

**APPRAISER LICENSING AND CERTIFICATION BOARD
HEBER M. WELLS BUILDING
ROOM 2B
February 24, 2010
9:00 A.M.
TELEPHONIC MEETING**

MINUTES

STAFF MEMBERS PRESENT

Deanna Sabey, Division Director
Dee Johnson, Enforcement Director
Mark Fagergren, Education/Licensing Director
Traci Gundersen, Assistant Attorney General
Jennie Jonsson, Hearing Officer
Renda Christensen, Board Secretary
Ken Wamsley, Investigator
Carla Westbroek, Appraisal Education/Licensing Specialist

BOARD MEMBERS PRESENT

Ron Smith, Chair
Craig Morley, Vice Chair
Debra Sjoblom, Board Member
Jeanette Payne, Board Member

GUESTS

Allen Larsen

The February 24, 2010 meeting of the Appraiser Licensing and Certification Board began at 9:00 a.m. with Chair Smith conducting.

Board Member Thronsen was excused from the meeting today because he is attending a continuing education course.

The Minutes for the January 27, 2010 meeting were reviewed and found to have three corrections. On page 5, there were two typographical errors: add “d” on “goo”; the name of Caleb A. Dooley was written with a “B”; and, a name was left off the discipline list for the Board’s review, Amy Offinga. With these corrections completed, the Board approved the Minutes as corrected.

DIVISION REPORTS

DIRECTOR’S REPORT – Deanna Sabey

Director Sabey gave an update on substitute HB-219, Delinquent Property Tax Amendment, this bill has passed and is waiting for the Governor’s signature.

The Division’s bill, HB-275, has passed through the House process and is going through the Senate process. It has been sent to the Senate Calendaring Committee for scheduling, and the Senate sponsor is Senator Neiderhauser.

A new bill, HB-399, has brought some interest to the Division. Director Sabey gave it a brief review because the bill is 120 pages. The name is “The Common Interest Ownership Amendment,” and was numbered yesterday. It enacts the Utah Common Interest Ownership Act and repeals the Condominium Ownership Act and Community Association Act. There are some provisions that deal specifically with assessors. This bill is sponsored by Representative Froerer.

Chair Smith asked if Representative Froerer offered some amendments at the time the Division’s bill, HB-275, went to the floor. Director Sabey said the Utah Legislature website has the amendments he has proposed, and it has already been through the process of having those amendments included as part of the bill. It has been voted on by the House with the amendments, and it was passed out unanimously.

One of the amendments is to add in a clause to the provision that said a licensee who is being investigated by the Division has to pay certain copying costs and the costs to transfer data into a universal readable format. These costs would only be required to be paid if the licensee was found in violation of statutes or rules. Another amendment was to codify what the Division’s policy has been in the past with regards to sending out notices to licensees who are coming up for renewal.

ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson reported in January the Division received 7 complaints; screened 0 cases; opened 5 cases; closed 5 cases; leaving the total number of appraisal cases at 90.

There are no stipulations to be reviewed. Chair Smith asked if the Division is getting into a higher number of cases in the future. Mr. Johnson said there are quite a few complaints in the screening process that haven’t been completed yet, and if we use the same numbers we have seen in the past, we will probably end up with about 40% to 50% of those complaints being opened for investigation. Of those 90 cases, there are approximately 12 to 15 cases over one year old. Most of those are waiting for the Division to bring them forward either in stipulations and/or a hearing. We have 12 cases open against one individual. When we reach a stipulation there, all 12 cases will close. Currently, the Division is negotiating with attorneys.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said that it was nice to have Ms. Westbroek back from recovering from her injuries. Mr. Fagergren presented the following list to the Board:

Certified and Licensed Appraiser Applicants Approved by both Education and Experience Review Committees:

- William Belka, CR Candidate
- Stephen C. Hemingway, LA Candidate
- Gil McDougald, LA Candidate
- Daniel Sanders, CR Candidate
- Monica Fell, LA Candidate
- Benjamin Hulet, LA Candidate
- Suzanne Millard, LA Candidate

John P. Ward, CR Candidate
John Michael Redd, Jr., CR Candidate

There is an individual who applied for a trainee license and his application was denied. Generally speaking, if a person is denied the only avenue is to appeal the decision and come before the Board in a hearing. This person states two reasons underlying the denial: the listing history of the subject was not reported for the last three years; and second, the work files were not provided. His letter explains that because he is a mass appraiser, he didn't get the typical sheet that Carla submits to indicate that an applicant must submit the entire file. Mass appraisers prepare eight reports of their own volition and determination, and provide those to the Division. Mr. Fagergren asked if this person should be scheduled for an appeal hearing, or that we include a copy of this letter with the work files that he now has sent, and send them back to the same reviewer to see if that changes the reviewer's opinion. Once the new memo has been received by the Division, we can add this person to the next list for review. After discussion, the Board agreed with Mr. Fagergren to re-submit the file to the same reviewer.

There is an individual with an education concern. People who are applying for a license or certification since January 1, 2008, have to take a prescribed curriculum, and there are very limited electives available. This person took two classes that preceded AQB approval for these courses under this program. Up to this point, the Division has made the decision that we don't do an approval that is referred to as a matrix approval. This means a person might take a 40-hour class with five hours on statistics and seven hours on highest and best use. The individual then submits their matrix indicating the courses they took with a breakdown. They ask for the Division to track these classes and let them know what other classes they need. If the courses are identical, then the Division will accept them. If they deviate from the prescribed AQB course, we won't accept anything other than the whole course. This individual has written to the provider of the courses which has responded by sending a grid sheet many pages in length, outlining the breakdown of the course. Mr. Fagergren asked the Board for their opinions and suggestions. A motion was made to go forward with approving the courses as Mr. Fagergren suggested. The motion was passed unanimously.

Chair Smith has submitted his resignation as Chair of the Education Review Committee. He has served for 11 years, and the Division has greatly appreciated his service. Mr. Fagergren asked the Board if they have any names to suggest as replacement for Chair Smith. He suggested that it may be time to appoint a new Education Review Committee. Chair Smith recommended a committee of 3 or 4 members, and have Mr. Fagergren as the Chair to handle all the straightforward cases, and then send the difficult cases to the Committee. The suggestion was made to place an article in the next newsletter for those appraisers who are interested in serving on the Committee. The newsletter will be out at the end of March.

There are no names on the denial list or the discipline list for review.

COMMISSION AND INDUSTRY ISSUES

Discussion: AMC Rules – Jennie Jonsson

Ms. Jonsson said the AMC rules have been published on the Division of Administrative Rules website. She wanted to make the Board aware that the Division of Administrative Rules has

put together an interim system in dealing with this delay of getting the rules up on the website. They have a page entitled the “Segue” page. You can go to this page and see the text of those rules that have been made effective but not yet been incorporated into official text.

Discussion: Priorities for Future Rules Ms. Jonsson said there have been some questions raised regarding AMCs that might need to be dealt with in rule. The first one is that the statute requires the AMCs to evidence to the Division that they have a system in place to review the work of the Appraisers on their panel for adherence to applicable appraiser standards. Ms. Jonsson said we do not have a rule that establishes a process by which they evidence that system. We have had them identify their reviewers and verify that each of those reviewers has passed the 15-hour USPAP course, which would include the test. So far, everyone has told us that they review every appraisal. We are not sure how extensive these reviewers are. The question for the Board is, what does the Board think would be an adequate review of the work? Secondly, they are asking, do we actually have to have these reviewers as our employees. Or, can we assign appraisers who are on our panel to review the work of other appraisers who are on our panel? It has come to the attention of the Division that appraisers have decided to get into the AMC business. Appraisers are starting AMCs and assigning themselves the work. The question is whether they can do that. Ms. Jonsson has done some research in the statute and our definition of AMC is a third-party broker. She has been telling them that based on that definition, she would advise an appraiser who owns and operates an AMC not to assign himself the work. The next question asked is, can I put my wife, child, etc. on my panel and assign her/them the work? Ms. Jonsson has asked the Board for their views on these questions.

