

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

Minutes- December 15, 2018
Board Meeting - Bismarck, ND

Chairperson Timian called the meeting to order at 9:00 AM. Roll call was taken.

Board Members present:

Chairperson Tim Timian

Joe Sheehan

Corey Kost

Kathy Maier

Brock DesLauriers

Staff Present:

Jodie Campbell

David Campbell

Allyson Hicks, Legal Counsel was present online during Investigations

Public Comment Period: Dennis Huber was in attendance on behalf of the ND Appraisers Association Governor's Affairs Committee. Mr. Huber requested an update on the AMC Law (43-23.5). Staff reported that the AMC Law and Rules are in place. As of September 1, all AMC's doing business in ND must be registered with the Board.

Mr. Huber requested the status of the proposed Appraiser Rules. Staff reported that the Rules have been submitted to the Office of Attorney General for review for legality. Once approved, the Rules must be reviewed and approved by the Administrative Rules Committee. The Committee meets on a quarterly basis and Staff expects the Rules to be heard at the March 2019 meeting.

Staff also reported that the Board will begin accepting applications based on the new criteria. Applications approved under the new Criteria will be approved as of the date the Rules are approved by the Administrative Rules Committee.

Minutes: Board members reviewed the minutes of September 17th. Kathy Maier moved for approval. Brock DesLauriers seconded the motion. Kathy Maier, Brock DesLauriers, Corey Kost, Joe Sheehan and Tim Timian all voted yes to the motion. The vote was unanimous. Motion carried.

Investigations:

Inv 214-135: Allegations were filed against John Hraba by a consumer. The Board did not move forward with Inv 214-135 based on the Board's determination to propose revocation of Mr. Hraba's ND permit on a separate investigation (Inv 214-145). The Board has proposed a revised settlement agreement to Mr. Hraba. To date, no agreement has been signed.

Discussion turned to re-consideration of Inv 214-135. The homeowner addressed a number of issues in the allegation. In addition, the Board found concerns in the areas of highest and best use and the sales comparison approach. The Board determined the concerns warrant a field review. Corey Kost made a motion to move forward with a field review. Kathy seconded the motion. Kathy Maier, Brock DesLauriers, Corey Kost, Joe Sheehan and Tim Timian all voted yes to the motion. The vote was unanimous. Motion carried.

Case 217-176TP: At the meeting of June 28, 2018 the Board moved to offer Brett Suszek a settlement agreement. Mr. Suszek provided additional comment to the investigation and submitted a counter offer in lieu of disciplinary action. Mr. Suszek expressed concern with the allegation of advocacy, certifying that he was not an advocate. Furthermore, any errors or omissions noted in the appraisal were not reflective of his typical work.

Discussion took place. Board members reviewed the allegations, response, initial offer to settle, and considered Mr. Suszek's additional comments. Mr. Suszek submitted a counter offer of conditional dismissal with the following terms: 1) completion of a 5-hour course in data verification methods, 2) payment of a \$1000 fine and 3) no disciplinary actions taken against his licenses, current or future, in any jurisdiction, for a period of two years. After completion of the terms of the conditional dismissal, the Board would dismiss his case. Board members agreed that Mr. Suszek's counter offer appeared to meet the Board's goal. Corey Kost moved to accept Mr. Suszek's counter offer. Brock DesLauriers seconded the motion. Chairman Timian noted concerns with competency. Chairman Timian called for the vote. Kathy Maier, Brock DesLauriers, Corey Kost and Joe Sheehan voted yes to the motion. Chairman Timian voted no. Motion carried.

Case 218-183: At the meeting of September 17, 2018, the Board moved to revoke Ben Mendez's ND certified residential permit, effective immediately. Mr. Mendez submitted a counter offer stipulating the following terms: 1) serve a 4-month suspension; 2) complete a minimum of 6 hours of education relating to Ethics; 3) pay a \$1000 fine and 4) after fulfilling these terms, he would be eligible for immediate reinstatement without a hearing.

A detailed discussion took place. Mr. Mendez's actions appeared intentional in that he retrieved an account without authorization and gained entry into confidential information. The Board members found these actions to be serious ethical violations. In addition to the ethical violations, the Client did not receive two independent appraisals as ordered, and the appraisal report was found to have significant issues of concern. Based on these findings, Kathy Maier moved to propose an offer of settlement to include: 1) a one year suspension; 2) completion of a minimum of 6 hours of education relating to Ethics; 3) payment of a \$1000 fine; 4) reinstatement after suspension and 5) complete restitution to the Client. Brock DesLauriers seconded the motion.

