

APPRAISER LICENSING AND CERTIFICATION BOARD

Heber M. Wells Building

Room 210

8:00 a.m.

April 27, 2011

MINUTES

STAFF MEMEBERS PRESENT:

Deanna Sabey, Division Director
Dee Johnson, Enforcement Director
Mark Fagergren, Education/Licensing Director
Xanna Hardman, Assistant Attorney General
Jennie Jonsson, Hearing Officer
Renda Christensen, Board Secretary
Carla Westbroek, Appraisal Education/Licensing Specialist
Jim Bolton, Investigator
Craig Livingston, Investigator
Ken Wamsley, Investigator
Jim Bolton, Investigator
Travis Cardwell, Investigator

BOARD MEMBERS PRESENT:

Craig Morley, Chair
Paul W. Throndsen, Vice Chair
Debra Sjoblom, Board Member
Jeanette Payne, Board Member
Daniel Brammer, Board Member

GUESTS:

Vern Meyer	Austin Christensen
Carol Howell	Brenda Pierce
Joel Frost	Jake Strickland
Frank Kane	William Lawrence
Neil Jensen	Steve Danson

The April 27, 2011 meeting of the Appraiser Licensing and Certification Board began at 8:00 a.m. with Chair Morley conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes - A motion was made to approve the March 23, 2011 minutes as written. Vote: Chair Morley, yes; Vice Chair Throndsen, yes; Board Member Brammer, yes; Board Member Sjoblom, yes. Motion carries.

DIVISION REPORT

DIRECTOR'S REPORT – Deanna Sabey

Director Sabey said that she and Mr. Johnson traveled to St. George and spoke at the Appraisal Institutes Symposium on March 25, 2011. The topics covered HB-91, which will be in effect on May 10, 2011; customary and reasonable fees; interim rule; DRE changes and specific licensing issues. We also covered the ASC field review, and explained about the Division's new website look.

On April 26, 2011 Director Sabey attended the UAA's annual meeting which was held in the Wells Fargo Atrium. This was a panel discussion where Chris Kyler, Mike Ostermiller, Rick Lifferth, Representative Draxler, Craig Morley, and Director Sabey made up the panel. There were good questions from the audience, and the meeting was very well attended.

Yesterday the Division visited Logan on their first location on the Division's Caravan. It was very well attended, and there were approximately 20+ appraisers in attendance.

Director Sabey made a presentation at the Appraisal Institute and discussed the customary and reasonable fees provision of the interim rule. She will cover the details of her report later in the meeting when the topic is scheduled on the agenda.

INVESTIGATIONS REPORT – Dee Johnson

Mr. Johnson reported in March the Division received 16 complaints; screened 4 complaints; opened 12 cases; closed 10 cases; leaving a total number of appraisal cases at 84. He complimented the investigators for trying to keep the cases as current as they are. One of their goals after the ASC was here is that by the time of our next review there will be no old cases.

Stipulation for Review

Jeffery M. Painter

The respondent was given the opportunity to appear today and has chosen not to.

Mr. Johnson introduced the new investigator for the Division, Travis Cardwell. Mr. Cardwell has been in the mortgage industry for several years, and will be a welcome addition to staff.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren brought up the topic of mass appraisers and how they have their experience documented. They must submit an experience log. In addition, the Division has an experience review system approved in rule whereby applicants can accumulate their hours and also submit Standards 1 and 2 appraisal reports as a fee appraiser would. Proposed rule 162-2g-304(d)-(5)(d) states that a State Licensed appraiser whose experience is earned primarily derived through mass appraisal experience shall submit proof of having performed at least five appraisals conforming to Standards 1 and 2. Certified Residential appraisers must submit 8 appraisals, and Certified General appraisers, must also submit 8 Standards 1 and 2 appraisals.

A question has come up as to the complexity of the work that is submitted to the Division. There is nothing in this proposed rule that says that mass appraiser applicants must provide very difficult examples. All the rule says is that they must turn in a certain number of appraisals to be reviewed. The Board can decide if they want to change the rule to require a variety of appraisal types or complexities. Currently, with fee appraisal applicants Ms. Westbrook chooses recent work and tries to choose a 2-4 family unit plus three others.

