

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

Minutes- June 28, 2023

Chairman Kost called the meeting to order at 10:31am. Roll call was taken.

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

Staff Present: Jodie Campbell and David Campbell

Legal Counsel: Joshua Amundson

Public Comment Period: No Comments.

Apprentice Permits and Permits issued via Reciprocity-Require Board Confirmation: The following applicants were issued permits based on meeting the requirements for their respective levels. Board confirmation is required:

- Apprentice applicants: Hunter Barth (Jeff Berg, supervisor), Noah Froehling (Wade Becker, supervisor) and Jonathan Gorter (Jim Dobbs, supervisor)
- Certified Residential (reciprocal applicants): Peter Pogwist (PA), Lisa Ratzke (PA) and Logan Zimmerman (MN)
- Certified General (reciprocal applicants):
 - Janna Beecher (CO) Vernon Martin (CA)
 - Andrew Chapman (WA) Hans Schmitter (IN)
 - David Feeley (OH) Barry Smith (MT)
 - Chaim Kamman (TX) William Steigerwaldt (WI)
 - Kyle Kever (OH) Christopher Stockness (MN)
 - Grace Kim (WA)

Discussion took place. Matt Schlenvogt moved to confirm all applicants for their respective levels. Brock DesLauriers seconded the motion. Chairman Kost called for further discussion. No further discussion took place. Chairman 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.

Gary Neu is making application for certified general via reciprocity with Minnesota. Discussion took place. Nikki Mertz moved for approval of Gary Neu's application for certified general. Brock DesLauriers seconded the motion. Chairman Kost called for further discussion. No further discussion took place. Chairman Kost called for the vote. Matt Schlenvogt, Nikki Mertz, Joe Sheehan, Brock DesLauriers and Corey Kost all voted yes. The vote was unanimous. Motion carried.

Educational Review: Brittin Callina submitted a report for educational review. The report was reviewed by Kathy Maier, Board Reviewer. Ms. Maier provided an overview of the initial review of the work product submitted. The reviews noted weaknesses. The Reviewer recommended that, prior to bringing the report and review to the Board for consideration for upgrade, Ms. Callina revise and resubmit the report for further reviewer. Ms. Callina revised and resubmitted the report. A second review was completed. The Reviewer provided an overview of the review on the revised work product. Discussion took place. Ms. Callina was encouraged to utilize the reviews, as well as Board member and Board Reviewer comments, when completing future reports.

Matt Schlenvogt made a motion to accept Ms. Callina's work product for upgrade to licensure. Joe Sheehan seconded the motion. Chairman Kost called for further discussion. No further discussion took place. Chairman Kost called for the vote. Nikki Mertz, Brock DesLauriers, Joe Sheehan, Matt Schlenvogt and Corey Kost voted yes to the motion. The vote was unanimous. Motion carried.

Educational Review: Ryan Lesmeister submitted a report for educational review.

Matt Schlenvogt requested to be recused from discussion and voting due to a conflict of interest. There is an employer/employee relationship as Matt Schlenvogt and Ryan Lesmeister are employed with Gate City.

Joe Sheehan moved to recuse Matt Schlenvogt from discussion and voting. Brock DesLauriers seconded the motion. Chairman Kost called for the vote. Nikki Mertz, Brock DesLauriers, Joe Sheehan and Corey Kost all voted yes. Matt Schlenvogt abstained from voting. Motion carried.

The report submitted by Mr. Lesmeister was reviewed by Kathy Maier, Board Reviewer. Ms. Maier provided an overview of the initial review of the work product submitted. The review noted weaknesses. The Reviewer recommended that, prior

to bringing the report and review to the Board for consideration for upgrade, Mr. Lesmeister revise and resubmit the report for further reviewer. Mr. Lesmeister revised and resubmitted the report. The Reviewer provided an overview of the review on the revised work product. Discussion took place. Mr. Lesmeister was encouraged to utilize the reviews, as well as Board member and Board Reviewer comments, when completing future reports.

Nikki Mertz made a motion to accept Mr. Lesmeister's work product for upgrade to certified residential. Brock DesLauriers seconded the motion. Chairman Kost called for further discussion. No further discussion took place. Chairman Kost called for the vote. Nikki Mertz, Brock DesLauriers, Joe Sheehan and Corey Kost voted yes to the motion. Matt Schlenvotg abstained from voting. Motion carried.

