

UTAH APPRAISER LICENSING AND CERTIFICATION BOARD

Heber M. Wells Building

Room 210

9:00 a.m.

June 25, 2014

MINUTES

DIVISION STAFF PRESENT:

Jonathan Stewart, Division Director
Mark Fagergren, Education and Licensing Director
Jeffery Nielsen, Chief Investigator
Justin Barney, Hearing Officer
Elizabeth Harris, Assistant Attorney General
Renda Christensen, Board Secretary
Carla Westbroek, Appraisal Licensing Coordinator
Jim Bolton, Investigator
Craig Livingston, Investigator
Theron Case, Investigator

BOARD MEMBERS PRESENT:

Daniel Brammer, Chair
Paul W. Thronsen, Vice Chair
Kristin Coleman-Nicholl, Board Member
John E. Ulibarri, Board Member
Jim Bringhurst, Board Member

GUESTS:

Jake Parkinson
Vern Meyer

The June 26, 2014 meeting of the Appraiser Licensing and Certification Board began at 9:00 a.m. with Chair Brammer conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Oath of Office – Administrative Law Judge Jennie Jonsson administered the Oath of Office to Daniel Brammer to serve a second four-year term.

Elections for 2014-2015- Elections were held to nominate and vote on the offices of Chair and Vice Chair positions. Nominations were taken for both of these positions.

The Board voted on the nomination of John Ulibarri to serve as the Chair for the upcoming year. Vote: Chair Brammer, yes; Vice Chair Thronsen, yes; Board Member Coleman-Nicholl, yes; Board Member Bringhurst, yes. The motion passes.

The Board voted on the nomination of Kristin Coleman-Nicholl to serve as Vice Chair for the upcoming year. Vote: Chair Brammer, yes; Vice Chair Thronsen, yes; Board Member Ulibarri, yes; Board Member Bringhurst, yes. The motion passes.

Both Mr. Ulibarri and Ms. Coleman-Nicholl will begin their new positions in the July meeting.

Approval of Minutes - Two corrections were needed on the May 28, 2014 minutes. One is the name correction of "Jacobson" to "Parkinson," the other correction is to clarify the date which the background checks will begin. A motion was made to approve the minutes with these two corrections from May 28, 2014 meeting. Vote: Chair Brammer, yes; Vice Chair Thronsen, yes; Board Member Ulibarri, yes; Board Member Coleman-Nicholl, yes; Board Member Bringhurst, yes. The motion passes.

DIVISION REPORT

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart reported that Chair Brammer was reappointed by the Governor and confirmed by the Senate to serve a second term. The Division thanks Mr. Brammer for wanting to serve a second term.

Every year the Association of Real Estate Law Officials ("ARELLO") sends out a Digest of Real Estate License Laws and Current Issues. In the 2014 edition on there is a section on appraisals, and Director Stewart thought this article might be applicable to the Board. This article was in regard to a case in Alaska where the Supreme Court of Alaska reversed the Appraisal Board's decision in State v. Wold. Wold, an experienced licensed appraiser, was sanctioned by the Board as a result of three different appraisals he performed. Each of the three appraisals was eventually used in court proceedings – two in divorce actions and the third in a partnership dispute. The Board became aware of potential issues with the appraisals when opposing counsel hired their own appraisers to evaluate the properties and those appraisals differed substantially from Wold's. The Board's decision to sanction Wold was largely based on the testimony of Ferrara, the first appraisal licensee in the state, and a two-time chair of the Board. After conducting a desk review, Ferrara testified that Wold's appraisals were sub-par. Ferrara did not inspect the properties himself, nor did he provide his own data to indicate exactly why Wold's appraisals were defective. Wold appealed the Board's decision and the superior court reversed all but one of the eight counts against Wold, citing a lack of substantial evidence against him. The Board appealed. The issue is whether there was substantial evidence that Wold's appraisals violated the standards. The Supreme Court of Alaska reviewed this case and affirmed in part and reversed in part. The Supreme Court went even further than the Superior Court and reversed the Board's findings on one count the Superior Court did not reverse. In essence, the court found that none of the eight were based on substantial evidence, but rather relied on the testimony of Ferrara without any actual evidence behind them. Ferrara stated that the comparables used by Wold were unreasonable, but he provided no evidence that there were better comparables than the ones used by Wold. Ferrara's speculation that such comparables must have existed was not sufficient a basis for a finding that they did in

fact exist. Further, Wold made explanations of his choice of comps and Ferrara testified that more explanation was required under USPAP. Neither Ferrara nor the state cited specific authority for this assertion.

