

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

Minutes - September 30, 2022– Board Meeting Via Zoom

Chairperson Kost called the meeting to order at 1:00 PM. Roll call was taken.

Board Members Present: Chairperson Corey Kost, Brock DesLauriers, Matt Schlenvogt and Nikki Mertz

Board Members Absent: Joe Sheehan

Staff Present: Jodie Campbell and David Campbell

Investigative Reviewer Present: Joe Ibach

Legal Counsel present: Carl Karpinsky and Allyson Hicks

Minutes: Board members reviewed the minutes of June 28 and August 23, 2022. Brock DesLauriers moved for approval of the minutes with the corrections noted. Matt Schlenvogt seconded the motion. Chairman Kost called for the vote. Brock DesLauriers, Nikki Mertz, Matt Schlenvogt and Matt Schlenvogt all voted yes to the motion. Joe Sheehan was absent from voting. Motion carried.

Educational Review: Kevin Osborne submitted a report for review as part of the Board's educational review process. A review was completed by Board Reviewer, Joe Ibach. A detailed discussion took place. Mr. Osborne was encouraged to utilize the review, as well as Board member and Board Reviewer comments, when completing future reports. Mr. Osborne indicated since receiving the review he has enrolled in a course that relates to the weaknesses noted in the review. Matt Schlenvogt moved to allow Mr. Osborne's report to be used as one of three reports for future certification. Brock DesLauriers seconded the motion. Discussion took place. Chairman Kost called for the vote. Matt Schlenvogt, Brock DesLauriers, Nikki Mertz and Corey Kost voted yes to the motion. Joe Sheehan was absent from voting. Motion carried.

Investigations:

Case 220-115: Chairman Kost turned to Board Reviewer to provide a brief summary of the allegations and his findings. Mr. Ibach found the allegations to be a homeowner unhappy with the results of the appraisal. It appears the lender and the homeowner have made the assumption that a prior appraisal completed on the property in 2019 by another appraiser is the accurate appraisal. Mr. Ibach indicated there was no review completed on the 2019 appraisal. His focus was on the appraisal in question and whether it meets USPAP.

In his review of the appraisal in question, Mr. Ibach found a number of strengths: 1) a comprehensive work file, 2) a detailed description of the property, 3) a detailed description of the comparable sales and 4) a detailed sales comparison approach reconciliation. While Ms. Hankey's response included support for the weaknesses noted in the review, Mr. Ibach found that the support was not provided in her appraisal.

Mr. Ibach commended Ms. Hankey on her detailed response. Based on Ms. Hankey's response, Mr. Ibach is of the opinion that Ms. Hankey has a good understanding of the methodology and appears to have a very good hand on the market.

In his written review, Mr. Ibach recommended Ms. Hankey pay a monetary fine and complete a sales comparison approach to value course. However, based on her detailed response, Mr. Ibach changed his opinion and no longer recommends additional education. Ms. Hankey has demonstrated a clear understanding of the methodology and has the data support in her work file, it is just a matter of her transferring that information into the appraisal report.

Ms. Hankey was in agreement with Mr. Ibach in that she needs to be more thorough in her reports and incorporate the data from her work file into her reports. She questioned whether the 2019 appraisal completed for the purchase done was reviewed? Mr. Ibach did not complete a review on the 2019 appraisal.

Chairman Kost called for Board discussion and directed the focus to the allegations on the report in question. Board members also commended Ms. Hankey for her detailed response and the data support she provided in her response. However, the report provided to the Reviewer and Board members did not include a signed certification. Ms. Hankey confirmed she has a signed copy in her work file. There appeared to be an error when submitting her work file to the Board.

Discussion turned to comparison of the previous appraisal completed by another appraiser in 2019 and Ms. Hankey's more current appraisal. There were discrepancies noted between the two appraisals, and the assessor's documentation (ex., size of the house, bathroom count on main floor). Unfortunately, there is no clear evidence what information is right or wrong.

The Board members concluded, that based on the information received, there appears to be a lot of good in the appraisal in question, however, there also appear to be few areas that need improvement. Chairman Kost called for a motion. Brock DesLauriers moved for a conditional dismissal to include a 4-hour course on "Missing Explanations" course offered by the Appraisal Foundation. Nikki Mertz seconded the motion. A brief discussion took place. Chairman Kost called for the vote. Matt Schlenvogt, Nikki Mertz, Brock DesLauriers and Corey Kost all voted yes. Joe Sheehan was absent from voting. Motion carried.

Included with the allegations for Case 220-115, Board members were provided with a copy of a report completed by another appraiser in 2019. Ms. Hankey questioned whether a review of this report could be completed. Chairman Kost turned to Legal Counsel who explained that in order for an investigation to begin there must be an initiation of an allegation.

Cases 219-191 and 219-192: Chris Chase submitted a written request to address the Board regarding the Board's offer to settle. Chairman Kost granted him the opportunity. Mr. Chase is online for comment.