Applicant for Certified Residential: Jeni Berquist is making application for certified residential.

Chairman Kost requested to be recused from discussion and voting due to a conflict of interest. There is an employer/employee relationship as Jeni Berquist is an employee of Dakota Appraisal and Corey Kost is owner of Dakota Appraisal.

Joe Sheehan moved to recuse Corey Kost from discussion and voting. Matt Schlenvotg seconded the motion. Staff took the vote. Nikki Mertz, Brock DesLauriers, Joe Sheehan and Matt Schlenvotg all voted yes. Corey Kost abstained from voting. Motion carried. Chairman Kost turned the Chair over to Vice Chair Matt Schlenvotg.

Jeni Bergquist meets the education and experience hour requirements for certified residential. Work product was submitted and reviewed for compliance with USPAP. Kathy Maier, Board Reviewer provided an overview of the reviews. Discussion took place. The Board determined Ms. Bergquist's work product was found to meet the minimum standards set forth in USPAP. Brock DesLauriers moved to approve Jeni Bergquist to sit for the national certified residential examination. Upon successful completion of the examination, Jeni Bergquist will have met all the requirements to hold a certified residential permit. Joe Sheehan seconded the motion. Vice Chairman Schlenvotg called for further discussion. No further discussion took place. Vice Chairman Schlenvotg called for the vote. Nikki Mertz, Joe Sheehan, Brock DesLauriers and Matt Schlenvotg all voted yes. Corey Kost was absent from voting. Motion carried.

Applicant for Licensure: Justine Thompson: Ms. Thompson is making application for licensure. Ms. Thompsom has submitted mass appraisal experience for experience credit. She has included a detailed explanation of her work as an assessor. Discussion took place.

Chairman Kost provided comment. With an applicant submitting mass appraisal experience, there are no typical Standards 1 and 2 appraisal reports reported, mass appraisal relates to Standards 5 and 6. Based on the explanation of her work as assessor, it appears Ms. Thompson's work product meets the intention of Standard 5, the development of an appraisal. However, compliance with Standard 6 appears to be questionable.

Chairman Kost questioned: 1) If the experience reported on the log does not meet both Standards 5 and 6, should the experience be allowed for appraisal experience credit? 2) Ms. Thompson submitted demonstration reports for review with her application. While demonstration reports are acceptable. Are demonstration reports, on their own, adequate to allow for licensure?

The typical applicant submits an experience log that includes 1) a listing of all the appraisals completed by the appraiser, 2) the hours that went into the assignments and 3) a signature of the supervisory appraiser. The signature of supervisory appraiser demonstrates that the hours claimed were completed in conformance with USPAP. Ms. Thompson submitted a work log of mass appraisal experience. The log is signed by Ms. Thompson.

AQB Criteria requires experience reported and submitted by an applicant must be in compliance with USPAP; in the case of mass appraisal experience, compliance with Standards 5 and 6. Standard 6 requires reports to have a signed certification that states the reports were completed in conformance with USPAP. The question before the Board is whether the work experience reported on Ms. Thompson's log meets the requirements of both Standards 5 and 6.

Chairman Kost indicated he researched the City of Bismarck and found that the City of Bismarck issues an annual report. That report includes the signature of the assessor and the names of those that contributed to the report. Ms. Thompson was listed. He found that the report does not have a signed certification. Chairman Kost is concerned that, while the report has similar elements to an appraisal, it does not appear that the report is intended to be completed in conformance with USPAP.

Chairman Kost made a comparison of an applicant submitting mass appraisal experience to an applicant submitting evaluations for credit. While the evaluations report may be similar to an appraisal report, they are not intended to be completed in compliance with USPAP. In order to log those demonstration reports for experience credit, the applicant must revise each evaluation report to meet USPAP.

Nikki Mertz provided comments. There appears to be no verification that the experience from Ms. Thompson's log meets both Standards 5 and 6. Without the report aspect we struggle with not having any real way to verify what has been done in conformance with USPAP. AQB Criteria requires the work experience be completed in conformance with USPAP. We as a Board are doing our best to follow those requirements.

