

UTAH APPRAISER LICENSING AND CERTIFICATION BOARD

Heber M. Wells Building
Room 210
9:00 a.m.
May 24, 2017
TELEPHONE MEETING

MINUTES

DIVISION STAFF PRESENT:

Jonathan Stewart, Division Director
Mark Fagergren, Education and Licensing Director
Kadee Wright, Chief Investigator
Justin Barney, Hearing Officer
Elizabeth Harris, Assistant Attorney General*
Amber Nielsen, Board Secretary
Eric Stott, Real Estate Analyst
Kendelle Christiansen, Education Coordinator
Jim Bolton, Investigator
Craig Livingston, Investigator
Faruk Halilovic, Division Staff

*Arrived at 9:05 a.m.

BOARD MEMBERS PRESENT:

Kristin Coleman-Nicholl, Chair
John E. Ulibarri, II, Vice Chair
Jim Bringhurst, Board Member
Jeffrey T. Morley, Board Member
Richard Sloan, Board Member

PUBLIC PRESENT:

Mike Vowles
Vern Meyer

The May 24, 2017 meeting of the Appraiser Licensing and Certification Board began at 9:01 a.m. with Chair Coleman-Nicholl conducting.

PLANNING AND ADMINISTRATIVE MATTERS

Approval of Minutes – Vice Chair Ulibarri noted the last paragraph of page three needed to be changed from “be less than twenty” to “not be less than twenty.” A motion was made and seconded to approve the April 26, 2017 minutes as amended. Vote: Chair Coleman-Nicholl, yes; Vice Chair Ulibarri, yes; Board Member Bringhurst, yes; Board Member Morley, yes; Board Member Sloan, yes. The motion carries.

Public Comment Period – Mike Vowles, a Certified General Appraiser, asked to appear before the Board today to discuss the requirement for Appraiser Trainee Education prior to registration as a trainee and receiving experience credit prior to taking education. Mr. Vowles feels the current requirements may hinder entrance to the industry and he is seeking an understanding and possibly a change. He stated he will hire someone who is competent. He stated it is discouraging for an individual who has completed their college education to be required to take additional education to be called a trainee. However, the education isn't his concern. His main concern is that someone cannot earn experience credit for their licensed appraiser designation simultaneously to taking the appraiser courses. Mr. Vowles stated he is unsure what the AQB requirement would be or if this is something that the Board could change. Mr. Fagergren outlined the AQB requirements which require prior to application, applicant must have completed 75 creditable hours within the five year period and take the Supervisor Trainee Course. Mr. Fagergren stated that the Utah rules mirror the AQB requirement. He stated the Utah rules state that you cannot be a trainee until you complete those education courses; and enhance the AQB requirement by saying no experience points will be awarded until you become a trainee. The Division feel it is logical that you cannot count experience until you are registered, since you cannot act in the capacity of an appraiser trainee until you are registered as an appraiser trainee. Mr. Fagergren stated the state cannot require less than the AQB however they may exceed the AQB requirements. Mr. Fagergren stated the Board has the authority to change the rules; the Board could change the rule regarding experience before becoming a trainee. Ms. Christensen noted that all individuals must wait a year after becoming a trainee before they can become a licensed appraiser. Mr. Vowles noted there would be a great difference between someone who is fresh out of highschool and an individual who graduated college with a degree in finance, economics, etc. He stated an individual coming out of college with a degree in finance, economics, etc and still needing to take additional education before being able to earn experience. He would like to see something where a college graduate could earn points while taking the additional education. Director Stewart stated the argument Mr. Vowles is making could be made for any professional industry such as securities or accounting. Even individuals with college education in those fields, are required to take education before receiving designations to work in that industry. The college degree would be a benefit to the individual, but they are still required to take that education. The discussion continued. Chair Coleman-Nicholl stated this may be something that the Board might not be able to help with, but Mr. Vowles may want to contact the AQB. Board Member Sloan asked for clarification that the Board could change the administrative rule preventing the accumulation of experience prior to becoming registered. Mr. Fagergren stated the Board could change the administrative rules. Chair Coleman-Nicholl stated that individuals cannot act as an appraiser without be registered or licensed; which could put the individual at risk of disciplinary action for practicing without a license. Board Member Morley stated rewarding experience points before being registered as a trainee could be problematic. Board Member Sloan discussed what the requirement was when he first became a trainee. Mr. Fagergren noted that even with the proposed liberalization that is being presented by the AQB, there is nothing that he has seen which would change the existing requirement. Mr.

