

NORTH DAKOTA REAL ESTATE APPRAISER QUALIFICATIONS AND ETHICS BOARD

Zoom/Teleconference call Meeting Minutes – August 23, 2022

Chairperson Timian called the meeting to order at 9:08 AM. Roll call was taken.

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

Staff Present: Jodie Campbell and David Campbell

Investigative Reviewer: Joe Ibach

Legal Counsel: Carl Karpinsky

Chairman Kost welcomed Nikki Mertz as the Board's newest member and offered a thank you to Tim Timian for his many years of service.

Chairman Kost turned the meeting over to Vice Chair Matt Schlenvogt. Brock DesLauriers moved to recuse Corey Kost from discussion and voting on Case 216-186 and Case 218-187. Joe Sheehan 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.

Case 218-186 and Case 218-187:

Chairman Schlenvogt turned the floor over to Carl Karpinsky, Board Legal Counsel, to review the options in moving forward with the Weber Cases. At the meeting of June 28, 2022, the Board moved to offer each of the Weber's a settlement agreement. The Weber's rejected the Board's offer and have proposed a resolution (counteroffer).

At the previous meetings of 6/21/22 and 6/28/22 the Board and Legal discussed possible options. Legal Counsel provided a brief overview of the options. The Board could request the ALJ hold an evidentiary hearing to supplement the record. The Board would be the decision maker on the discipline; determine the discipline and hand down the order.

Another option would be to amend the findings of fact conclusions of law. The Board could not supplement the record but would use the information already in the record to amend the order. The Board would be the decision maker on the discipline, but as long as the information is already in the record could provide additional explanation for its decision.

Legal informed the Board that Matthew Sagsveen has replaced Jim Nicolai as Board Litigation Counsel. Mr. Sagsveen presented the Board with another option to consider, amend the original recommended order to be a final order.

Legal thought it prudent to provide a brief overview of the options when a case initially goes to the ALJ: 1) a board can request a recommended order from the ALJ. This option allows the board to decide the discipline. 2) a board can request the ALJ do a final order. The ALJ would come up with the findings of fact and conclusions of law, based on the evidence. In this option, the ALJ would determine the discipline.

The option Mr. Sagsveen is proposing is to amend the recommended order to a final order, turning control over to the ALJ to make the final determination on discipline. This option takes away the Board's discretion in determining the discipline. Legal added that discipline handed down by the ALJ would probably hold more weight than if coming from the Board.

Board members discussed the concerns in turning to the ALJ for a final order:

- The ALJ could come up with a much lower disciplinary action than what the Board would like to see, and the Board would have no control.
- Going this route would take the subject matter experts (the appraiser members of the Board) out of play. The appraiser members of the Board are the experts, the ALJ does not have the background in USPAP.
- The Board is charged with the responsibility to protect the public, not the ALJ.
- Why have a Board and USPAP experts if they are to be completely negated at the end of the process

- Board members agreed, the Board should make the final decision on discipline.

Chairman Schlenvogt provided opposing Counsel, Ron McClean the opportunity to comment. Mr. McClean is of the opinion; the Cases should go back to the ALJ.

Chairman Schlenvogt requested Legal provide an overview of the process should the Board decide to bring this back to the ALJ, with the Board having the final say. Legal explained, after the Board motions, he would follow up with Mr. Sagsveen and cite hearing language, NDCC 28-32-25. Mr. Sagsveen would write a hearing request to allow the Board to supplement the record and give the Board the final determination of the discipline. Opposing Counsel would be allowed to supplement the record as well. Staff and Legal would work together to decide on the supplemental information to introduce. A hearing would be held. Legal indicated there could be the possibility that the ALJ would allow the record to be supplemented without holding a hearing.

There was no further discussion.

Chairman Schlenvogt called for a motion to accept or reject the proposed resolution submitted by Ron McClean on behalf of Kelly Weber and Jerome Weber. Staff read the offer. Joe Sheehan moved to reject the proposed resolution (counteroffer). Nikki Mertz seconded the motion. Chairman Schlenvogt called for discussion. No further discussion. Chairman Schlenvogt called for the vote. Brock DesLauriers, Nikki Mertz, Joe Sheehan, and Matt Schlenvogt all voted yes to the motion. Corey Kost abstained from voting. Motion carried.

