

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

Minutes- June 28, 2018
Board Meeting - Holiday Inn, Bismarck ND

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

Board Members present:	Chairperson Dave Lanpher	Tim Timian
	Kathy Maier	Brock DesLauriers
	Corey Kost	
Staff Present:	Jodie Campbell	David Campbell
	Edward Erickson, Legal Counsel	
Others Present:	Claire Brooks, ASC Staff	Jenny Tidwell, ASC Staff
	Ross Berg	Sheila Ressler
	Wade Iverson	Gary Geiszler
	Craig Mclvor	Heather Kitzman
	Jill Beck	Jason Wisnewski
	Nikki Mentz	Eddy Mitzel
	Colin Heupel	Casey Heupel
	Don Weidner	Luke Koterba
Others Present Online:	Patty Hodenfield	Tonia Dosch
	Joe Ibach	

Minutes: Board members reviewed the minutes of March 19, April 26 and May 10, 2018. Tim Timian moved for approval of the minutes with corrections noted. Kathy Maier seconded the motion. Tim Timian, Kathy Maier, Brock DesLauriers, Corey Kost and Dave Lanpher all voted yes to the motion. The vote was unanimous. Motion carried.

Public Comment Period: No comments.

Investigations:

Case 217-176 : The appraisal in question was completed for tax purposes. Some of the issues of concern noted in the allegations and discussed by the Board at the September 25th meeting included: 1) sales verification not recognized in the analysis, 2) lack of recognition of special assessments, 3) market value definition was not the definition cited under ND Statute, market value was consistent for financing rather than tax purposes, and 4) misrepresentation of building size.

Mr. Suszek provided a written response and was present via teleconference call at the September meeting to address the allegations. He indicated: 1) he was not aware of how specials were handled in ND, an error on his part; 2) had he used the ND Century Code definition of market value he believes it would not have made a difference in his value conclusion; 3) his building measurements/count were based on a drawing received. He had made multiple requests to the Client for information that was not provided. Therefore, based on the information provided, he felt he took the proper steps to determine the building area.

Prior to making a decision, the Board concluded that further information was required. Staff was to research the subject/sales relative to special assessments. Dave Campbell, Board Reviewer, provided the Board with a summary of his findings.

After review and discussion of all the information provided, the Board determined Mr. Suszek: 1) rendered an appraisal in a careless or negligent manner; 2) did not adequately verify or analyze the comparable sales; and 3) did not consider the impact special assessments had on the sales, recognizing special assessments for the subject property, but not the comparable sales. Furthermore, the Board was concerned with competency and advocacy.

Based on the Board's deliberation and findings, Corey Kost moved to elevate the allegation to a complaint. Brock DesLauriers seconded the motion. Corey Kost, Tim Timian, Kathy Maier, Brock DesLauriers and Dave Lanpher all voted yes to the motion. The vote was unanimous. Motion carried.

Corey Kost moved to offer Mr. Suszek a settlement agreement. The terms of agreement to include: 1) completion of a minimum 5-hour course in data verification methods and 2) payment of \$1000 fine. Tim Timian seconded the motion. Discussion took place. There appears to be two issues of concern: competency and advocacy. Tim moved to amend the motion to require a minimum 4-hour Ethics course.

Both courses are to be completed within 6 months of the executed agreement. Kathy Maier seconded the amendment to the motion. Corey Kost, Tim Timian, Kathy Maier, Brock DesLauriers and Dave Lanpher all voted yes to amend the motion. The vote was unanimous. Motion carried.

Chairman Dave called for a vote on the amended motion to offer Mr. Suszek a settlement agreement to include the following terms: 1) within 6 months of a signed settlement agreement, Mr. Suszek must complete two courses: a minimum 5-hour course in data verification methods and a minimum 4-hour course in Ethics and 2) payment of a \$1000 fine. Corey Kost, Tim Timian, Kathy Maier, Brock DesLauriers and Dave Lanpher all voted yes to the motion. The vote was unanimous. Motion carried.

Case 218-180: Gary Geiszler was present for discussion. At the meeting of March 19, the Board tabled the allegation and called for a desk review on the report in question to determine compliance with USPAP.