Director Stewart thought this article was important because if the Division is investigating allegations against an appraiser we should be able to back up what we are stating with real evidence and explanations.

INVESTIGATIONS REPORT – Jeffery Nielsen

Mr. Nielsen reported in the month of May the Division received 2 complaints; opened no new cases; referred no new cases to the Attorney General's office; closed 13 cases; leaving a total of 34 cases.

There are no stipulations for review this month.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said he has had some recent emails and exchanges wanting clarification, so he wanted to get the opinion of Board. We are all aware that a certified appraiser is limited to having three trainees that they can supervise. The question comes, once someone is licensed and they want to upgrade to certified residential or certified general, what supervision, if any, is required and what restrictions are required on certified supervisors. After researching in the AQB policy books, it seemed clear to Mr. Fagergren that a licensed appraiser, if acting under the scope of their authority, and acquiring experience to become a certified residential, theoretically would never need to have a supervisor. If they did homes that were outside the scope of their authority, then they would need a certified residential or general signature as a supervisor. Similarly, if someone is licensed or certified residential wanting to become certified general, since neither of their scope of authority allows them to do work on the general table, it is Mr. Fagergren's belief and understanding that all the general work on the general schedule would have to have a supervising general appraiser supervising the work. He does not believe that there is any restriction as to the numbers of people they are supervising. The restriction seems clear that it is only on trainees. Theoretically, a certified general could have many other people they do supervising work for from time to time.

The Board concurs with Mr. Fagergren. Who is required to attend the supervisor/trainee course? From this definition, it is required for trainees and their supervisors. But, if someone signs for a certified residential or general, would they need to take the course? He doesn't believe that is the case. The confusion comes when those who are working with the licensees or certified residentials who want to do work outside their scope.

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

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

Keisa Waters, CG Candidate

Jennifer Sczypkowski, CR Candidate

Discipline List

Scott Hallows, CG Renewal

Peter P. Hathaway, CG temporary permit

David Phillips, CE Appraiser Instructor

There are no stipulations for review this month.

COMMISSION AND INDUSTRY ISSUES

Rule Updates – Justin Barney

Mr. Barney said there have been several amendments to the rules this year, and the Division and Board are working on a more comprehensive amendment on changes to R162-2g-304d. These include definitional changes, time limitations that were put in for accumulating hours in several places, and changes in the experience hour rule, and the appendices 1 and 3.

Discussion: Experience Rule 304-d and Appendices' 1, 2, 3 – Board Member Coleman-Nicholl and Board Member Ulibarri

Board Member Ulibarri wanted to make one more change in 304d(5)(e) where it states that ad valorem appraisers can't accrue more than 60% of their experience hours in the following three categories. He would like to add sale ratio studies to the list.

Director Stewart said that he and Mr. Fagergren had a lengthy discussion with Board Member Ulibarri and Board Member Coleman-Nicholl regarding the effective date of the amendments, and how we handle experience before and after. From the effective date of the rule change people would have to keep two separate logs: one log for prior to rule changes; one log for everything after the effective date.

The Board asked Mr. Barney to bring back a draft rule next month to include all the changes that have been discussed. Mr. Barney will also add in the clarification of the supervisor role on the same amendment.

Board Member Ulibarri suggested the Board have a rule change that ad valorem appraisers submit samples of different property types when submitting for their certified general. Mr. Fagergren suggested the Board identify how many of the samples included according to types. The decision was to bring this up for discussion next month when reviewing the draft rule.

OPEN TO PUBLIC

INFORMAL HEARING:

10:07 Allen Mead - Experience Review
Keith Beckstead, Supervisor

A motion was made to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Chair Brammer, yes; Vice Chair Thronsen, yes; Board Member Ulibarri, yes; Board Member Coleman-Nicholl, yes; Board Member Bringhurst, yes. The motion passes. Executive Session was held from 10:43 a.m. to 11:31 a.m.

OPEN TO PUBLIC

RESULTS OF DELIBERATIONS

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

Keisa Waters, CG Candidate - Approved

Jennifer Sczypkowski, CR Candidate - Approved

Discipline List

Scott Hallows, CG Renewal – Approved with concurrence of the Director

Peter P. Hathaway, CG temporary permit – Approved with concurrence of the Director

David Phillips, CE Appraiser Instructor – Denied with the concurrence of the Director

Allen Mead will be notified by mail as to the outcome of his hearing.

A motion was made to adjourn the meeting. Vote: Chair Brammer, yes; Vice Chair Thronsen, yes; Board Member Ulibarri, yes; Board Member Coleman-Nicholl, yes; Board Member Bringhurst, yes. The motion passes. The meeting adjourned at 11:33 a.m.