Fagergren stated if the Board wanted to allow an individual to receive credit for experience before being registered they could allow that with a rule change. Board Member Sloan stated he was in favor of making that change. Ms. Wright asked if this change were made, how they would be distinguished from an unlicensed individual. Mr. Fagergren stated the statute requires that an individual must be licensed to act in order to do different duties; he stated that it could require a change in statute to allow the experience before registration. Chair Coleman-Nicholl stated she doesn't feel this is something that needs to be changed in light of how difficult it would be to regulate; and she asked for the opinions of the rest of the Board. Vice Chair Ulibarri stated he is disinclined to the change the rule. Board Member Morley feels that with the AQB current language could present a problem awarding experience credit before an individual becomes a registered trainee; however, he doesn't have a fundamental issue with accumulating points while completing the education. He stated if the AQB opens up for a 4th Exposure Draft that is something that someone may want to bring up in the public comment period. Director Stewart stated he looked up the statutory language for trainees and it states, "an individual shall register with the Division as a trainee before the individual acts in the capacity of a trainee or earns experience for licensure." If the Board were inclined to change the rule, the statute would have to be changed first since it doesn't allow for that. Chair Coleman-Nicholl stated this probably wasn't the outcome that Mr. Vowles had hoped for and asked for a motion to dispense with this item unless new information is brought forward where a change would be compliant with the state code and AQB. The motion was made and seconded. Vote: Chair Coleman-Nicholl, yes; Vice Chair Ulibarri, yes; Board Member Bringham, yes; Board Member Morley, yes; Board Member Sloan, yes. The motion carries.

DIVISION REPORTS

DIRECTOR'S REPORT – Jonathan Stewart

Director Stewart reported the Appraisal Subcommittee will be coming July 11-13. The ASC attends the meeting on the Thursday, including the executive session. The Board meeting will be held on Thursday July 13, 2017 (instead of the Wednesday).

Director Stewart stated the Board submitted public comments on the AQB's 3rd Exposure Draft. He stated there were 212 public comments. He will look at the comments to see what the general consensus is in the public comments.

ENFORCEMENT REPORT

Ms. Wright reported in April the Division received 6 complaints; opened 1 new cases; closed 2 case; leaving 35 appraisal cases open with the Division. There are a total of 8 cases now with the AG's office.

Stipulation for Review:

Catherine Anderson

EDUCATION AND LICENSING REPORT – Kendelle Christiansen

Mr. Fagergren reported the Division has finished the Caravan. There was a big emphasis in talking about the 3rd Exposure Draft; he thinks it was enlightening for most of the folks there to learn of the changes that are being proposed. He stated he read the comments. Joe Stott was very in support of the proposals because of the challenges the bank faces to get appraisals performed in rural areas; he feels more individuals would be likely to become licensed appraisers. Most of the other feedback from appraisers seemed to be skeptical of the proposals.

HEARING OFFICER REPORT – Justin Barney

Mr. Barney stated there were no licensing stipulations for review.