Dave Campbell had a discussion with an individual from the Assessing Department with the City of Fargo. This individual indicated their intent is to comply with USPAP. This individual indicated they do sign a certification, but Mr. Campbell was unclear as to how close that certification is to a USPAP certification.

Ms. Thompson explained that a Class 1 certified Assessor is certified to IAAO standards, and IAAO Standards are closely related to USPAP.

Chairman Kost provided comment. IAAO Standards and USPAP Standards are two different standards; similar, but not the same. The AQB Criteria does not mention alternative standards. The critical piece missing is a signed certification attesting to the fact that work completed complies with USPAP.

Chairman Kost looked to Board Reviewer, Kathy Maier for comment. Ms. Maier became licensed in ND through assessing experience. Others have come through as well, and that complicates things. She felt that it is important to note that discussion of this is not a new issue. Ms. Maier further commented that as far as development, Justine has demonstrated that she has put that time in. Ms. Maier explained that when it comes to assessing experience there are different elements; there are individuals that do the data collection and others like Justine Thompson and her supervisor that are the decision makers.

Chairman Kost questioned whether she felt the intention of the general assessing offices was to complete appraisals in conformance with USPAP. Ms. Maier clarified that her experience was quite some time ago and she feels regulations have changed significantly since then.

Discussion continued. The experience, according to the AQB Criteria, has to be gained by completing the whole appraisal process (the development and the reporting) in conformance with USPAP. Chairman Kost read an excerpt from the AQB criteria, *"the quantitative experience requirement must be satisfied by time spent in the appraisal process. The appraisal process consists of: analyzing factors that affect value; defining the problem; gathering and analyzing data; applying the appropriate analysis and methodology; and arriving at an opinion and correctly reporting the opinion in compliance with USPAP."*

Ms. Thompson informed the Board that she held a registered (trainee) permit in Colorado a number of years ago. In order to be issued a registered appraiser in Colorado the applicant has to have completed 600 hours of experience under a supervisor. Unfortunately, she cannot provide a log of her experience, as it was a number of years ago and her supervisor at the time is no longer an appraiser. She questioned the Board. Even though she cannot provide an experience log from her work as a registered appraiser in Colorado, based on the fact that she could not hold a registered appraiser permit until she met the 600 hours of experience under a supervisory appraiser, could her Colorado experience be considered verified experience? Chairman Kost explained the key is "verifiable work experience". If an applicant cannot provide verification, therein lies the issue.

Staff reviewed Montana's policy relating to mass appraisal experience. The instructions for the applicant submitting mass appraisal require the log be signed by supervisor attesting the experience claimed is compliant with Standards 5 and 6. Reports are selected from the log for review for compliance with Standards 5 and 6. Staff contacted the Montana office questioning the review process for Standards 5 and 6. No response has been received.

Discussion turned to how to proceed with Ms. Thompson's application. Board members were in agreement that further research of the AQB criteria with regard to mass appraisal experience, as it relates to ND Statute and rules would be a prudent course of action. Joe Sheehan questioned whether the Board should move ahead on discussion of the work product submitted and reviewed. Board members were in agreement to table the application.

Joe Sheehan moved to table the application and research AQB criteria with regard to mass appraisal experience, as it relates to ND Statute and Rules. Brock DesLaurier seconded the motion. Chairman Kost called for further discussion. No further discussion took place. Chairman Kost called for the vote. Nikki Mertz, Brock DesLauriers, Joe Sheehan, Matt Schlenvogt and Corey Kost all voted yes to the motion. The motion was unanimous. Motion carried.

Investigations:

Case 223-130: Allegations were filed by Fannie Mae's Loan Quality Center. The concerns noted: 1) use of physically dissimilar comparable sales-gross living area and 2) inappropriate comparable sales selection due to location. Chairman Kost turned the floor over to the Board Reviewer, Kathy Maier to provide a brief overview of the Case and her findings based on the review of the allegations, appraisal report in question, and the appraiser's response.

The reviews addressed additional concerns: 1) lack of attention to the market area analysis, 2) verification of sales, 3) weak reconciliation, and 4) the lack of a cost approach for 10-year effective age while questionable, is not uncommon.

