



**BOARD OF REAL ESTATE APPRAISERS MEETING
May 3, 2012**

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MINUTES BOARD OF REAL ESTATE APPRAISERS

May 3, 2012
Colorado Division of Real Estate
1560 Broadway, Suite 1250C
Denver, CO 80202

A meeting of the Colorado Board of Real Estate Appraisers was held on Thursday, May 3, 2012 at 1560 Broadway, Suite 1250C, Denver, Colorado at 9:00 a.m.

Notice of the meeting was published timely and the meeting was held pursuant to the Colorado Sunshine Laws, Title 24, Article 6, C.R.S., as amended.

ORDER OF BUSINESS BY THE VICE-CHAIR:

Call to Order, Roll call, Determination of a Quorum-

The meeting was called to order at 9:02 a.m. – Robin Anderson, Chair made a quorum determination.

Board Members in attendance: Robin Anderson, Chair, Frank Beltran (attended via conference call), Vice Chair, Deborah Delaney, Susan Secrest, Tony Navarro, Wayne Hunsperger and Bruce Willard.

Also attending were Marcia Waters, Division Director; Cary Whitaker, Deputy Director; Hollis Glenn, Investigations Manager; Penny Elder, ESP Program Manager; Eric Turner, Education, Policy & Communications Manager; Sherri Karstetter, ESP Program Settlement Specialist; Heather Flannery, Assistant Attorney General; Doreen Archuleta, Enforcement; Martha Torres-Recinos, Program Support, and several members of the Board's staff. The meeting was open to the public and several members of the public attended.

MINUTES APPROVAL- March 1, 2012

After review, it was moved by Ms. Delaney and seconded by Mr. Hunsperger to approve the Minutes of the March 1, 2012 Board meeting as written.

Mr. Frank Beltran is absent. **Motion carried.**

MINUTES APPROVAL- Emergency Meeting Minutes, March 27, 2012

After review, it was moved by Mr. Navarro and seconded by Ms. Delaney to approve the Emergency Meeting Minutes of the March 27, 2012 as written.

Mr. Frank Beltran is absent. **Motion carried.**

Mr. Frank Beltran joins the meeting via conference call at 9:04 a.m.

ORDER OF BUSINESS:

Policy Matters, Updates and Information

Selection of BOREA Leadership-

It was moved by Mr. Hunsperger and seconded by Ms. Anderson to nominate Frank Beltran as Chair of the Board of Real Estate Appraisers. Mr. Beltran accepts the nomination.

It was moved by Ms. Anderson and seconded by Mr. Navarro to nominate Deborah Delaney as Vice-Chair of the Board of Real Estate Appraisers. Ms. Delaney accepts the nomination.

Nominations are closed. **Motion unanimously carried.**

Service Award – Ms. Robin Anderson

Director Marcia Waters presented Ms. Robin Anderson a service award thanking Ms. Anderson for her service as Chair of the Board of Real Estate Appraisers for the past year.

AQB and AARO Conference Report-

Harold Ovsowitz provided the Board with a report on recent AQB and AARO Conferences that he attended.

- Mr. Ovsowitz was appointed to the AARO Education Committee and Yvette Gabardi will be providing assistance.
- The Appraisal Subcommittee is instituting a hotline that is expected to be up and running within three months.
- It is expected that the number of complaints will substantially increase.
- The AQB is introducing new quality criteria for undergraduate and graduate degrees for appraisers.
- Pass rates have substantially increased so appraisers are better prepared and more qualified.
- It is expected that the number of colleges offering appraisal degrees will increase.
- The AQB will have a course template available in June for those who supervise.
- According to AARO, most states are in favor of reciprocity agreements, and reciprocity is supported by the AQB.
- It is anticipated that banks will be filing more complaints.

Legislative Update-

Director Marcia Waters advised the Board that HB12-1110, Concerning the Regulation of Appraisal Management Companies, is scheduled to be heard in the Appropriations Committee in the Senate. The bill made it through the Finance Committee last week.

BOREA Sunset Review-

Vivienne Belmont is continuing to compile research and has identified these issues for the Sunset Review. These issues are not yet recommendations. According to Ms. Belmont, her report will be published October 15th and will be available to the Board and staff then.