Comments from Board Member Payne and Mr. Larsen state they are both concerned that assignments are being given to preferred appraisers instead of names being chosen at random. Vice Chair Morley said he would like to propose a rule change concerning broadcast e-mails on a first-come-first-serve basis. Under USPAP 2010, appraisers must disclose to their client, before they accept the assignment, if they have had any prior professional involvement with the property over the past three years. When they get a broadcast e-mail where the property is not specifically identified, they cannot accept the assignments without violating that disclosure requirement. The secondary issue is one of competency. If the appraiser doesn't know specifically where the property is or doesn't have a property address, it circumvents the competency issue. Vice Chair Morley would like to have the Division consider putting into rule this issue that broadcast e-mails on a first-come-first-serve basis would not be allowed by an AMC. The other issue is that there are at least three or more companies that you can hire to monitor the site, capture the information, and then basically resell it to the appraiser for a fee. You can either subscribe to the service or they can pay the company a \$30 referral fee. Paying a referral fee must be disclosed in the appraisal. He said there are mortgage companies sending out e-mails at 2:00 a.m. to see if they want an assignment. If the Division prohibits the e-mail broadcasts the problem would be solved. He believes that we need to come up with some rules to protect the public and to stop some of the abuses that are currently happening.

Vice Chair Morley said he believes when an AMC sends out a request for an assignment, they should have some responsibility to ask the appraiser if they routinely do work in that area, if they have access to the data, and if they are competent to do work in that geographical area

and property type. If an appraiser deceives the AMC, the Division can't hold the AMC responsible in believing what the appraiser told them, but they do have a duty to ask the questions before they give the assignment. He suggested that when the assignment is given to the appraiser there should be some type of screening going on to see if the appraiser is competent to do the work.

Chair Smith said all of these comments have been a good discussion. He asked if this is something the Division and Board would like to start now, or wait until after the 2011 legislative session. Director Sabey said there are some specific issues that need to be taken care of very shortly that are causing an unwanted effect in the industry. Chair Smith suggested a small committee put something together within the next two weeks so it can be considered at the next Board meeting next month. He suggested that Ms. Jonsson, Vice Chair Morley, and Mr. Larsen (on the public side) be on the committee. The topics of using a BPO to facilitate a mortgage loan and to discuss fee splits in the report should also be discussed in the committee meeting.

Chair Smith moved on to a topic that Mr. Johnson previously addressed of having an amendment to R106-7 in the sales and listing history. The general wording was approved last month and Ms. Jonsson said the rule will go out for public comments on March 1, 2010.

Mr. Johnson expressed interest in covering the sale and listing history of the comparable sales as well as the subject. USPAP does not have a specific rule on this topic. Mr. Johnson said at the time we consider other rules this would be an appropriate time to discuss this topic as well. It was discussed this would require further discussion and the change can wait until 2011 when we have a general overhaul in the rules.

Chair Smith brought up the issue to clarify the rule regarding sample appraisal submissions for mass appraisers. After some discussion it was decided that this topic can wait until 2011 to be addressed.

The next topic of discussion was if appraisers should be held responsible for complying with the USPAP advisory opinions. This is a topic that can wait to be discussed at a later date.

