

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

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Zoom/Teleconference call - April 19, 2022 – Minutes

Chairperson Timian called the meeting to order at 9:02 AM. Roll call was taken.

Board Members present online: Chairperson Tim Timian, Corey Kost, Brock DesLauriers, Matt Schlenvogt and Joe Sheehan

Staff Present: Jodie Campbell and David Campbell

Investigative Reviewer: Joe Ibach

Legal Counsel: Carl Karpinski

Investigations:

Cases 219-191 and 219-192:

Chairman Timian opened discussion Case 219-191 and 219-192.

Corey Kost disclosed a conflict of interest with the respondent, Chris Chase. He is actively working on a project where Mr. Chase is the Review Appraiser. Discussion took place. Brock DesLauriers made a motion to recuse Corey Kost from discussion and voting on Cases 219-191 and 219-192. Matt Schlenvogt seconded the motion. Chairman Timian called for the vote. Matt Schlenvogt, Brock DesLauriers, Joe Sheehan and Tim Timian all voted yes to the motion. Corey Kost abstained from voting. Motion carried.

Chairman Timian turned the floor over to Joe Ibach, Board Investigative Review Appraiser. Mr. Ibach addressed a concern brought up in Mr. Chase's response. The concern is with Mr. Ibach as the Reviewer in these Cases works in the same market area as Mr. Chase. In his response Mr. Chase stated that it may be "*inappropriate and unethical for competing appraisers to review a situation where an appraiser can be sanctioned*".

Mr. Ibach confirmed that it is and always has been his intent to complete reviews for the Board in a consistent and ethical manner. He explained that the review is not about the appraiser, it is the appraisal being reviewed. He questioned whether the Board Members had any concerns with him not completing his reviews in a fair and ethical manner.

Matt Schlenvogt thought it important to clarify that ultimately, it is up to the Board to discuss and accept/reject the reviews. It is not the sole work of the Reviewer. Board members were in agreement that Mr. Ibach has been consistently fair and ethical in his review process with the Board.

Mr. Ibach provided an overview of the issues outlined in his review of Case 219-192:

- He started by discussing various definitions: "appraisal", "value" and "property" and "real estate". Based on the definitions he discussed, Mr. Ibach questioned whether Mr. Chase prepared and developed an appraisal report.
- Based on the definition of an "appraisal", an appraisal report has to have an opinion of value; Mr. Ibach concluded no opinion of value was developed in the report in question. Rather, a report was prepared that developed a depreciated cost analysis of the improvements. Based on the fact that there was no value concluded, Mr. Ibach questioned whether an appraisal report was prepared. In his opinion, no.
- The appraisal was reported in a restricted format. According to USPAP, a restricted appraisal report is for the client's use only and the report must include a statement to that effect. The appraiser did not prominently state the use restriction. Furthermore, in his latest response Mr. Chase indicated he knew that the property owner was going to hear the results of the appraisal, that in itself does not allow the use of a restricted appraisal report.
- In his response, Mr. Chase indicated the appraisal was completed based on a cost approach. Mr. Ibach explained, a cost approach was only completed up to the land or site value. The cost approach used was not "complete", because it lacked the site value. A cost approach, when applied correctly includes a land value – there was no land value included.
- Mr. Ibach found that the work file was insufficient to reproduce an appraisal report. He indicated Mr. Chase questioned him as to whether he had received the entire work file. Staff reported Mr. Ibach received the work file that was Mr. Chase provided to Staff.
- There was no highest and best use analysis; a highest and best use cannot be completed on improvements only.
- Mr. Chase provided no market support for the depreciation estimates.
- The scope of work does not sufficiently identify the appraisal problem. A detailed explanation of the scope of work does not have to be included in the written report. However, if it is not included in the written report it must be included in the work file. The work file was insufficient.

- In a statement in his report Mr. Chase made reference to an assumption “...*in other words, the values given assume there is land and that the building is usable as it is on the date of value.*” If Mr. Chase is going to assume there is land there would have to be some form of assumption identified, either extraordinary or hypothetical Neither were identified.

Mr. Ibach provided a very brief overview of some of the issues noted in his review of Case 219-191.

- There was no market support for the land value conclusion in the appraisal or the work file.
- There appeared to be the same weaknesses in trying to identify the exact value that was to be developed.
- Failed to include in his appraisal the extent that another appraiser provided significant appraisal assistance.

Board discussion took place. Board members were in agreement with the inconsistency's issues noted in the Investigative Review Report. Chairman Timian provided comment. The appraiser appeared to use a straight-line method of depreciation and questioned whether the property really depreciated in a straight-line manner. He questioned whether that was what the sales told; has market information used; and whether an inspection was completed.

