales comparison approach. 1) failure to collect sufficient sales to bracket the subject's contract price, 2) lack of proper verification sources, and 3) lack of support for adjustments.

Mr. Aaland indicated he addressed his reasoning for not using the income and cost approach in the supplement addendum. Mr. Ibach confirmed this was addressed in the supplemental addendum.

Board Reviewer's Recommendation: Based on his my review, the report is not entirely USPAP compliant due to the weaknesses found in the sales comparison approach (lack of support). The Reviewer recommends the Board consider a conditional dismissal to include 1) a monetary fine, 2) revise and resubmit report for review addressing deficiencies in the review and 3) complete a course in "Thinking Outside the Form".

Chairman Kost allowed David Aaland to comment. After providing clarification on some of the issues noted in the review, Mr. Aaland concluded that he is of the opinion his report meets the minimum requirements of USPAP.

Chairman Kost called for discussion. Chairman Kost noted a previous allegation filed against Mr. Aaland that resulted in a conditional dismissal agreement. The issues addressed at that time appear to be the same issues being addressed to today.

Review of the previous conditional dismissal agreement indicates Mr. Aaland signed the agreement in October of 2020. The required courses were completed February 10, 2021. The date of the report in question is January 2021. Therefore, the classes were completed after this current report was completed. Discussion concluded.

Matt Schlenvogt moved to dismiss the allegations against David Aaland. Nikki Mertz seconded the motion. Chairman Kost called for discussion.

There was a question as to whether a conditional dismissal is appropriate considering that the issue of lack support for the sales comparison approach is a critical aspect of the appraisal. It was suggested that a conditional dismissal with the appraiser submitting an Experience log and having appraisals reviewed be appropriate. Discussion continued. This report was completed prior to Mr. Aaland completing the courses from a previous conditional dismissal. There is an overlapping timeframe where Mr. Aaland has not had the opportunity to incorporate what he learned from the course and apply it going forward. Discussion concluded.

Chairman Kost called for the vote. Nikki Mertz, Matt Schlenvogt and Joe Sheehan voted yes to the motion. Corey Kost and Brock DesLauriers voted no to the motion. Motion carried. Case dismissed.

Case 221-116: Mr. Mark Ryan, respondent to the allegation is not present at today's meeting. Staff emailed Mr. Ryan a copy of the Investigative Review Report and notice of the meeting date. No response was received.

Staff informed the Board that Mr. Ryan did not renew his ND licensed permit for 2022. In addition, review of the ASC National Registry indicates Mr. Ryan is no longer an active appraiser in his home state of MN.

The allegations, the appraisal in question, and Mr. Ryan's response to the allegations have been reviewed by Board Investigative Reviewer, Joe Ibach and submitted to the Board for consideration.

Chairman Kost turned to Mr. Ibach to provide a summary of the allegations, his findings and recommendation.

Board Reviewer summarized the Allegations: The appraiser failed to verify comparable rents; used inaccurate rents, comparable sales that were over one year old, and dissimilar styles of comparables. In addition, the complainant questioned the location of the sales used.

Board Reviewer findings: As detailed in his Investigative Review Report, the Reviewer found numerous areas of noncompliance with the appraisal report:

- Inadequate neighborhood/market conditions summary
- Inadequate property description
- No highest and best use analysis
- No reconciliation of market rents to support an opinion of the subject property's market rents
- No market support for all the adjustments in the sales comparison approach
- Failure to reconcile the entire sales comparison approach
- Failure to reconcile properly analyze and reconcile the GRMs
- Did not certify to prior services
- Lack of support and reconciliation in conclusion to the site's market value
- Failure to analyze the personal property's effect on value

Relative to strengths, Mr. Ibach indicated he found no strengths.

Board Reviewer Recommendations: Mr. Ibach's initial recommendation was for a conditional dismissal. However, after reviewing the numerous areas of noncompliance detailed in his Review Report, he has

reconsidered his initial recommendation. Based on his findings, Mr. Ibach recommends the allegation be elevated to a complaint.

