

# NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

## Board Meeting Minutes – January 31, 2024

Chair Kost called the meeting to order at 3:32 PM Roll call was taken.

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

Legal Counsel Present: Matthew Menge

Staff Present: Jodie Campbell and David Campbell

Chair Kost welcomed Matt Menge as the Board's new Legal Counsel.

**Minutes:** Board members reviewed the minutes of November 15, 2023. Brock DesLauriers moved for approval of the minutes with the corrections noted. Matt Schlenvogt seconded the motion. Chair Kost called for the vote. Brock DesLauriers, Nikki Mertz, Joe Sheehan, Matt Schlenvogt, and Corey Kost all voted yes to the motion. The vote was unanimous. Motion carried.

**Certified General Permits issued via Reciprocity-Require Board Confirmation:** The following applicants were issued permits based on meeting the requirements for certified general via reciprocity. Board confirmation is required:

- Certified General (reciprocal applicants):
  - Steven A. Klett via reciprocity with AZ
  - Daniel P. McCoy via reciprocity with MO
  - Carey A. Miklos via reciprocity with PA

Discussion took place. Matt Schlenvogt moved to confirm all applicants for their respective levels. Nikki Mertz seconded the motion. Chair Kost called for further discussion. No further discussion took place. Chair Kost called for the vote. Brock DesLauriers, Joe Sheehan, Matt Schlenvogt, Nikki Mertz, and Corey Kost all voted yes to the motion. The vote was unanimous. Motion carried.

**Investigations:** During Board discussion of allegations, the Board will refrain from using names to protect the anonymity of the parties involved in an allegation. However, Board Chair will provide either party with the opportunity to comment. If the Board elevates an allegation to the level of a complaint, names may be used.

Case 222-125, Case 222-126, and Case 222-129:

- These three cases involve appraisals completed on the same property.
- Three different appraisers completed two different appraisal reports.
- Allegations have been filed against three appraisers.

Case 222-125 and Case 222-126 involve one appraisal report signed by two appraisers. While the appraisers signed the same report, each appraiser has been assigned a separate Case number. Therefore, at this point, the Board will address each Case separately.

**Case 222-125:** Chair Kost turned the meeting over to David Campbell, Board Reviewer, to provide an overview of his findings. Reviewer Campbell clarified that one review was completed on the appraisal report related to Case 222-125 and Case 222-126, as both appraisers signed the appraisal report. The Reviewer also clarified that while he completed the Review checklist for compliance with USPAP and discussed the strengths, weaknesses, and noteworthy concerns in the reports, he did not make a final recommendation. There are questions he would like to see answered before making a final recommendation.

The Reviewer discussed a billboard that was located on the property and questioned if the billboard structure was owned by the owner of the property or whether the sign company owned it. He was unable to find the answer in any of the appraisals. It appears the appraiser in Case 222-125 visited with the property owner and was told that that billboard structure was owned by him (the landowner). If this were the case the value of that structure was not included in the sales comparison approach.

The Reviewer questioned whether the Fargo-West Fargo market area was adequately researched, questioning the use of a sale from Linton, ND. Linton is a much smaller community than the Fargo area, with a different

market area. In addition, the individual who filed the allegations included comparable sales and lease information with the allegation. The Reviewer did not find that this information was included as part of this appraiser's research of the market area. Furthermore, there were two other appraisals completed on this same property and none of the sales from those appraisal reports appeared to be included in this appraiser's research either. Therefore, the Reviewer questioned whether the value conclusion adequately reflects the appraiser's knowledge of the Fargo -West Fargo market area.

Additional concerns noted in the review included lack of detailed market support for adjustments relating to 1) market conditions, 2) age/condition, 3) quality of construction and parking adjustments, and 4) location/economic factors (in particular – reconciling an improved sale in a smaller market area, the community of Linton, to the city of Fargo). Additional discussion and market support would have added credibility to the appraisal.

Special assessments were identified in the report. However, there was no outstanding balance provided. Furthermore, the report did not address whether the outstanding specials were included in the value conclusion or if the buyer were to assume the specials.

Credible assignment results require support by relevant evidence and logic to the degree necessary for the intended use. The report lacked support and additional discussion.

The appraisal identified two other appraisal companies as the Clients and intended users. The property owner and tenant are also listed as intended users. Three of the four Intended Users did not find the concluded value credible.

The Reviewer questioned the appraisers' use of such a wide range of the lease comparables (the use of retail properties). It is difficult to say the appraiser(s) provided good market support.

The overall capitalization rate information appeared to be from outside the Fargo-West Fargo market area. The Reviewer noted concerns that the appraiser(s) may have missed local market evidence that may have impacted the conclusions.