As in past meetings, Chairman Kost requested he be recused from discussion and voting on the Cases 219-191 and 219-192, involving Chris Chase. Chairman Kost turned the meeting over to Vice Chair Schlenvogt,

Legal Counsel, Allyson Hicks, discussed rules that have come down from the Ethics Commission on bias, conflict of interest and a new rule, Quas-Judicial Bias Rule. The standards for conflict of interest are whether you have a direct or substantial, personal, or pecuniary interest in a matter. Is there an appearance of bias to a reasonable person? A Board Member requesting to be recused must disclose the nature of the conflict of interest and request a neutral reviewer take up the conflict. The neutral reviewer would be the rest of the Board.

Corey Kost explained that is requesting he be recused based on a project that he currently is working on where Chris Chase is the Reviewer. Mr. Chase will be directly reviewing Mr. Kost's work. Discussion took place. Vice Chair Schlenvogt called for a motion. Brock DesLauriers moved to recuse Corey Kost from discussion and voting on Cases 219-191 and 219-192. Matt Schlenvogt seconded the motion. Nikki Mertz, Brock DesLauriers and Matt Schlenvogt voted yes to the motion. Corey Kost abstained from voting and Joe Sheehan was absent. The vote carried. Mr. Kost is recused from discussion and voting.

Mr. Chase began his comments. The Reviewer has summarized eight USPAP violations in his review and 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 fact that the property owner was given a copy of the appraisal was beyond his control. The property owner was not a client nor an intended user. He feels the Reviewer made an assumption that impacted the rest of the review.
- Fee Simple: Throughout the review there are statements that an appraiser cannot appraise the building without the land. Mr. Chase does not agree.
- 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.
- 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, it was not the definition that was outdated, but the new edition. He further stated 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 concluded that he is most concerned 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, a conditional dismissal.

Legal Counsel Karpinsky requested Mr. Chase address his requests in a written response to the Board.

Case 218-186 and Case 218-187: As in previous meetings, Corey Kost disclosed a possible conflict of interest with Cases 218-186 and 218-187. The allegation was submitted by Joe Ibach. Mr. Ibach is Mr. Kost's father-in-law. Furthermore, Mr. Ibach is an employee of Dakota Appraisal, which is now owned by Mr. Kost. Mr. Kost requested a neutral reviewer take up the conflict.

Vice Chair Schlenvogt took over as Chair. Discussion took place. Vice Chair Schlenvogt called for a motion. Nikki Mertz moved to recuse Corey Kost from discussion and voting on Cases 218-186 and 218-187. Brock DesLauriers seconded the motion. Nikki Mertz, Brock DesLauriers and Matt Schlenvogt voted yes to the motion. Corey Kost abstained from voting and Joe Sheehan was absent. The vote carried. Mr. Kost is recused from discussion and voting.

Vice Chair Schlenvogt turned discussion over to Carl Karpinsky, Board Legal Counsel. At a previous meeting the Board discussed the next steps towards supplementing the record. At that point the Board did not know what specific documents the Board was going to supplement the record with. Board Discussion took place. The Board's past disciplinary actions are already included as part of the record. The Appraisal Foundation Voluntary Matrix is not part of the record but is a document the Board is as a supplement to the record. Legal Counsel Karpinsky questioned whether the Board would want to go through an evidentiary hearing to supplement the record for this one document. The Board has two options:

- 1) Move forward with an evidentiary hearing to supplement the record, OR
- 2) Move forward without an evidentiary hearing and amend the Order based on the record that is in place.

Vice Chair Schlenvogt called for discussion. Legal Counsel Hicks explained, if the Board does not move forward with supplementing the record, the Board would call a special meeting to discuss the Administrative Law Judge's June 6, 2022, Findings of Facts (Order). The Board would review the Order and determine what findings of fact, if any, that the Board would want to modify and determine disciplinary action. Any modifications made to the Order by the Board would require a detailed explanation for deterring from the ALJ's Order.

Discussion concluded. Board members were in agreement that there appears to be sufficient information in the record to move forward with finalizing the Order. Vice Chair Schlenvogt called for a motion.

Brock DesLauriers made a motion to call for a special meeting to move forward with amending the Order based on the Record that is in place. Nikki Mertz seconded the motion. Vice Chair Schlenvogt called for discussion. Board members questioned whether this should be discussed in executive session. Legal Counsel Hicks advised against it. Vice Chair Schlenvogt called for the vote. Nikki Merz, Brock DesLauriers and Matt Schlenvogt voted yes to the motion. Joe Sheehan was absent from voting. Corey Kost abstained from voting. Motion carried.

Other Business:

- Reminder of the Attorney General's Training Session scheduled for October 4, 2022.
- This is Carl Karpinsky's last meeting as Board Legal Counsel. Chairman Kost, Board members and Staff thanked Carl for his time with the Board. Allyson Hicks is taking over as Interim Counsel until a replacement is appointed.

Chairman Kost called for adjournment. The Board meeting adjourned at 2:51pm.

Respectfully submitted,

Jodie R. Campbell
Executive Secretary