Reviewer Maier concluded that the allegations do have merit. However, while the allegations have merit, they do not rise to the level of a formal complaint. Reviewer Maier recommended the appraiser complete additional education.

Discussion took place. Board members were in agreement with the issues noted in the review. While the appraiser appears to have a good understanding of the appraisal process, the appraiser could benefit from additional education.

Based on the allegations, review and discussion, Nikki Mertz moved to offer the appraiser a conditional dismissal agreement with the terms to include the option of successfully completing either one of the Appraisal Foundation's corrective courses: the 4-hour course titled "Missing Explanations" OR the 4-hour course titled "Sales Comparison Approach Reconciliation". The course must be within six months of signing the agreement. Upon successful completion of the course, Case 223-130 would be dismissed. Brock DesLauriers seconded the motion. Chairman Kost called for further discussion. No discussion took place. Nikki Mertz, Joe Sheehan, Matt Schlenvogt, Brock DesLauriers and Corey Kost voted yes to the motion. The vote was unanimous. Motion carried.

Case 222-128: This Case was first addressed at the meeting of May 31, 2023. At that meeting the Board heard from the Complainants. The respondent was unable to be present at that meeting. However, he is in attendance via zoom today. Joe Ibach, Board Reviewer was not in attendance at the prior meeting, he is also in attendance today. Chairman Kost offered up Joe Ibach as a resource if Board members had questions.

Chairman Kost disclosed his relationship with Joe Ibach. Mr. Ibach is an employee of Dakota Appraisal and is Mr. Kost's father-in-law. He asked the Board if they felt he should be recused from participation in this Case.

Brock DesLauriers moved to recuse Chairman from discussion and voting on this Case. Joe Sheehan seconded the motion. Chairman Kost called for discussion. Matt Schlenvogt asked Chairman Kost his thoughts. Chairman Kost explained there is information provided from a number of sources, one of which is a review by Mr. Ibach. But that review is just one piece of information that has been provided. Mr. Kost indicated that he does not feel that his business and personal relationship with Mr. Ibach would influence his decision making, but he does understand the appearance of bias is out there. Mr. Kost feels he has a duty as Board member to participate as much as he can to help the Board come to the right conclusion. He further stated that he is one vote out of 5 members.

Brock DesLauriers requested clarification. Mr. DesLauriers understood that the Respondent (the appraiser in question) was an employee of Dakota Appraisal. Chairman Kost confirmed that the Respondent was NOT an employee. Both the Respondent and Reviewer are named Joe. Mr. DesLauriers indicated he made his motion based on his understanding that Joe, the Respondent, was an employee of Dakota Appraisal. Based on the fact that the Respondent is not an employee of Dakota Appraisal, Brock DesLauriers retracted his motion to recuse Chairman Corey from participation in this Case.

Matt Schlenvogt moved to NOT recuse Chairman Kost from discussion and voting on Case 223-128. Brock DesLauriers seconded the motion. Chairman Kost called for further discussion. No further discussion took place. Chairman Kost called for the vote. Nikki Mertz, Brock DesLauriers, Joe Sheehan, Matt Schlenvogt and Chairman Kost all voted yes to the motion. The motion was unanimous. Motion carried.

Discussion took place. Chairman Kost provided a quick overview. A review was completed. The Complainants provided written allegations. A written response was received from the Respondent. The Complainants addressed the Board at the meeting of May 31, 2023. New information was brought to light at that meeting; a second appraisal completed by another appraiser. The Board moved to table Case 222-128 until the Board had the opportunity to consider the second appraisal. Staff forwarded a letter to the Complainants requesting a copy of the second appraisal. The appraisal report was not provided.

The Respondent was unable to attend the meeting of May 31, 2023, but is in attendance today via zoom. Chairman Kost allowed the Respondent the opportunity to address the Board with any additional information.

Joe Hirschfeld is the Respondent in this Case. He indicated that this was a very challenging report. He understood the frustration on the part of the Jellesed's, but indicated there was frustration on his part as well. His frustration was due to the lack of communication between the parties involved. While it may appear that the appraisal was rushed, Mr. Hirschfeld felt he completed the assignment the best he could. He welcomed questions from the Board.