Discussion continued. The Board found there were several issues in the report that may rise to the level of USPAP violations. Kathy Maier moved to amend her motion to include the completion of the Appraisal Foundation's corrective course "Report Writing and Form Filling". Brock DesLauriers second the motion to amend. Chairman Timian called for the vote. Kathy Maier, Joe Sheehan, Brock DesLauriers, Corey Kost and Tim Timian voted yes to the motion. The vote was unanimous. Motion carried.

Case 218-184: At the meeting of September 17, 2018, the Board moved to offer Jared Perry a settlement agreement. Mr. Perry submitted a counter offer of conditional dismissal. In lieu of disciplinary action Mr. Perry proposes successful completion of two Appraisal Foundation corrective courses: Self-protection and Documentation and Residential Report Writing Versus Form Filling. After completion of these terms, the case would be dismissed.

Discussion took place. Kathy Maier moved to accept Mr. Perry's counter offer of conditional dismissal. Corey Kost seconded the motion. Discussion turned to the additional concerns with the report, some of which included 1) not properly identifying the client, 2) purpose of the appraisal improperly stated, 3) no analysis of prior services and 4) no analysis of current contract. Kathy Maier moved to amend her motion. In addition to completing the two Appraisal Foundation corrective courses, there must be no disciplinary actions taken against Mr. Perry's permit for a period of two years from the date of signing the agreement. After completion of the terms of the conditional dismissal, the Board would dismiss his case. Corey Kost seconded the motion to amend. Chairman Timian called for the vote. Corey Kost, Brock DesLauriers, Kathy Maier, Joe Sheehan and Tim Timian all voted yes to the motion. The vote was unanimous. Motion carried.

Update from Legal Counsel: Allyson indicated she has drafted the settlement offer for John Hraba relative to Inv 214-145, but is having difficulty contacting his attorney.

Mr. Mike Pitcher, legal counsel with Civil Litigation has been assigned to the Thelen Cases.

Case 218-185: At the meeting of September 17th the Board moved to elevate the allegations against Dana Schau to a complaint and move forward with an independent review. Ms. Schau and the Board members have received a copy of the independent review.

The reviewer concurred with the allegations: 1) the appraiser did not properly develop the highest and best use analysis, specifically with respect to excess land versus surplus land; 2) there appears to be a lack of understanding in adjusting for differences in seller concessions/buyer obligations; 3) there appears to be a weakness in the cost approach, with little to no market support for the vacant land value of the subject land; 4) there appears to be a weakness in the analysis of the pending sale of the subject property; 5) improper sales selection; and 6) the appraiser does not identify individuals providing significant assistance within the signed certification.

Discussion took place, with Ms. Schau present. Ms. Schau included a revised appraisal as part of her response. Ms. Schau explained that her apprentice had completed the tasks and missed the concerns noted above. Ms. Schau indicated she had completed additional education after receiving the allegation and is willing to complete further education to assist in a better understanding of the issues noted in the allegations.

Corey Kost moved to offer Ms. Schau a conditional dismissal of the allegations with the following terms: Within six months of signing the conditional dismissal Mr. Schau must successfully complete the following Appraisal Foundation corrective courses:

- 1) 4-hour course related to appraiser self-protection, and documentation;
- 2) 3-hour course on supporting adjustments;
- 3) 5-hour course on highest and best use; and
- 4) 4-hour course on thinking outside the form.

In addition, there must be no disciplinary actions taken against her permit for a period of two years from the date of signature on the conditional dismissal. Kathy Maier seconded the motion. Kathy Maier, Brock DesLauriers, Joe Sheehan, Corey Kost and Timian all voted yes to the motion. The vote was unanimous. Motion carried.

Cases 218-186 & 187: Allegations have been filed against Jerome Weber and Kelly Weber. The issues outlined in the allegations include: 1) failure to reconcile contract price to concluded market value; 2) failure to address significant changes in the region's and city's economic base; 3) lack of highest and best use analysis; 4) inconsistency in selection and analysis of comparable market data; 5) improper comparable rent selection and 6) lack of reasoning and/or support for analysis, opinions and conclusions.

A detailed discussion took place. Some of the areas of concern discussed by the Board included: 1) No analysis of prior sale; 2) Appraisers did not indicate whether they did nor did not inspect the property; 3) Market analysis appeared to be misrepresented, did not demonstrate how market affected the appraisal; 4) Highest and Best Use stated, lacked analysis; 5) Depreciation defined, however no comment was provided; 6) Inadequate Cost approach; 7) Sales Comparison approach misrepresented, no ND sales reported; and 8) Capitalization rate was not adequately supported. These concerns led the Board to question competency.