Chair Morley said the mass appraisers have an advantage in that they are able to select the properties they want to appraise. It would be easy to do an analysis to see where they had a lot of comparable sales, and once that was done, they could select any property within that area. We don't tell them it must be a variety of properties; it can be all the same kind of properties. It may be well to ask them to produce a little more variety. Chair Morley would like to see this topic added to the agenda for next month for more discussion.

Mr. Fagergren said that Board Member Brammer received a letter from Ron Smith indicating that there is an individual who is a mass appraiser and has recently retired, and suggesting him as a candidate for the experience review committee. Historically, people the Board has appointed for mass appraiser experience review status have not been practicing. He has supervised the appraisals of oil wells, gas wells, multi-ferrous and non-ferrous mines. The Board will discuss this in their Executive Session.

Mr. Fagergren submitted the following lists to the Board for their review:

Certified and Licensed Appraiser Applicants Approved by both Education and Experience Review Committee

Layne Browning, CR Candidate	Garrett Hannig, CG Candidate
Brenda Pierce, LA Candidate	Jeffrey Trent Pierson, CR Candidate
Joseph Quackenbush, CR Candidate	Eric Snowden, LA Candidate
Cory S. Waddoups	

Certified and Licensed Appraiser Segmented Applicants Approved previously for Testing by Appraiser Board Education Submitted and Approved to Meet New Criteria

William K. Cole, Jr.
Kristy Hammond, LA Candidate

Certified and Licensed Appraiser Applicants Approved Education Denied by Experience Review Committee

William Gibson, LA Candidate
Scott T. Roberts, CR Candidate

Discipline List for Board's Consideration

Barbara Fausett, Appraiser Trainee
Michael Kleber-Diggs, AMC Control Person
Michael Loughry, Reciprocity CR application

John Kilpatrick

COMMISSION AND INDUSTRY ISSUES

Rule Updates – Jennie Jonsson

Ms. Jonsson said there have been some rule amendments out for public comments and there have been no comments received. The rules are in a position to be made effective. These rules were suggested by the Appraisal Subcommittee in their review. The rule, R162-103, will require school directors, owners, and instructors to disclose pleas in abeyance, and diversion agreements, as well as convictions. It will also require that a person must attend 100% of a pre-licensing or continuing education class to receive credit. It also clarifies how work in academia, authorship, teaching, etc. may be used for continuing education credit, as well as service on the education review committee, experience review committee and technical advisory committee. A motion was made to make R162-103 effective. Vote: Chair Morley, yes; Vice Chair Thronsen, yes; Board Member Sjoblom, yes; Board Member Payne, yes; Board Member Brammer, yes. Motion carries.

The two rule amendments that we worked on last month have been submitted to the Division of Administrative Rules and have been accepted. They will be published for public comments on May 1, 2011. R162-104-14 is the rule that was put in place for the 19 people who completed their segmented application, but did not pass the exam and now have additional education requirements. The rule states that they now need to complete everything including submitting their application by December 31, 2011 or else they will be asked to submit more recent work to be reviewed by the Experience Review Committee. If there are no comments, it will be effective on June 7, 2011.

Ms. Jonsson said when we submitted our draft language to the Administration of the Department of Commerce they were confused about our use of the term “segmented” application. It is not a defined term, so they requested that instead of using this term, we just state what a segmented application is. She has changed that language and sent it out to the Board by e-mail for their review. The Board responded that they did not consider these changes to be substantive and that we could go ahead and file based on their last vote.

In the AMC rules, we have proposed some amendments that are also going to be published on May 1, 2011 for public comments. These are amendments that require an AMC to provide evidence that the entity is registered and in good standing with the Division of Corporations and Commercial Code before it may receive a registration in Utah. It also puts in some restrictions regarding fees that AMCs are passing along to appraisers: they can't be junk fees; inflated fees; or fees for services that were not actually preformed. The fees must be disclosed accurately as part of the offering of the assignment. These are rules R162-2(e). Subsection 201 deals with registering with the Division of Corporations and Commercial Code; 304 deals with disclosing any fees charged to the appraiser; and 401 specifies that those fees may not be inflated, etc.

Last month, Ms. Jonsson mentioned that the Division is getting close to completing a reorganization of the appraiser rules, and she has sent a draft out by e-mail to the Board. The Division's intention was to change the numbering system to an outline format, to number the different sections so that they would tie with the statutes (that have been reorganized and renumbered and will be in effect in the first part of May).