Chairman called for discussion. This is a unique situation in that the appraiser no longer holds a license in ND. However, at the time the appraisal was completed Mr. Ryan did hold a ND licensure permit.

The Board cannot make the assumption that the appraiser is not going to re-apply for another permit. Staff clarified that should Mr. Ryan re-apply for licensure he would have to go through the full application process. The Board would have the opportunity to review his work product. In addition, Mr. Ryan would be required to re-take the national examination.

Board members were in agreement with the findings outlined in the Review Report. The issues are numerous and of significant concern.

Corey Kost moved to elevate Case 221-116 from an allegation to a complaint. Matt Schlenvogt seconded the motion. Chairman Kost called for discussion. No further discussion took place. Chairman Kost called for the vote. Brock DesLauriers, Nikki Mertz, Matt Schlenvogt, Joe Sheehan and Corey Kost all voted yes to the motion. The vote was unanimous. Motion carried.

Corey Kost moved to offer Mark Ryan a settlement agreement with the following terms:

- 1) Payment of a monetary fine of \$2000; and
- 2) If Mr. Ryan reapplies for licensure in ND, in addition to completing the requirements for licensure Mr. Ryan must successfully re-take two additional qualifying education courses: Residential Sales Comparison Approach and Residential Income Capitalization Approach

Chairman Kost called for discussion. No further discussion took place. Chairman Kost called for the vote. Brock DesLauriers, Nikki Mertz, Matt Schlenvogt, Joe Sheehan and Corey Kost all voted yes to the motion. The vote was unanimous. Motion carried.

Case 221-123: Keana Schuler, respondent to the allegation, is in attendance. The allegations, the appraisal in question and Ms. Schuler's response to the allegations have been reviewed by Board Investigative Reviewer, Joe Ibach and submitted to the Board for consideration.

Chairman Kost turned to Mr. Ibach to provide a summary of the allegations, his findings and recommendation.

Board Reviewer summarized the Allegations. The seller:

- Disagreed with the appraised value. The contract value did not support the contract price.
- Disagreed with the comparable sales that were used.
- Was frustrated with the lack of communication. However, the appraiser responded with a phone log which dispelled the communication issue.
- Was of the opinion that the appraiser did not enter the house. However, the appraiser provided pictures of the interior.

A review was completed to determine whether there was support for the allegations and if the report was USPAP compliant.

Board Reviewer Findings: As detailed in the Review, the Reviewer found that the strengths of the appraisal far out way the weaknesses.

Weaknesses noted in the review included:

- Improper understanding of subject site's "as vacant" highest and best use
- Limited use of proper verification source(s)
- The subject site's market value lacked support

The Reviewer found there was no evidence to support the allegations. The seller did not provide any additional data to support her opinion that the value should be something other than what was reported in the appraisal.

Board Reviewer Recommendation: The allegation has little or no merit. While some there were some weakness's noted, the Reviewer found the appraisal report substantially meets the minimum requirements of USPAP. The Reviewer recommends the allegations be dismissed.

Chairman Kost called for Board discussion. Board members were in agreement with the Reviewer. Although there were weaknesses noted in the review, the issues do not rise to the level of a formal complaint. The Board found there was no basis for the allegations.

Matt Schlenvogt moved for dismissal of the allegations against Keana Schuler. Brock DesLauriers seconded the motion. Chairman Kost called for discussion. No discussion took place. Chairman Kost called for the vote. Nikki Mertz, Brock DesLauriers, Joe Sheehan, Matt Schlenvogt and Corey Kost all voted yes. The vote was unanimous. Motion carried.

Proposed Amendments:

NDCC 43-23.3: At the meeting of November 10, 2022, the Board discussed drafting language to require out-of-state appraisers performing reviews on appraisals completed on ND properties to hold a ND permit. The following language has been drafted and added as part of 43-23.3.04.1:

1. *"An appraiser, apprenticed, licensed, or certified in another state may not engage in, advertise, conduct the business of, ~~or act in any capacity as an appraiser in this state,~~ or perform an appraisal review for a property located in this state, without first obtaining a temporary permit under section 43-23.3-11 or a permit under section 43-23.3-04.1. "*

At the meeting of November 10th, the Board also discussed adding language to 43-23.3 allowing credentialed appraisers to complete evaluations for their lender-employer. These evaluations would not be required to be USPAP compliant.