A desk review was completed. Discussion took place. The desk review noted a number of weaknesses: 1) lack of support for the sales analysis, replacement cost new, and allocated land values, 2) highest and best was not developed; 3) improper application of depreciation estimates; and 4) no reasoning and/or support for the analyses, opinions, and conclusions.

Based on the information received and reviewed, Corey Kost moved to elevate the allegation to a complaint. Tim Timian seconded the motion. Kathy Maier, Tim Timian, Brock DesLauriers, Corey Kost and Dave Lanpher all voted yes to the motion. Motion Carried.

Having considered the allegations, response to the allegations and desk review, Cory Kost moved to offer Gary Geiszler a settlement agreement with the following terms: Mr. Geiszler must complete 1) a 4-hour course regarding "Thinking Outside the Form"; 2) an 8-hour course on Highest and Best Use; and 3) an 8-hour course on the Cost Approach. Brock DesLauriers seconded the motion. Discussion took place.

Tim Timian moved to amend the motion and substitute the above noted courses with a 35-40 hour tested course. Mr. Geiszler must complete a Basic Appraisal Procedures course within 6 months of execution of the agreement. In addition, there must be no verified complaints filed against Mr. Geiszler within the next 12 months of signing the agreement. Kathy Maier seconded the motion. Kathy Maier, Tim Timian, Brock DesLauriers, Corey Kost and Dave Lanpher all voted. Motion Carried.

Case 218-181: The respondents, Heather Kitzman and Craig Mclvor were in attendance. The allegations were filed by the consumer. The allegations included a market analysis, the appraisals completed by respondents, and another appraisal on the same property completed by Dana Schau.

The basis of the allegations appears to be how the appraisers valued the excess land. There was also a concern that the appraisers (Ms Kitzman & Mr. Mclvor), both being realtors/appraisers, had a conflict of interest in the property appraised.

Discussion took place. In response to the allegations, the appraisers clarified that holding both a realtor/appraiser license does not constitute bias, stating they did not benefit in any way on the sale of this property.

The appraisers further clarified that the appraisal was completed for FHA financing, explaining that the HUD 4000.1 Handbook will not allow the lender to take the excess land into consideration. Therefore, the appraisers appraised the property without the excess land. The appraisal completed by Dana Schau was for completed for conventional financing and conventional financing does allow for consideration of excess land. That being said, Mr. Mclvor and Ms. Kitzman felt there may have been a lack of understanding by the complainant as to what is required of an appraiser in meeting FHA requirements.

After review of the allegations and response, as well as discussion with Ms. Kitzman and Mr. Mclvor, the Board concluded that Ms. Kitzman and Mr. Mclvor adequately met the expectations for the Client and FHA.

Corey Kost moved to dismiss the allegations. Tim Timian seconded the motion. Corey Kost, Tim Timian, Kathy Maier, Brock DesLauriers and Dave Lanpher all voted yes to the motion. The vote was unanimous. Motion carried.

Chairman Lanpher addressed Mr. Mclvor's lack of professionalism in his response, encouraging more cordial communication.

Discussion turned to a report submitted by the complainant as part of the allegations against Ms. Kitzman and Mr. Mclvor. The report was completed by Dana Schau. In review of Ms. Schau's report, the Board found a number of concerns.

Tim Timian made a motion to move forward with filing allegations against Dana Schau based on the following issues: 1) improper selection of comparable sales/ all selected comparables are superior to the subject property; 2) no support for the land value conclusion; 3) improper appraisal methodology used in determining the highest and best use, especially with respect to excess land; 4) lack of reporting the analysis of the pending sale of the subject property; 5) lack of adjustments for differences in concessions and outstanding special assessment balances; and 6) individuals who provided appraisal assistance were not identified within the signed certification.

Corey Kost seconded the motion. Corey Kost, Tim Timian, Kathy Maier, Brock DesLauriers and Dave Lanpher all voted yes to the motion. The vote was unanimous. Motion carried. Staff was directed to draft a letter requesting Ms. Schau address the issues found in the report.

Case 218-182: The respondent, Jason Wisnewski, was in attendance. Board members reviewed the allegations and response to the allegations. A detailed discussion took place.