Chair Kost provided comments. The Complainant provided information from his perspective. While the issues may not be specifically tied to USPAP, some of the concerns may be noteworthy.

One of the sales used in the Sales Comparison Approach was an auto parts store in Linton, ND, a much smaller community which is quite a different market area than the Fargo market. While it is a similar type of retail warehouse property, if a sale of that type of property and different market area is used, the adjustment must be supported.

The appraisers also used other industrial type buildings as sales. Only one sale was used by two of the appraisers. The other sales used were unique, and none of them were really of similar retail warehouse design. There may not have been similar retail properties that had sold in the Fargo market area, but research of similar retail warehouse sales in more comparable communities (with more comparable size and economic characteristics) would have added more credibility.

In the income Approach the appraisers separated out the retail and warehouse component of this property. Most of the comparable rents used appear to be retail suites within strip centers and strip retail centers as opposed to an auto parts store. Chair Kost questioned whether those are reasonable substitutes for the subject property.

The Reviewer questioned how the billboard was handled. Chair Kost provided comments. It appears the rent being received from the billboard was a small percentage in comparison to the total property's potential income, which may have been the reason the appraiser(s) provided little detail in how it was handled. Regardless, additional clarification or commentary would have been helpful.

In the Sales Comparison Approach the appraisers identified that the fee simple interest was value. In the Income Approach it appears that the leased fee interest (from the billboard) was valued. The variance raises questions.

As noted by the Reviewer, it was not clear if the value conclusion included the special assessments and/or if the liability was going with the buyer or being paid off upon sale. Some discussion would be appropriate.

Chair Kost questioned whether the highest and best use was properly developed and summarized as required by USPAP. The highest and best use analysis appeared to be very minimal, the appraiser simply stated that it was retail, with no mention of the warehouse use.

In the Sales Comparison Approach the Reviewer discussed adjustments. There appeared to be adjustments made to the wrong sale. Furthermore, the report lacked market support for adjustments made to other sales.

Comparable overall capitalizations rates derived from the market were missing. There were retail overall rates but no industrial overall rates. This raises questions, as the property has a significant warehouse component.

**Case 222-126** relates to the same appraisal report as Case 222-125. However, the Respondent is a second appraiser signing the same report. Therefore, the review and Reviewer's discussion are identical to that of Case 222-125.

Chair Kost offered the respondent from Case 125 the opportunity to comment. The appraiser indicated the report was fully worked on by both appraisers. He had no additional comments as he felt the written response provided detailed answers to the allegations and review.

The Reviewer concurred with the Respondent; a detailed response had been received. However, before making a final recommendation he was waiting for a response from the Respondent in Case 222-129 as this response may or may not have an impact on Case 222-125 and Case 222-126 value conclusions.

Chair Kost offered the appraiser involved in Case 126 the opportunity to make comments. The appraiser did not believe it was necessary to provide further comments as he too felt the written response provided detailed answers to the allegations and review. However, the appraiser requested confirmation that Board members received both the April 3, 2023, response to the allegations and the December 20, 2023, response to the Reviewer. Board members confirmed receipt of the responses.

**Case 222-129:** This Case involves a third appraiser who completed a second appraisal on this property. Chair Kost turned to the Reviewer for a brief overview of his findings.

As in the previous Cases 222-125 and 222-126, the report lacked supporting information. In addition, while the comparable sales used by this appraiser may have been more comparable to the property being appraised than those considered in the previous Cases, there may have been other sales in the Fargo market area that could have considered comparable but were not included.

The Reviewer discussed a provision in the lease allowing for the purchase of the property under certain terms and conditions. There were three different appraisals completed on the property. If either two of the three appraisers could agree on a number that would be the number that would be the purchase price. The appraisers in Case 222-125, Case 222-126 and Case 222-129 were close in value, therefore, that was the number that was used as part of the purchase agreement.

An email memo in the appraiser's work file raised concerns. In review of this memo, the Reviewer questions whether the appraiser may have 1) opined to the opinion of market value and/or 2) opined to the quality of another appraiser's work.

The Reviewer again clarified that while he completed the Review checklist for compliance with USPAP and discussed the strengths, weaknesses, and noteworthy concerns in the reports, he will not make a final recommendation until the appraiser has had the opportunity to respond.

Chair Kost concurred with the Reviewer's concerns with the memo in the appraiser's work file. These concerns appear to relate to development and reporting requirements of USPAP and need to be addressed by the appraiser.

In the Income Approach the appraiser stated the market rent conclusions without any summary or comparable rent within the actual report itself. No support was found in the work file. This did not allow the reader to understand how the appraiser concluded to the market rent.

The appraiser involved in Case 222-129 has not had the opportunity to respond to the review. He is currently out-of-state. The Board members were in agreement, that upon his return, they would allow the appraiser 30-days to respond.