Discussion took place. In review of the report, it appears only sales from MLS were used. There was no indication that research was completed outside of MLS. There were questions about the verification of property characteristics, specifically about the appraiser missing the fact that the house included a very large basement/garage/shop component. Mr. Hirschfeld commented there were miscommunication issues between himself, the lender and the borrower.

Chairman Kost turned discussion of the review. Other issues addressed in the review included 1) site value in cost approach lacked support, 2) adjustments lacked support, 3) the highest and best use lacked analysis, 4) there was not sufficient information provided to replicate the cost approach and 5) verification sources were lacking.

While Chairman Kost commended Mr. Hirschfeld on the number of sales he researched to extract depreciation and obsolescence, he also addressed the two major concerns with the report. 1) Why limit the research of sales to MLS and 2) after inspecting the site, why not question the basement size, etc.?

Mr. Hirschfeld explained that he did expand his search beyond MLS. He searched assessing and county records for deeds for the past 12 months. But because of the reliability of the information associated with those sales and their comparability, he did not use them. In his opinion, MLS was a more reliable verification source.

Discussion took place. Matt Schlenvogt briefly discussed the difference in the quality and detail of blueprints from builder to builder that he has experienced. The quality ranges from very detailed to handwritten, at times hard to decipher. He discussed the importance of communication between all parties, specifically regarding changes to the blueprints. He questioned Mr. Hirschfeld as to who he was receiving his information from. Mr. Hirschfeld explained that initially it was coming from the lender. He further explained that the lender was not receiving the information in a timely manner, so he began working with the borrowers (the borrowers were their own contractors).

Mr. Schlenvogt turned to information discussed by the Jellesed's at the May 31, 2023, meeting. The Jellesed's discussed a second appraisal that was completed on the property. According to the Jellesed's, there is a variance of \$700,000 between the two appraisals. The Board was made aware of this but was not provided with a copy of the second appraisal to help determine why such a variance.

Nikki Mertz questioned whether the verification of sales was a component of the review process that the Board typically requests of the reviewer. Chairman Kost clarified that verification of information and sales research is above the typical scope of work required for a Standard 3 review. Board Reviewer, Joe Ibach indicated he did not verify sales, as that was beyond his scope of work.

Chairman Kost commented. There are questions, specifically where it relates to the appropriateness of sales. Were the most appropriate comparable sales used in this appraisal? The Board does not have a copy of the second appraisal to help determine the appropriateness of the sales.

Joe Sheehan commented. Without that second appraisal to help the Board determine the reasoning for the \$700,000 variance between the two appraisals, he would like to see research into comparable sales in the McKenzie County area completed. The Board cannot determine if the appraiser did his job right without knowing if the appropriate sales were used.

Chairman Kost commented. The appraiser has indicated he did the research, and based on his research he used the best comparable sales available. The Board has no information showing otherwise. The question is whether the Board accepts that explanation or moves ahead with further research.

The Complainants are in attendance online. Chairman Kost asked the Jellesed's if they had additional information they wanted to present. The Jellesed's indicated that did not agree with Mr. Hirschfeld that communication was a struggle. They felt all questions from him were handled in a timely manner. Furthermore, he was made aware of the large basement Ms. Jellesed confirmed that there was a phone conversation Mr. Hirschfeld regarding the basement, as well as a walk-through. She further commented. The Board appears to have overlooked the letter of December 13, 2017, which details the basement. This letter was forwarded to Mr. Hirschfeld. The Jellesed's disagree with how the Board is approaching this complaint. Ms. Jellesed indicated the second appraisal will not be provided to the Board until the questions detailed in the complaint are answered.

Chairman Kost thanked the Jellesed's for the comments. The initial allegations did provide additional sales based on their research with assessors and recorders. The question is whether they are comparable and was there sufficient information in the sales to rely on them.

Based on the Review, the Reviewer found there were some noncompliant issues. He recommended the allegation be conditional dismissed with the following terms: Completion of a 7-hour sales comparison approach course and the Appraisal Foundation's 4-hour course "Scope of Work Appraisals & Inspections and 4-hour course "Thinking Outside the Form". In addition, payment of a monetary fine to help cover the investigative costs.