Mr. Chase was given the opportunity to address the Board.

- He questioned whether the Board members received his complete work file as the Reviewer requested additional information. Staff reported the work file submitted by Mr. Chase was provided to Board members and Mr. Ibach.
- Mr. Chase questioned the concept of not being able to appraise something without a land value. He stated he has reviewed a number of appraisals completed that way. He read from USPAP...*“The appraiser is not required to value the whole when the subject of an appraisal is a fractional interest of physical segment or a partial holding.”* Mr. Chase indicated his assignment was to appraise the buildings. He explained, he could have done a sales comparison approach, but it did not seem reasonable and would be extremely more speculative. He further explained he did a contributory value of the improvements to the site.
- There were allegations made by the Reviewer relative to highest and best use. Mr. Chase commented highest and use is not required by USPAP.
- Mr. Chase continued. It was implied by a Board member that he did not do an inspection. Mr. Chase confirmed he did complete an inspection to the best of his ability. Unfortunately, there was a property owner who would not allow him into the house. It was also implied that he did a straight-line depreciation. Mr. Chase indicated the depreciations that he made were based on his opinion and what Marshall Valuation Services suggests that depreciation should be given the age and condition.
- He further indicated he has reviewed appraisals by appraisers that work in Bismarck that are present that have done the exact same thing; They to use their professional opinion because they could not find market data.

Mr. Ibach commented, Mr. Chase is correct in that you can appraise the value of the improvements. However, you have to market support the contributory value of the improvements, but value has to be based on market data. Mr. Chase commented that he has seen appraisals completed from our office where the data does not exist. We bracket it with market data, data that the marketplace has put a value on, and we then compare it directly. An appraiser can value the contributory value of the improvements, but just estimating the depreciated cost without any market support, they are not one in the same,

Board member discussion took place. Board members concluded that it appears depreciation was not based off of the market support, but Marshall and Swift examples. The main issues appear to be in the development of the report, basing the highest and best use on a cost approach without land value; and looking at market value and not taking into consideration the site.

Chairman Timian called for a motion.

Tim Timian moved to raise this allegation to the level of a complaint, Brock DesLauriers seconded the motion. Chairman Timian called for discussion. Board members discussed the difference between conditional dismissal versus a settlement agreement. A conditional dismissal agreement is offered on the allegation level, whereas a settlement agreement is offered at the complaint level. Once the Board moves the allegation to the level of a complaint, at that time the Board may propose an offer of settlement. Chairman Timian called for the vote. Matt Schlenvogt, Brock DesLauriers, Joe Sheehan and Tim Timian. Corey Kost recused himself from voting. Motion carried.

Discussion took place. Staff reported that the review cost for these allegations to date totaled \$9700. Matt Schlenvogt moved to offer Mr. Chase a settlement agreement. The terms to include:

1. A monetary fine in the amount of \$9,700 (reimbursement of review costs).
2. Education: 4-hour “Scope of Work: Appraisals & Inspections” (Appraisal Foundation corrective course)
4-hour “Ethics, Competency, and Negligence” (Appraisal Foundation corrective course)
Two-day tested USPAP Course

Brock DesLauriers seconded the motion. Discussion took place. It was clarified that this was an offer of settlement not an offer of conditional dismissal. Matt moved to amend the motion to include that the terms of the agreement must be met within a one-year period, Brock seconded the motion. Chairman Timian called for the vote. Joe Sheehan, Matt Schlenvogt and Tim Timian voted yes to the motion. Brock DesLauriers voted no. Corey Kost recused himself from voting. Motion carried.

Case 220-108 and Case 220-111: Mr. Thelen is currently under a Settlement Agreement with the Board. The effective date of the Agreement is 12-28-2020. There have been two additional allegations filed with the Board. To date, Case 220-108 is still an allegation. Case 220-111 was elevated to the level of a complaint on December

18, 2020, and the Board moved for a formal review. Chairman Timian turned the floor over to Board Investigative Reviewer.