Chair Kost called for discussion. No further discussion took place.

Mr. Tom Martin is the complainant in Case 222-125, 126 and 129. Chair Kost offered Mr. Martin the opportunity to comment. Mr. Martin provided comment and relayed his concerns:

- Relative to the Neuman signage structure on the property, in discussion with Neuman several years back, he owns the structure.
- If he, a layperson, could find comparable building sales in Fargo from 2020-2022, he questions why these appraisers did not and why they had to use sales from 2018.
- His building is 20 years old, on an I-29 frontage road and is in decent condition, yet the appraisers valued his building in the lower 10% of comparable buildings sold in Fargo.
- He discussed the human element in this transaction. The building is in his daughter's trust. He filed the allegations against these appraisers as this is his daughter's trust fund and all he wants is fair value. He does not believe these appraisers provided that.
- Mr. Martin discussed the process to value the building that was included in the lease: 1) the renter hires an appraiser, 2) the building owner hires an appraiser, and 3) those two appraisers select a third appraiser. He further explained that this was included in the lease to assure tenants that he would not inflate the rent when the lease came up.
- Mr. Martin explained that he was reassured by the Bank and a number of other individuals that appraisals do not vary more than 10%. In his experience with these appraisals, this did not happen.

Chair Kost thanked Mr. Martin for his comments. Board members were in agreement to table Cases 222-125, 222-126 and Case 222-129 until the appraiser in Case 222-129 has had the opportunity to respond.

**Update from Legal Counsel:**

**Case 218-186 and Case 218-187:** In the September 20, 2023, Order of Appeal the Judge remanded the Case back to the Board for the purpose of a hearing on the discipline. Based on discussion with the paralegal assigned to the Case, the hearing for this Case is on the priority list to be scheduled for a hearing.

Legal Counsel indicated his priority is to expedite this hearing as soon as possible. He will apprise the Board if there is an opportunity to resolve these Cases prior to the hearing.

Case 220-108, Case 220-111: Audited Reports from Case 221-160, Case 220-161 and Case 220-164 Settlement Agreement; and Case 223-129, Case 223-131 and Case 223-132:

At a previous meeting, all six Cases were bundled together and moved to litigation. In Legal Counsel's review of the disciplinary statute and procedural process, Legal noted concerns with the process in sending all six cases to litigation at this point. Legal Counsel recommends the Board initiate the complaint process for the reviewed reports and request a formal response from the appraiser. Upon review of the formal response, the Board can bundle all six cases together and make a determination.

Chair Kost provided a recap. Based on a previous Settlement Agreement, the Board required the appraiser submit an experience log, from which reports were selected for review for compliance with USPAP. The reports were reviewed, the appraiser provided a response, but the Board did not initiate a complaint on each of the appraisal reports.

Therefore, to meet the procedural requirements, the Board would need to 1) make a motion to initiate a complaint on each of the appraisals reviewed as part of the Settlement Agreement, 2) make a formal request to the appraiser for a response, 3) address the appraiser's response and 4) revisit Board action.

Legal Counsel confirmed this would be his recommendation.

Chair Kost moved to initiate a complaint on the three audited reports that were requested from the experience log as part of Settlement Agreement relating to Case 221-160, Case 220-161, and Case 220-164, and provide the appraiser the opportunity to respond to the complaint. Joe Sheehan seconded the motion. Chair Kost called for further discussion. No further discussion took place. Chair Kost called for the vote. Joe Sheehan, Nikki Mertz,

Matt Schlenvogt, Brock DesLauriers, and Corey Kost all voted yes to the motion. The motion was unanimous. Motion carried.

Legal Counsel will draft a letter to the appraiser's attorney requesting a response.

**Finances:** Staff provided the Board with the 2023 Year-end Financials and a 2024 Proposed Budget. Board discussion took place. At the request of the Board, Staff purchased CD's. Based on the interest from the CD's, Board DesLauriers recommended the line item relating to "Interest" to be increased to \$25,000.

Joe Sheehan moved to approve the 2023 Year-end Financials and revised 2024 Proposed Budget. Brock DesLauriers seconded the motion. Chair Kost called for further discussion. No further discussion took place. Chair Kost called for the vote. Matt Schlenvogt, Brock DesLauriers, Joe Sheehan, Nikki Mertz, and Corey Kost all voted yes to the motion. The vote was unanimous. Motion carried.

Future Meetings: Staff is in the process of scheduling an in-person meeting in conjunction with the Spring ND Appraisers Association course. Staff requested Board members forward dates they will be gone and Staff will draft a tentative 2024 schedule.

Chair Kost called for adjournment at 5:33pm. Meeting adjourned.

Respectfully submitted,

Jodie R. Campbell  
Executive Secretary