Board discussion took place. Chairman Kost has since been informed that the NDAA is considering proposing an amendment allowing appraisers the ability to perform evaluations without being subject to USPAP. The appraisers performing these evaluations would not be under the jurisdiction of the Board. Based on these findings, no language was drafted.

Discussion concluded. Chairman Kost called for a motion.

Nikki Mertz moved to approve the proposed amendments to NDCC 43-23.3 as drafted. Matt Schlenvogt seconded the motion. Chairperson Kost called for discussion. There was no further discussion. Matt Schlenvogt, Brock DesLauriers, Joe Sheehan, Nikki Mertz and Corey Kost all voted yes to the motion. The vote was unanimous. Motion carried.

Discussion turned to proposing amendments to NDCC 43-23.5 to carry the same language requiring out-of-state appraisers performing reviews on appraisals completed on ND properties to hold a ND permit. The proposed language would read:

"43-23.5-12. Appraisal review.

Any employee of, or independent contractor to, the appraisal management company that performs an appraisal review for a property located in this state must be:

- ~~1. Certified~~ A certified or licensed appraiser in good standing in this state;~~or~~
- ~~2. A certified or licensed appraiser in good standing in another state."~~

Discussion concluded. Chairman Kost called for a motion.

Matt Schlenvogt moved to approve the proposed amendments to NDCC 43-23.5 as drafted. Nikki Mertz seconded the motion. Chairman Kost called for discussion. There was no further discussion. Matt Schlenvogt, Brock DesLauriers, Joe Sheehan, Nikki Mertz and Corey Kost all voted yes to the motion. The vote was unanimous. Motion carried.

AARO Fall Conference update. Corey Kost, Nikki Mertz, Joe Sheehan and Joe Ibach attended the conference.

- Chairman Kost commended Joe Ibach for taking on the role of President of AARO for a two-year timeframe. As President of AARO Mr. Ibach thanked the Board for their continued support of him as President.
- Board Member, Matt Schlenvogt has been appointed as Alternate Director to AARO.

Highlights of AARO:

- Diversity Equity & Inclusion: Bias in appraising was a main topic discussion throughout the conference.
- Barriers to entries: By adopting the AQB Guidelines and not putting any further strictions appraiser entering the profession shows States (North Dakota inclusive) are committed breaking down barriers.
- PAREA: The Appraisal Institute's PAREA program will be offered beginning Fall of 2023.
- ASC State compliance reviews will be completed in person in 2023.
- Conversations with other States regarding State issues, challenges and new ideas.

- Appraiser Ghosting: Appraisers go off the grid and are nonresponsive to clients (lack of communication). This issue is having a negative impact on the perception of appraisers and the trust the public has in appraisers. States are struggling in how to handle these types of complaints. A Working Group within AARO has approached the Appraisal Standards Board to address “ghosting” in the Ethics provision of USPAP (appraiser must communicate with client).
- IAAO presentation on mass appraising encouraged States to accept mass appraisal as experience credit. Mass appraisals completed in accordance with Standard 6 of USPAP should be accepted. The issue comes into play when mass appraisers do not complete their work product in compliance with Standard 6.
- Harmonization of enforcement of USPAP across jurisdictions is an ongoing concern. Consistency in handling complaints and investigations is and continues to be issue across the States.
- Future conferences will start with 3-4 hours of State Regulator education.

2023 Board meeting Schedule:

Staff is to schedule two in-person meetings, Bismarck in May and Fargo in November in conjunction with the NDAA meeting. Other meetings will be schedule as virtual meetings.

Chairman Kost closed the meeting at 11:20am.

Respectfully Submitted,

Jodie R. Campbell
Executive Secretary