There were also some substantive changes that the Board has worked on. Those would include: (1) requiring trainees to submit their most recent work for evaluation by the Experience Review Committee; (2) reporting trainees to include on their experience logs all assignments done so as not to stop the log as soon as they reach the 2,000 hours; (3) prohibiting trainees from leaving an assignment off the log so it will not be chosen for review; and (4) specifying that complex assignments where the highest and best use of a vacant lot or land is for more than 4 one-to-four units cannot be preformed by a state licensed appraiser or a state certified residential appraiser.

All of those substantive changes have been incorporated in this draft, but beyond these things, the main point is to reorganize them and try to clean up the language and the numbering.

Board Member Payne said on page 6 there were two typographical errors. It should read "Application to sit" in two places. A motion was made to publish these proposed amendments for public comment. Vote: Chair Morley, yes; Vice Chair Thronsdn, yes; Board Member Sjoblom, yes; Board Member Payne, yes; Board Member Brammer, yes. Motion carries. Ms. Jonsson stated that she would be double checking the numbering and the references; the Board authorized her to make corrections on these areas without bringing the filing back to the Board for a new vote.

Customary and Reasonable Fees - Last month we were going to accept from the Board and public thoughts about what ideal regulation might look like, so we could do some research to see where our legal boundaries and parameters are. The Division has not received any comments as of today.

Chair Morley turned the time over to Director Sabey. Director Sabey outlined the federal side of the Dodd-Frank Act on customary and reasonable use. The Act requires AMCs to charge appraisers customary and reasonable fees. The comments to the interim rule specifically state the provision for customary and reasonable fees is not a fee-setting rule, nor is the Dodd-Frank language a fee-setting statute. The marketplace should be the primary determiner of the value of appraisal services. Not only is that important because that is what it says in the statute and rules, but it is also important because the Board and Division have to be very careful in crafting rules that don't violate federal law in price fixing.

The interim rule itself became effective on April 2, 2011. It specifies that customary and reasonable fees for appraisal services must be determined for the geographic market in which the property being appraised is located. The AMC has two different

presumptions of compliance that they can look at in order to adhere to the customary and reasonable fees rule.

The first presumption of compliance states that compensation must be “reasonably related” to the recent rates for appraisal services performed in the geographic market of the property. The rule specifies “recent” as meaning generally within one year. The AMC has the ability, in meeting this presumption, to gather information about recent rates by using a reasonable method. The rule specifies that an example of a reasonable method would be a fee survey. This might be something the Board may look at to decide whether the fee survey meets survey requirements or is it just a fee survey that is a disguise for the fees the AMC wants. The AMC can adjust for factors such as property type, scope of work, and appraiser qualification in experience and professional record. The AMC itself cannot engage in the price fixing or any other anti-competitive act.

Presumption two is an easier presumption from a regulatory perspective. This is a presumption that a fee is customary and reasonable it relies on a rate schedule in the geographic market of the property that has been established by objective third-party information. An example of that would be the Veterans Administration Appraiser Fee Schedule.

This schedule cannot include AMC paid compensation. Another important point in this presumption is that AMCs may give volume-based discounts. A number of AMCs have provided in their contract language clauses that say by accepting the assignment, the appraiser is also agreeing that the customary and reasonable fee requirement is being satisfied. This may be an important provision for AMCs to have for their own liability protection. This does not satisfy the federal presumption. It does not matter whether the appraiser agrees to this or not, as far as looking at this presumption. For example, if we had a hearing and the AMC presented the defense that the appraiser agreed, and therefore, the presumption has been met, we would reject the defense.

This is new ground on the state level. The rule doesn’t allow the Board or Division to mandate that an AMC user either presumption. The interim rule states the authority to decide which presumption to use.

Board Member Payne had several suggestions regarding customary and reasonable fees. The first thing to do would be to separate appraisal fees and management fees. Currently, the appraisal fee is included in the management fee that the mortgage company pays the AMC. The appraiser still has to report the appraisal fee in their report. Chair Morley said we don’t have the ability to require a separation on the closing statements or by contracts. He said the Board has done what it can do under the authority it has to create a separation between the total fee and the fee the appraiser receives.