Joe Sheehan provided comments. The Complainant feels they have unanswered questions. Without further research into comparable sales, Mr. Sheehan does not feel the Board can answer them. The Board needs to find out if the right kind of search for comparables was completed by the appraiser. Board members were in agreement.

According to the Jellesed's there is \$700,000 variance in the two appraisal value conclusions. Board members determined it would be prudent to research comparable sales to find if the most appropriate comparable sales were used. It was suggested that the Board contract with an appraiser to assemble comparable sales over \$500,000.

Joe Sheehan moved to contract with an appraiser to research sales in the area of the subject property and bring this information to the Board to assist in determining if the most appropriate sales were used. Nikki Mertz seconded the motion. Chairman Kost called for discussion. Matt Schlenvogt is to work with Dave Campbell to set the parameters for the

scope of work on this assignment. Chairman Kost called for the vote. Matt Schlenvogt, Nikki Mertz, Brock DesLauriers, Joe Sheehan and Corey Kost all voted yes to the motion. The vote was unanimous. Motion carried.

Thelen (Reports reviewed per 2020 Settlement Agreement): Mark Thelen was present online.

Chairman Kost provided a brief overview. Mark Thelen signed a Settlement Agreement with the Board on December 24, 2020. One of the terms required the appraiser submit a monthly log of experience for a period of two years. A random selection of reports could be made from that log and reviewed for compliance with USPAP. The logs were submitted, and three reports were selected and reviewed.

Chairman Kost disclosed his relationship with Joe Ibach. Mr. Ibach is an employee of Dakota Appraisal and is Mr. Kost's father-in-law. He asked the Board if they felt he should be recused from participation in this Case. Nikki Mertz moved to not recuse Corey Kost from participation or voting in this matter. Matt Schlenvogt seconded the motion. Chairperson Kost called for further discussion. No further discussion took place. Chairperson Kost called for the vote. Nikki Mertz, Brock Deslauriers, Matt Schlenvogt and Joe Sheehan all voted yes to the motion. Motion carried.

Chairperson Kost turned to Board Reviewer, Joe Ibach to provide an overview of the reviews.

- The main issues of noncompliance in the selected reports appeared to be the same issues that were found in the initial reports.
- Based off the fact that the areas of noncompliance were, for the most part, the same in each appraisal, only two of the three reports were reviewed.
- Some of the areas of noncompliance discussed (1st Report):
 - inadequate description of the neighborhood market
 - incorrect description of the site
 - description of the improvements inconsistent, therefore, noncompliant
 - noncompliant analysis of highest and best
 - the appraiser failed to sufficiently research the market for the most pertinent comparable sales; the only sales used were found through MLS; no search parameters were provided
 - no market support for adjustments -USPAP requires support for adjustments
- Some of the areas of noncompliance discussed (2nd Report):
 - inadequate description of the neighborhood market
 - noncompliant description of the improvements
 - Reviewer questioned the appraiser's reasoning for not using the cost approach
 - noncompliant analysis of highest and best
 - the appraiser failed to sufficiently research the market for the most pertinent comparable sales; the only sales used were found in MLS; no search parameters were provided
 - no market support for adjustments -USPAP requires support for adjustments
- Some of the areas of noncompliance discussed (3rd Report):
 - inadequate description of the neighborhood market
 - noncompliant description of the improvements
 - noncompliant analysis of highest and best
 - Comparable sale; no search parameters provided
 - no market support for adjustments -USPAP requires support for adjustments
 - Income approach lacked credibility
- Board Reviewer concluded, there appeared to be no attempt to correct the noncompliant issues from past appraisals, as the same noncompliant USPAP issues appear to carry over from appraisal to appraisal, no matter when the appraisal was completed.

Chairperson Kost offered Mr. Thelen the opportunity to comment. Mr. Thelen indicated, after submitting a response to the reviews, he expected a response from the Reviewer and did not receive one. He also found the Reviewer's criticism relative to proximity of comparable sales to be unfair. He indicated he had an opportunity to view an appraisal completed by the Reviewer where the proximity of sales appeared to be no different than what he had used in his appraisals.