Based on the issues noted in the review and Board discussion, Corey Kost moved to table the allegation and move forward with a field review by an independent appraiser. Kathy Maier seconded the motion. Brock DesLauriers, Tim Timian, Corey Kost, Kathy Maier and Joe Sheehan all voted yes to the motion. The vote was unanimous. Motion carried.

Educational Review: AJ Hammen submitted a report for review as part of the Board's educational review process. An independent review was completed. Board members discussed the review with Mr. Hammen. Mr. Hammen was encouraged to utilize the review, as well as Board member comments, when completing future reports.

Nikki Mertz submitted a report for review as part of the Board's educational review process. An independent review was completed. Board members discussed the review with Ms. Mertz. The reviewer found no issues of concern. Corey Kost moved to allow Ms Mertz's report be used as a report for the upgrade process to certified general. Kathy Maier seconded the motion. Kathy Maier, Brock DesLauriers, Joe Sheehan, Corey Kost and Tim Timian all voted yes to the motion. The vote was unanimous. Motion carried.

Chairman Tim Timian turned the Chair over to Corey Kost and abstained from discussion.

Kaitlyn Timian submitted a report for review as part of the Board's educational review process. An independent review was completed. Board members discussed the review with Ms. Timian. Ms. Timian was encouraged to utilize the review, as well as Board member comments, when completing future reports. Kathy Maier moved to allow Ms. Timian's report be used as a report for the upgrade process to certified general. Brock DesLauriers seconded the motion. Kathy Maier, Brock DesLauriers, Joe Sheehan, and Corey Kost all voted yes to the motion. Tim Timian abstained from voting. Motion carried.

Corey Kost turned the Chair back to Tim Timian.

Applicants:

Dusty Schlecht is making application for certified residential and was present for discussion. Review of Mr. Schlecht's application indicates he meets the education and experience hour requirements for certified residential. Two reports were reviewed by an independent reviewer. A number of weaknesses were outlined in the reviews. Board members concurred with the reviews.

Based on the weaknesses noted in the reviews, Kathy Maier moved to table Mr. Schlecht's application for certified residential and request Mr. Schlecht revise and re-submit the two reports for Board review. Corey Kost seconded the motion. Kathy Maier, Brock DesLauriers, Joe Sheehan, Corey Kost and Tim Timian all voted yes to the motion. The vote was unanimous. Motion carried.

Steve Vetter is making application for certified residential and was present for discussion. Review of Mr. Vetter's application indicates he meets the education and experience hour requirements for certified residential. Two reports were reviewed by an independent reviewer. A number of weaknesses were outlined in the reviews. Board members concurred with the reviews.

Based on the weaknesses noted in the reviews, Kathy Maier moved to table Mr. Vetter's application for certified residential and request Mr. Vetter revise and re-submit the two reports for Board review. Corey Kost seconded the motion. Kathy Maier, Brock DesLauriers, Joe Sheehan, Corey Kost and Tim Timian all voted yes to the motion. The vote was unanimous. Motion carried.

Finances: Staff submitted the current income and expense report. After review and discussion, Corey Kost moved for approval. Brock DesLauriers seconded the motion. Kathy Maier, Corey Kost, Joe Sheehan, Brock DesLauriers, and Tim Timian all voted yes to the motion. The vote was unanimous. Motion carried.

Other Business:

Waiver request update: The Appraisal Subcommittee has requested additional (more current) information from the parties that submitted the Waiver Request (ND Department of Financial Institutions, ND Bankers Association and Governor Burgum). To date, it appears no further information has been provided.

Staff Reviewer/Investigator: Staff contacted the ND Office of Procurement and found the Investigator/Reviewer Job Announcement must be announced through the Procurement office. Therefore, the announcement was forwarded to the Procurement office, is being revised to meet their requirements and will be posted thereafter.

Fall AARO Conference: Staff and Corey Kost provided a brief overview of the Conference.

Update on Proposed Rules: The Proposed Rules have been submitted to the Attorney General's office for review for legality. Once approved, the Rules must be forwarded to the Administrative Rules Committee for review and approval. The Committee meets on a quarterly basis. Staff expects the Rules to be on the Committee's March 2019 agenda.

Chairman Timian called for adjournment.

Respectfully submitted,

Jodie R. Campbell
Executive Secretary