BOARD AND INDUSTRY ISSUES

Mr. Barney presented a proposed rule amendment which would change R162-2g-304c Application to Sit for the State-Certified General Appraiser Exam, R162-2g-304d Experience Hours, R162-2g-307d Continuing Education Course Registration and Certification, R162-2g-307f Instructor Certification for Continuing Education, and R162-2g-311 Scope of Authority. The changes were discussed at the last meeting. The changes would reduce the number of inspections required for an appraiser trainee to be accompanied by a supervising appraiser from 100 residential appraisals to 35 residential appraisals. Mr. Barney outlined the changes and the language regarding that change. Vern Meyer had a comment that it would be a great time to correct the language that requires the measurement of the exterior of a property and change it to the measurement of the improvements. Mr. Barney asked if the Board would be interested in clarifying that language. Vice Chair Ulibarri stated he agrees with Mr. Meyer; however, the word improvement shouldn't be used since the definition of improvement would cause the language in the rule to be imprecise. The language to use was discussed. Mr. Meyer asked whether the number of 35 appraisals makes sense. Chair Coleman-Nicholl stated that this was discussed at length and the number of inspections was derived as a result of that discussion. Mr. Meyer briefly stated he does feel that the number is odd when you consider there is only a requirement for 20 commercial appraisals. Vice Chair Ulibarri stated that he agreed with Mr. Meyer, and asked that the Board consider amending the proposal to 20 residential appraisals to match the commercial appraisal requirement; however, he stated if the other Board Members don't agree he is fine with the requirement for 35 appraisals. Chair Coleman-Nicholl is set at 35 appraisals. Mr. Fagergren discussed why the commercial appraisal requirement might be lower. Mr. Barney asked if the Board would like to move forward with this language or if the Board would like him to draft new language. Chair Coleman-Nicholl advised Mr. Barney to prepare language to be discussed at the meeting next month.

The other changes in the proposed rule amendment allows for registration for a special event continuing education course. Mr. Fagergren outlined the history of the issue and merits of this proposal. Mr. Fagergren outline the specifics of this proposal including the restrictions and registration requirements. Chair Coleman-Nicholl feels the proposal is

awesome and that the language in the proposal makes sense. Board Member Morley asked for clarification of the language which states the course lasts 1 to 7 days, if the course would need to last for one full day or if a partial day would be included. Mr. Fagergren feels that a partial day would be considered in the one day. Mr. Morley asked if language might be changed to not lasting more than seven days. Mr. Barney agreed that language could provide more clarity. Board Member Morley asked for clarification for the requirement for submitting the course. Mr. Fagergren discussed the requirement. Mr. Fagergren stated at the next meeting he will provide a fee chart for the proposed payment schedule. Ms. Christensen explained why the individual courses in the event should be certified individually, since it would allow credit to be given for the portions attended and not require attendance for the whole event. Mr. Barney stated he will work on the additional language and the rule proposal will be presented next month.

Mr. Fagergren presented an individual who was approved for licensing by the Division since the last meeting.

Chair Coleman-Nicholl noted that Vice Chair Ulibarri had to leave the meeting.

Mr. Barney outlined the history of the AMC Rule Update which received a lot of public comment and necessitated a public hearing. As a result the language on that proposal was changed and approved for filing by the Board. There have been some concerns which have arisen because of that filing. The rule amendment is currently in the public comment period for the changes through the end of May; the earliest the rule would go into effect after the Board has received and considered any public comment would be August 14, 2017. There has been not public comment received at this time on those changes.

Director Stewart stated that the filing has been through one public comment period and is in the second public comment period; and the Division has received a lot of public comments in favor of and in opposition to the proposed rules. He received a phone call yesterday from someone representing an effected party; this phone call led Director Stewart to believe that if the rule passes as currently amended that litigation is reasonably likely. Because of this Utah Code Section 52-4-205(1)(c) provides that it is appropriate to discuss this matter in a closed meeting in light of the reasonably likely litigation.

A motion was made and seconded to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual; also a motion was made and seconded to close the meeting to discuss reasonably imminent litigation. Vote: Chair Coleman-Nicholl, yes; Board Member Bringhurst, yes; Board Member Morley, yes; Board Member Sloan, yes. The motion passes.

CLOSED TO PUBLIC

An Executive Session was held from approximately 10:07 a.m. to 11:09 a.m.

OPEN TO PUBLIC

RESULTS OF EXECUTIVE SESSION

Stipulation for Review:

Catherine Anderson – Approved

A motion was made and seconded to adjourn the meeting. Vote: Chair Coleman-Nicholl, yes; Board Member Bringhurst, yes; Board Member Morley, yes; Board Member Sloan, yes. The motion passes. The meeting adjourned at approximately 11:10 a.m.