Chairperson Kost provided comments. It is not the responsibility of the Board Reviewer to respond to the Respondents comments on the reviews. Chairperson Kost provided a brief outline of the Boards' Investigative Process: 1) An allegation is filed, 2) the appraiser is provided the opportunity to respond to the allegation, 3) the allegation and response are forwarded to a Board reviewer for review, 4) the review is forwarded to the respondent for comment, and 5) from there the allegations, response to the allegations, the review, and the appraiser's response to the review are provided to the Board members for review and consideration at a following Board meeting.

Matt Schlenvogt provided comment regarding proximity of comparable sales. When looking at comparable sales, distance from the subject is not necessarily the appropriate parameter to look at. It is about looking at similar market areas, and when the market areas have differences, appropriate adjustments for those differences are required. This appears to be an issue found in the three appraisals under review.

Chairman questioned Mr. Thelen on how he obtains geographic competency throughout North Dakota. Mr. Thelen

provided a detailed description of his process. However, based on the deficiencies found in the reports, geographic competency appears to be an issue.

Chairperson Kost provided a brief recap of the history of the situation.

- The appraiser has had a number of similar past violations resulting in a number of complaints, and prior disciplinary actions.
- Mr. Thelen signed a Settlement Agreement with the Board dated December 24, 2020. One of the terms of the agreement required Mr. Thelen to submit a log of experience for a period of two years. The Agreement authorized the Board to select reports from the log for review for compliance with USPAP. Three reports were selected and reviewed by Joe Ibach, Staff Reviewer. The reviews on these current reports address similar issues of noncompliance as were found in the appraisals that resulted in the 2020 Agreement.
- There are subsequent complaints with disciplinary action where the Board had proposed a settlement agreement that was not accepted. Those complaints are currently in the administrative hearing process. The terms of that agreement included a one-year suspension, a probationary period of two years, submission of a log and review of reports for compliance with USPAP.
- There are currently three pending allegations that the Board has yet to address.

Chairperson Kost turned the floor over to Board Counsel for direction. Board Counsel explained that the Board has a couple of options. Based off the evidence submitted, the Board could move forward on these three appraisal reports. If the Board determines these reports are in violation of USPAP, the Board could initiate additional disciplinary proceedings. Another option would be, once the Board addresses the three new allegations, if the reports are found to be noncompliant, the Board could combine these reports with the new allegations and address everything together.

Matt Schlenvogt requested the Board discuss the Reviewer's recommendation. Chairperson Kost turned to the Reviews, after reviewing all three reports the Reviewer came up with the following recommendation....*"The appraiser has been provided several opportunities to become a more competent appraiser but failed. For these reasons, it is recommended that the appraiser's credential be revoked. If revoked, the Board needs to address whether the appraiser is allowed to reapply for licensure."*

Board members looked to the Appraisal Qualifications Board Voluntary Matrix. Comparing the Matrix with the reviews of these three reports Chairperson Kost was of the opinion that this matter would fall under Level III Violations, *"..violations that rise to the level of affecting the credibility of the assignment."*

Board discussion continued. There appear to have been no changes to the reports, even after the appraiser has been provided a number of opportunities to do so. While this may not be intentional, it is habitual. The Board is at the point where it needs to step in and protect the public.

Based on the violations of USPAP noted in the reviews, Chairperson Kost moved for revocation of Mark Thelen's licensed permit. Matt Schlenvogt seconded the motion. Chairperson Kost called for discussion. Discussion took place.

Chairperson Kost amended his motion to read, "revocation of Mark Thelen's licensed permit for a period of two years, at the point Mr. Thelen could reapply for licensure." Matt Schlenvogt seconded the amended motion. Discussion continued. Joe Sheehan requested clarification on the difference between a suspension and a revocation. A revocation requires the appraiser to reapply for a permit. Once a suspension period has ended the appraiser may continue to practice. Discussion concluded. Chairperson Kost called for the vote. Joe Sheehan, Brock Deslauriers, Nikki Mertz, Joe Sheehan and Corey Kost all voted yes to the motion. The vote was unanimous. Motion carried.