A discussion was held on an amendment on segmented applications. Chair Smith said in 2007 the AQB had recommended that we change our qualifications to require licensed appraisers to complete more education, and for Certified appraisers to complete a college degree. Utah decided to have all the people who applied in 2007 held to the education requirements under the old rule. These applicants were not required to have a college degree. If these applicants completed their experience by the end of 2010, the education they completed under the old rule would be deemed adequate to become Licensed or Certified appraisers. The segmented applications expire by rule at the end of 2010. If these applicants do not complete their experience by that date, they fall under the guidelines of the current rule and will need more education. Chair Smith is suggesting the deadline to complete the experience required be extended. It was decided to add this topic for discussion on the next agenda. Mr. Fagergren said an article in the March newsletter as a reminder is scheduled.

Chair Smith asked Mr. Johnson if he wanted to discuss the information that was received from the Appraisal Sub Committee and the AQB regarding discipline matrix. Mr. Johnson said it would be best to discuss it at a later time.

Board Committee Appointments – Chair Smith

Chair Smith has a recommendation for the Experience Review Committee. He is recommending Charles Tucker, Certified Residential appraiser, with approximately five years direct appraisal experience, and about two and one-half years as a Certified Residential. The Board has approved Mr. Tucker to be added to the Experience Review Committee.

“White Paper” Discussion – Vice Chair Morley

Director Sabey said they were asked to meet last Thursday with a group of professionals from the mortgage and residential real estate arenas, and also builders (specifically the Ivory group). Everyone was concerned about what is happening with appraisers, and they were wondering if the Board would be open to adopting a “white paper,” or a list of things that people could use to know what appraisers are supposed to be doing. It appeared that the mortgage and real estate groups were not aware of the high standards the appraisers are held to, and it would be helpful if these groups had a list to know if an appraiser is committing a violation of rules or statutes. The paper would require some significant thought and preparation. Vice Chair Morley said he would bring this to the Board’s attention and get the dialogue started. The Board would be able to help educate the other industries as to what standards the appraisers are held. The list could serve as safe harbor instructions to other groups.

Director Sabey said the upcoming Caravan and newsletter could both be used as educational resources to address some of these issues. Vice Chair Morley said the Appraisal Institute, Utah Association of Appraisers, and Utah appraiser groups probably have a better ability to provide some of the education to the appraisers to make sure that they are meeting the requirements under USPAP, and resisting some of the encounters that are sometimes happening with underwriters by asking appraisers to do things that are in conflict with USPAP. Vice Chair Morley said the Wasatch Front MLS is in the process of collecting some of these builder’s sales that occurred without real estate agents participating in the transactions. They are going in and expanding the scope of the Wasatch Front MLS to be a clearing house for builder sales as well as realtor sales.

These groups are asking the Board to try and improve competency and quality of the appraisals being done, not only for new construction, but everything. Vice Chair Morley suggested that we put together a list of items that address what an appraiser is required to do in each certain situation. Perhaps there could be a continuing education class to address the mortgage and real estate licensees to have a better understanding of the valuation process. After discussing the issues, it was decided that Director Sabey and Vice Chair Morley write a draft paper in response to these concerns for next month’s meeting.

CLOSED TO PUBLIC

A motion was made to go into Executive Session from 11:29 a.m. to 12:15 p.m.

Executive Session: Strategy Session to Discuss Pending Litigation – Blaine Ferguson and Laurie Noda, Assistant Attorneys General

OPEN TO PUBLIC

Certified and Licensed Appraiser Applicants Approved by both Education and Experience Review Committees:

William Belka, CR Candidate - Approved
Stephen C. Hemingway, LA Candidate - Approved
Gil McDougald, LA Candidate - Approved
Daniel Sanders, CR Candidate - Approved
Monica Fell, LA Candidate - Approved
**Benjamin Hulet, LA Candidate – See comment below
Suzanne Millard, LA Candidate - Approved
John P. Ward, CR Candidate - Approved
John Michael Redd, Jr., CG Candidate - Approved

**Chair Smith has recused himself on Mr. Hulet. Because of this, there was not a quorum to vote on Mr. Hulet. His name will be added to the list next month for a vote.

A motion was made to adjourn at 12:17 p.m.