Case 220-108: Mr. Ibach reported that this is an anonymous allegation. He provided a brief outline of various issues addressed in his review, some of which included:

- Inadequate neighborhood description. Simply providing a statement that the property is agricultural provides not basis to determine what the market is, "agricultural" is a use, not a neighborhood.
- The highest and best use was not properly developed. The appraiser did not address the highest and best use of the site as vacant and as improved, nor were all four tests of highest and best applied, as required by USPAP.
- Inadequate description of improvements. No specifics were provided. The appraiser reported the condition rating at C3, which reflects a "good" rating. However, there was no additional description of improvements other than that the kitchen and bathroom were updated.
- The appraiser rated the improvements as having a C3 condition, yet the improvement components on the form are rated average. "Average" and C3 are not consistent as C3 rating means they are well maintained. Inconsistencies lessens the credibility of the improvement's description.
- Selection of comparable sales lacked credibility. There were four sales used in the original report, none were located in the area. It appears the only source used by the appraiser to find sales was the Minot MLS, when in fact there appear to be number of the sales in the property's market area through the Bismarck/Mandan MLS. The lack of truly comparable sales lessens the credibility of the sales comparison approach. The lender requested the appraiser consider another sale that was not considered initially. It was the only sale that had locational proximity.
- Reconciliation: The appraiser weighted the sales. Unfortunately weighting improper sales does nothing to the value because sales are in appropriate for this particular market segment. When the appraiser included the 5th sale, the value went from \$30000 to \$330000. The Reviewer questioned whether one sale can support the value.
- Adjustments were stated. None had direct or even indirect market support. Furthermore, there was no for the adjustments in the work file.
- No acceptable verification sources were referenced. The appraiser indicated he used MLS listings and warranty deeds as verification sources. Those sources do not meet Fannie Mae guidelines.
- Collectively the issues question the credibility of the appraisal.

Case 220-112: Mr. Ibach provided a brief outline of the issues reported in his Investigative Review Report, some of which included:

- Highest and best use was not properly developed. It was reported as single-family dwelling. The appraiser failed to address that the property is located in a high demand area for student housing. Therefore, the highest and best use may be something different. This was not addressed.
- Inconsistencies in improvement descriptions: The appraiser rated the condition as C3. This implies a good condition rating, yet a majority of the condition ratings on the form are rated average.
- The basement has a kitchen, and it was not addressed. Once a kitchen is observed it is incumbent upon the appraiser to address whether it was a duplex or whether it could be used as a duplex. It was not addressed.
- Inadequate description of the improvements.
- Overall lack of analysis for adjustments.
- Site value: Market abstraction was performed, but it appears it was performed incorrectly and there was lack of support for the conclusions.
- The sales comparison approach lacked verification sources
- No support for seller paid concession adjustments
- No market support for any adjustments, USPAP requires the appraiser provide reasoning and market support.
- No market support for special assessments.

Board discussion took place. Board members agreed with the issues addressed in the reviews. Collectively there appears to be numerous USPAP issues. Board members also questioned the scope of practice. This appears to be a complex property and a licensed appraiser is not allowed to appraise complex properties with a \$250,000 transaction value, which this property does exceed.

Case 220-108: Corey Kost moved to elevate the allegation against Mark Thelen to a complaint. Matt Schlenvogt seconded the motion. Chairman Timian called for the vote. Matt Schlenvogt, Joe Sheehan, Brock DesLauriers, Corey Kost and Tim Timian voted yes to the motion. The vote was unanimous. Motion carried.

Discussion took place. Mr. Thelen is still under a Settlement Agreement with the Board. The effective date of the Agreement is 12-28-2020. There are now two additional allegation that have been submitted to the Board. Both appraisal reports appear to have the same noncompliant issues. In both cases the allegations were substantiated. In his Investigative Review, Mr. Ibach is of the opinion the issues rise to the level of strong board action.

Chairman Timian read from the Settlement Agreement Mr. Thelen is currently under. *“In the event future complaints (allegations reported to the Board) are validated by the Board, with the Board voting to initiate a formal administrative complaint hearing proceedings, Thelen will automatically be subject to a one-year suspension.”* The agreement that was signed by Mr. Thelen

Board members questioned whether the Board was at the point to where Mr. Thelen could be subject to automatic suspension? Legal Counsel confirmed that the Board is at that point. The Board just voted to bring Case 220-108 allegations to a formal complaint. If the Board offers a settlement agreement and Mr. Thelen does not agree to the offer, the Cases will move to an administrative hearing. Mr. Karpinsky informed the Board that based on Rules, the Board has the authority to modify any of the Board’s disciplinary action, so the Board could modify the current settlement agreement.

There was a question relating to the dates the current allegations were filed. The allegations were filed prior to the signing of the agreement. The allegations may have been filed prior to the date of signing, but the allegations were raised to the level of a “complaint” after the date Mr. Thelen signed the agreement and the agreement says “future” complaints.

The Board has an appraiser who has been before the Board multiple times, has prior disciplinary history, numerous appraisals with validated complaint and violations, a pattern of similar violations, and refusal to acknowledge the violations. In reviewing past agreements between the Board and Mr. Thelen, the terms included completion of specific education. Board members questioned what else can be done other than move forward with the automatic one-year suspension?