Update on Cases 218-186 & 187 (Weber's): The attorney for the Weber's filed a brief with the Court on their appeal. Dave Garner, with the Attorney General's office, will be representing the Board. He is in the process of finalizing the brief on behalf of the Board. The brief is due July 4th. Once both briefs are filed, the Case will go to oral argument. Board members may be in attendance to observe.

Other Business:

- Board Member Advocacy in a Public Setting: Board Counsel cautioned Board members when speaking in public, Board members do not want to be perceived as speaking for the Board. It is good practice when speaking to start with a disclaimer that you are speaking on your behalf, you are not representing the ND Appraiser Board.
- Update on Thelen Administrative Hearing (Cases 220-108 and 220-111): The Case has been re-assigned to a new attorney in Civil Litigation.
- Board Review Facilitator or Board Staff Reviewer: Board Members need to decide whether to continue with a Staff Reviewer position or move to a Board Review Panel Facilitator. This position would be considered a manager, not a reviewer. Staff provided a listing of suggested duties for this position: assembling and maintaining a panel of reviewers, ensuring the panel members are current on review and investigative techniques, assigning upgrade applicants and investigations to a panel member, maintaining a consistency and timeliness in the review process.

Chairperson Kost looked to Board Counsel to discuss the Facilitator contract. Any contract under \$10,000, the Board can make a selection. A contract from \$10,001 - \$50,000, the Board has to send it out for three bids. Any

contract \$50,001 or higher has to go out to RFP. This is the same for the Reviewers. However, the Reviewers scope of work is per application or per allegation. Therefore, each fee would be under the \$10,000 mark.

Joe Ibach has indicated interest in this position. With Mr. Ibach's history on the Board, and as Staff Reviewer, he has the experience to assist in moving forward with this position. However, if the contract is over \$50,000 the contract has to go out to RFP. One option would be to contract with Mr. Ibach, under a \$10,000 contract, while the Board explores this position further and determines if this is the direction the Board wants to go. Board members were in agreement further research is needed.

- Correspondence between Gate City Bank and Vogel Law Firm: Gate City Bank requested Vogel Law Firm to review NDCC 43-23.3 to address whether North Dakota Law allows Gate City Bank credentialed appraiser employees to complete evaluations for their employer, Gate City Bank. Vogel Law firm concluded that NDCC 43-23.3 allows employee appraisers to complete evaluations for use by their employer, Gate City Bank.

Board Counsel cautioned the Board to disregard the memo. Only the Attorney General's Office can provide legal advice to State Agencies. Mr. Schlenvogt confirmed that this was legal advice provided to Gate City Bank and was provided to the Board as information to take into consideration.

- Organizational Document: Chairperson Kost provided an organizational document to the Board. He drafted document as an informational reference for Board members. The document addresses all aspects of the Board, including the structure of the Board, a description of the Board processes, a scope of the different tasks performed by the Board, legislative processes, as well as a listing of expectations for the different roles of the Board and Staff.
- Chairperson Kost announced that Joe Sheehan has been reappointed to a second term on the Board.
- Election of Chair/Vice Chair: Joe Sheehan moved to nominate Corey Kost as Chairperson. Matt Schlenvogt seconded the motion. Brock DesLauriers, Nikki Mertz, Joe Sheehan, and Matt Schlenvogt all voted yes to the motion. Corey Kost abstained from voting. Motion carried.
- Brock DesLauriers moved to nominate Matt Schlenvogt as Vice Chairperson. Joe Sheehan seconded the motion. Nikki Mertz, Joe Sheehan, Brock DesLauriers and Corey Kost all voted yes to the motion. Matt Schlenvogt abstained from voting. Motion carried.

Finances: Board members reviewed and discussed the 2022 Year-End financials, Year-End Comparisons from 2018-2022, the current financials and the 2023 Proposed Budget. Discussion took place Joe Sheehan moved to approve the financial reports and 2023 Budget. Brock DesLauriers seconded the motion. Chairman Kost called for the vote. Nikki Mertz, Matt Schlenvogt, Brock DesLauriers, Joe Sheehan and Corey Kost voted yes. The vote was unanimous. Motion carried.

Chairperson Kost called for adjournment at 4:52pm.

Respectfully submitted,

Jodie R. Campbell
Executive Secretary