Director Sabey said the creation of a committee is reasonable. There are some specific issues that need to be addressed, and it will take a number of hours to complete. The

committee should draft some rough language and create a draft to present to the Board. Director Sabey suggested that AMCs be part of the committee because this directly affects their business. It was decided that the committee should have seven members, with at least two from the Division; two from the UAA; one from the Board; and two from the AMCs. After some discussion, those who have been selected to be on the committee are:

Division: Director Sabey, Jennie Jonsson
Appraiser Board: Dan Brammer
UAA: Vern Meyer, Jared Preisler
AMCs: Neil Jensen, Austin Christensen

Chair Morley said an issue coming up will be AMCs having to pay national registry fees for each appraiser on their panel. Director Sabey said we will do some checking into this because it may be a bit premature at this point.

Because of the scheduled hearing today, the topics of Application fees being paid by AMCs; Appraiser Pressure; and Broker Price Opinions will be on the agenda for next month.

A brief recess was taken from 9:55 a.m. until 10:11 a.m.

OPEN TO PUBLIC

INFORMAL HEARING:

10:11 Mark D. Peterson – Disciplinary Hearing

Division Witnesses: Ken Wamsley, Investigator

The Board took a lunch break from 12:15 p.m. until 12:30 p.m.

CLOSED TO PUBLIC

Motion to hold an Executive Session. Vote: Chair Morley, yes; Vice Chair Throndsen, yes; Board Member Sjoblom, yes; Board Member Brammer, yes; Board Member Payne, yes. Chair Morley read into the Minutes, "I hereby affirm that the sole reason for closing part of the meeting was to discuss the character, professional competence, or physical and mental health of an individual." An Executive Session was held from 12:30 p.m. to 12:45 p.m.

A brief break was taken from 12:45 p.m. until 1:04 p.m.

OPEN TO PUBLIC

1:04 Continuation of hearing
Division Witness: William Lawrence
Mr. Wamsley has been recalled to testify.

A brief break was taken from 2:24 p.m. to 2:37 p.m.

2:37 Continuation of hearing
Division Witness: Mr. Wamsley is continuing with his testimony.

CLOSED TO PUBLIC

Motion to hold an Executive Session. Vote: Chair Morley, yes; Vice Chair Throndsen, yes; Board Member Sjoblom, yes; Board Member Brammer, yes; Board Member Payne, yes. Chair Morley read into the Minutes, "I hereby affirm that the sole reason for closing part of the meeting was to discuss the character, professional competence, or physical and mental health of an individual." An Executive Session was held from 4:00 p.m. to 4:32 p.m.

OPEN TO PUBLIC

RESULTS OF DELIBERATIONS

Review of Lists
Deliberation on Hearing
Deliberation on Stipulation

The Stipulation for Jeffery M. Painter was approved.

The Board has voted on the accepting the recommendations made below. Vote: Chair Morley, yes; Vice Chair Throndsen, yes; Board Member Payne, yes; Board Member Brammer, yes; Board Member Sjoblom, recused herself.

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Layne Browning, CR Candidate	Garrett Hannig, CG Candidate
Brenda Pierce, LA Candidate	Jeffrey Trent Pierson, CR Candidate
Joseph Quackenbush, CR Candidate	Eric Snowden, LA Candidate
Cory S. Waddoups	

Certified and Licensed Appraiser Segmented Applicants Approved previously for Testing by Appraiser Board Education Submitted and Approved to Meet New Criteria

William K. Cole, Jr. - Approved
Kristy Hammond, LA Candidate - Approved

Certified and Licensed Appraiser Applicants Approved Education Denied by Experience Review Committee

William Gibson, LA Candidate - Denied
Scott T. Roberts, CR Candidate - Denied

Discipline List for Board's Consideration

Barbara Fausett, Appraiser Trainee - Approved
Michael Kleber-Diggs, AMC Control Person - Approved

Michael Loughry, Reciprocity CR application - Approved

John Kilpatrick – Approved

The name of Glen Stevens was approved to be on the list of Experience and Education Mass Appraiser Reviewers.

A motion was made to adjourn the meeting. Vote: Chair Morley, yes; Vice Chair Thronsen, yes; Board Member Sjoblom, yes; Board Member Brammer, yes; Board Member Payne, yes. The meeting adjourned at 4:33 p.m.