Corey Kost moved to offer Mr. Thelen a settlement agreement with the terms to include a 12-month suspension. Brock DesLauriers seconded the motion. Chairman Timian called for discussion. The one-year suspension, based on these complaints, would cover the USPAP violations from these two reports and would remedy all prior agreements that we have with Mr. Thelen. Board members discussed the review costs for both cases.

Corey Kost moved to amend his motion to add a monetary fine of \$4600 fine to be paid in one-year time frame. Brock DesLauriers seconded the motion. Further discussion took place. The motion does not address if there are further allegations that rise to the level of a complaint. Legal suggested additional language relative to maybe a probationary period. Corey Kost commented that we have a number of aggravating circumstances that factor into the decision for the suspension. If another complaint comes down the way, the history can be the basis for further action. Whereas if it includes an “automatic” clause our hands are tied. Chairman Timian called for the vote. Corey Kost and Joe Sheehan voted yes to the motion. Matt Schlenvogt, Brock DesLauriers, Tim Timian voted no to the motion. Motion did not carry.

Tim Timian made a motion to recover the review costs of \$4600, one year suspension, and should he decide to keep appraising after the one-year suspension, if he comes before the Board all items from the past will be considered to determine whether or not revocation is necessary. Motion died due to the lack of a second.

Legal Counsel suggested the Board include language that gives the Board an option, if an allegation come in, the Board can make a decision without a hearing. This would give the Board discretion on a case-by-case basis.

Matt Schlenvogt moved to offer Mr. Thelen a settlement agreement with the terms to include: 1) a \$4600 monetary fine to cover the costs of the investigation, 2) a one- year suspension, and 3) two-year probation after the one-year suspension. As part of the two-year probation Mr. Thelen must submit appraisal lost on a monthly basis. Reports may be selected for review at any time for review for compliance with USPAP. If Mr. Thelen violates any condition of the agreement the Board can make a decision without a hearing. Brock DesLauriers seconded the motion. Chairman Timian called for the vote. Corey Kost, Joe Sheehan, Brock DesLauriers, Matt Schlenvogt and Tim Timian all voted yes to the motion. The vote was unanimous.

Leo Wilkin, Legal Counsel for Mr. Thelen questioned Mr. Karpinsky as to whether Mr. Thelen could have the opportunity to respond to Mr. Ibach’s comments. It is up to the Board Chair to allow comment. Chairman Timian did not allow comment.

Fannie Mae LQC Tips: Fannie Mae has been forwarding notices called “Tips” to States. The Board has received two notices and was unsure how to handle them. Staff contacted Fannie Mae to find out the definition of a “Tip” and then questioned other States as to how they are handling these notices. There is no consistency among States: It ranges from: disregard the notice, forward it on to the appraiser, handle it as a complaint, forward a letter of concern, etc. The Board needs discussion to set policy in how they should be handled.

Joe Ibach also had a discussion with Lyle Radke of Fannie Mae. When sending out Tips, Fannie Mae does not consider a “Tip” a complaint, they are just trying to inform the States. They leave it up to the States to make their own decision on how to handle the information. Fannie Mae does not have the authority to regulate appraisers. They do not want to have to remove appraisers from the appraiser panel if the appraiser can be educated, so they forward them to the States.

In Staff discussion with Fannie Mae, it was confirmed that these “Tips” are not computer generated. Fannie Mae works with the lenders and then takes a number of steps prior to sending the notice. The “Tips” that are sent to the States are those that require the lenders to take remedial action before accepting the appraisal.

Discussion turned to how to handle the “Tips”. The Board has currently received two “Tips” from Fannie Mae and processed them as allegations. In both cases the Board has offered a conditional dismissal, based on review of the reports in question.

Joe Ibach indicated that Mr. Radke will be addressing “Fannie Mae Tips” at the upcoming AARO conference. Staff and Board members will be in attendance at the conference. It was suggested that the Board table the handling the Fannie Mae “Tips” until after the AARO. Hearing from Mr. Radke and other States would allow the Board members to make a more informed decision. This would include a second look at the two cases before the Board.

Matt Schlenvogt moved to table the two conditional dismissals related to the Fannie Mae “Tips” until the Board meets post AARO Conference. Joe Sheehan seconded the motion. Chairman Timian called for the vote. Joe Sheehan, Matt Schlenvogt, Corey Kost, Brock DesLauriers and Tim Timian all voted yes. The vote was unanimous.

Chairman Timian called for adjournment.

Jodie R. Campbell
Executive Secretary