Chairman Schlenvogt called for a motion on how the Board wishes to proceed. Joe Sheehan moved to return Cases 218-186 and 218-187 to the ALJ with supplemental information for a final order on discipline to come from the Board. Brock DesLauriers second the motion. Discussion took place. Staff questioned whether the Cases were being returning to the ALJ for an evidentiary hearing. Legal Counsel clarified that the Board is returning the Cases to the ALJ to supplement the record with additional information for the Board to make the final recommendation on disciplinary action. It would be up to the AL whether to hold an evidentiary hearing or allow it to be supplemented by paper. Legal could request both. Chairman Schlenvogt called for the vote. Joe Sheehan, Nikki Mertz, Brock DesLauriers, and Matt Schlenvogt all voted yes to the motion. Corey Kost abstained from voting. Motion carried.

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

Matt Schlenvogt turned the Chair back over to Corey Kost.

Chairman Kost turned the floor over to Dean Rylander. Mr. Rylander is attending on behalf of the NDAA and is here to discuss NDAA Initiatives.

PAREA: The NDAA endorses this program and is requesting the Board adopt PAREA as a viable source for 100% experience training. In essence, the Board has already adopted PAREA. PAREA is part of the AQB Criteria, and the Board adopts the AQB Criteria by reference in Rules.

NDSU Curriculum: Matt Schlenvogt has been in discussion with NDSU relative to developing a real estate minor program. Within that real estate minor program would be the opportunity to complete appraiser qualifying education to become a credentialed appraiser. NDSU would look at this as a 5-year trial period and would be looking for assistance with costs (\$20,000 per year) from different avenues, including the Board via the ASC Grant program.

Experience Training Program: The NDAA has looked into the SD Experience Training program. Unfortunately, the program is struggling. While NDAA supports this type of a program, it is a big undertaking and at this point looks to be more of a long-term goal.

The NDAA is offering their services for any type of a task force or a focus group to assist the Board in tackling needs that would benefit the state, the appraisers, and the public.

Discussion turned to sources of funding to assist in programs or initiatives. One example discussed was a program to encourage or get appraisers to appraise in the underserved areas. As mentioned in previously, NDSU

has requested assistance in funding their real estate degree program. Possible sources of funding could be through:

- An ASC Grant
- Regional Workforce Impact Program
- ND Career Builders
- ND State College of Science

The NDAA is pursuing the feasibility of creating a Centralized Assessing Website that covers all counties and cities in ND. Mr. Rylander believes the biggest hurdle is going to be financing, especially in the smaller counties. Board members are support of this initiative.

Evaluations: The NDAA supports and requests the ND Appraiser Board support creating a path for appraisers to complete evaluations in ND. The ability to complete evaluations would give the appraisers another option within the appraisal profession. Mr. Rylander reported that there are around 13 states that already allow appraisers to complete evaluations. The NDAA understands this request will require a statute and rules change.

Mr. Rylander discussed regulating evaluations. The bank regulates an evaluation product, not the Board. The NDAA feels that, at a minimum, the appraiser completing an evaluation should follow the ethics and competency rule of USPAP, with no regulation beyond that. Mr. Rylander clarified that the appraiser would only be allowed to complete an evaluation for a financial institution. The appraiser would not be allowed to complete an evaluation for an individual.

Discussion took place. From the Board perspective, one of main concerns is protecting the public trust in the appraisal profession. It is unlikely the public will understand the difference between an appraisal and an evaluation. The evaluation is designed for the Regulator, but there is concern the borrower would be privy to it. The Board questioned: 1) Where is the recourse if there are blatant violations found with the evaluation? 2) Has there been any research on States that allow evaluations as to whether there has been a positive impact on the State?

Chairman Kost concluded, should the NDAA proceed with legislation relative to evaluations, the Board will at that time review the NDAA proposed legislation and decide whether or not to support it. Chairman Kost thanked Mr. Rylander and the NDAA for their efforts and commitment to the profession.

Chairman Kost called for a motion to adjourn. Joe Sheehan moved for adjournment. Nikki Mertz seconded the motion. Joe Sheehan, Nikki Mertz, Brock DesLauriers, Matt Schlenvogt, and Corey Kost all voted yes to the motion. Motion carried.

Respectfully submitted,

Jodie R. Campbell
Executive Secretary