Some of the issues noted in the allegations included: 1) the home is in excellent condition both, interior and exterior, with above average oak cabinetry, railings, windows, etc. concluding that the home was not constructed to be an affordable starter home; 2) concerns with appraiser's choice of comparables, as well as the adjustments he made in the appraisal; 3) erroneous comments in the Supplemental Section: The complainant provided a listing for the past 12 months of sales in rural Bismarck indicating this statement is not reflective of the market; and 4) appraiser did not respond to the Seller's agent request to review the appraisal and provide an explanation for the comparables used.

Mr. Wisnewski's written response addressed the issues noted in the allegations: 1) the subject was not constructed by the company indicated by the complainant; there had not been updates, with the exception of shingles; the flooring and counter tops were of standard quality; overall condition was that of an 11-year old home; 2) the comparables were used to help bracket all aspects of the subject property, including above grade GLA square footage, room count, and additional amenities. The allegations describe various damages relative to Comparable 6. However, per the MLS listing and listing agent, this comparable received more recent updates. The damages described in the allegations is not reflective of the property described in the MLS listing; 3) the listing included in the allegations does not give an accurate representation of the current market of properties that are comparable to the subject, as the list includes all properties that were sold outside the city limits of Bismarck. Many of the properties listed are new construction homes, homes on large parcels of land, homes located along water frontage etc. and do not appear to be comparable to the subject property; and 4) an appraiser is not to discuss assignment results with anyone other than the Client or other intended users, as identified by the Client. The seller's agent was not the Client, and was not identified by the Client as an intended user of the appraisal report.

After review of the allegations and response, as well as discussion with Mr. Wisnewski, the Board concluded that the report appears to be credible; the appraiser used the most current comparables and the adjustments made appear to be reasonable and appropriate. According to the Confidentiality Section of the Ethics Rule of USPAP, Mr. Wisnewski's actions to not discuss the appraisal with the Seller's agent appear to be appropriate.

Kathy Maier moved to dismiss the allegations. Corey Kost seconded the motion. Corey Kost, Tim Timian, Kathy Maier, Brock DesLauriers and Dave Lanpher all voted yes to the motion. The vote was unanimous. Motion carried.

Staff Investigator/Reviewer: The Staff Investigator/Reviewer position will be a central figure to communicate with the Board, Staff, investigative panel, legal counsel and appraisers(applicants/investigations). Board members reviewed the revised Staff Investigator Duties and Responsibilities provided by Staff. Further recommendations were made. Tim Timian moved for approval of the job description as amended. Brock DesLauriers seconded the motion. Corey Kost, Tim Timian, Kathy Maier, Brock DesLauriers and Dave Lanpher all voted yes to the motion. The vote was unanimous. Motion carried.

Discussion turned to salary. Corey Kost moved to approve a rate of \$150 per hour. Tim Timian seconded the motion. Corey Kost, Tim Timian, Kathy Maier, Brock DesLauriers and Dave Lanpher all voted yes to the

motion. The vote was unanimous. Motion carried. Board members were in agreement to estimate a budget of \$50,000 per year (330 hours per year).

Staff will draft a job announcement to present to the Board.

Proposed Rules:

Staff met with Legal Counsel (Edward Erickson) on June 25th to discuss the proposed rules. Mr. Erickson made recommendations relative to verbiage. Staff incorporated his recommendations and has presented the Board with a revised draft. A detailed discussion took place.

Wade Iverson, with Farm Credit Services, indicated concern with the proposed changes relating to: 1) no experience will be granted until an applicant holds an apprentice permit and 2) only allowing apprentice, licensed and certified appraisers to submit work product for educational review. Discussion continued. Prior to making a decision, Board members decided further research was in order.

Appraisal Subcommittee (ASC) State Review: The ASC conducts a State Compliance review on each State no less than every two years. Each State regulatory program is reviewed for compliance with Title XI.

ASC Staff members, Claire Brooks and Jenny Tidwell are here conducting the Two-Year State Compliance Review on the North Dakota Regulatory Program. Ms. Brooks provided a brief overview of the review process, as well as their findings. Ms. Brooks' and Ms. Tidwell's preliminary review of the ND regulatory program found no compliance issues. These findings will be submitted to the ASC for their review and a final compliance report will be provided to the Board.

Chairperson Lanpher thanked the ASC for their comments and assistance in the review process.

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

Chairman Lanpher called for adjournment.

Respectfully submitted,



Jodie R. Campbell
Executive Secretary