- Continue the Board and the regulation of real estate appraisers. There is no argument here.
- Eliminate registered training license types or at least eliminate the exam.
- Eliminate Senate confirmation of Board appointments.
- Eliminate references to a 3-year renewal cycle and authorize the Board to determine an appropriate renewal period.
- Authorize the Board to impose discipline if they would have denied a license for the same reason.
- Authorize the Board to discipline licensees who have received deferred judgments or have a felony conviction.
- Require appraisers to be finger-printed contingent on AMC legislation.
- Have fines go to the General Fund rather than the cash fund. Fining authority is used for discipline and not to increase revenues. If the funds are used to offset license fees, then that is seen as an inappropriate use of fining authority.
- State E&O Policy.
- Assessors and why is it necessary to license assessors. There are lots of differences between appraisers and assessors. Assessors are hired by county governments, and they should determine the necessary qualifications for their employees. The State has an interest in ensuring that assessors have the appropriate qualifications because for instance, the state taxes back-bill if there weren't enough property taxes collected, and then state income taxes would have to be pay for things like local schools. What is the most appropriate form of regulation? Should it be under BOREA or under a new law, or under the Division of Property Taxation? Should it be a separate license type? Should it have its own Board or a Director model?
- Remove Assessor position from the Board and add a public member. The rationale is that the Board is losing a public member because of AMC legislation and they see it as important to have public member representation.
- Do we have the necessary authority to protect sensitive information in disciplinary files that are open for public inspection?
- Possibility of clarifying the requirements for a license to determine if it is appropriate to have a license for all real estate appraisals or is it just for the federally related transactions.

Citizen Participation:

Chet Berman from Longmont addressed the Board to offer his assistance in supervisor credentialing. Mr. Berman is willing to assist with the education.

COMPLAINT INVESTIGATIONS:

Complaint No. 2011060735 (Chris Stanley, Investigator)
Mr. Glenn presented this matter to the Board.

Complaint No. 2011060735 the report alleged violations of: USPAP – Record Keeping Section; Competency Rule; Scope of Work Rule; Standards Rule 1-1(a) and 1-1(c); Standards Rule 1-2(c) and 1-2(h); Standards Rule 1-3(b); Standards Rule 1-4, 1-4(a), 1-4(b), and 1-4(c); Standards Rule 1-5(b); Rule 1-6(a); Standard 2; Standards Rule 2-1(a) and 2-1(b); Standards Rule 2-2(b)(iii), 2-2(b)(v), 2-2(b)(vi), 2-2(b)(viii), and 2-2(ix).

The Board received an anonymous complaint on a 2011 commercial appraisal completed by the Respondent. Staff's investigation of the appraisal report revealed serious competency issues related to accepting and appraising a commercial property. Of concern was his failure to understand and therefore perform a credible Highest and Best Use Analysis. However, of most concern was the Respondent's lack of knowledge of basic appraisal principles and practices within the three approaches to value. The appraiser's failure to verify data resulted in inaccurate analysis, erroneous conclusions, and a misleading appraisal report. These errors ultimately affected the overall credibility of the report and the value conclusion to such an extent that the client required a new appraisal from a different appraiser.

Mr. Navarro moved and Ms. Delaney seconded that the Board finds that reasonable grounds exist to believe that violations of appraisal law occurred in Case Number 2011060735. The Board voted to refer back to Staff for a settlement offer consistent with Staff recommendations of Level 4 discipline including completion of education consistent with the recertification for a certified general appraiser license; a stayed fine; and a review of three appraisals within 6 months.

Ms. Secrest, Mr. Navarro, Ms. Delaney and Mr. Hunsperger are opposed. **Motion Fails.**

It was then moved by Mr. Navarro and seconded by Mr. Hunsperger that reasonable grounds exist to believe that violations of appraisal law occurred in Case Number 2011060735. The Board voted to refer back to Staff for a settlement offer consistent with Staff recommendations of Level 4 discipline including a public censure; completion of education consistent with the recertification for a certified general appraiser license; a stayed fine; and supervision and review of three appraisals within 6 months.

Mr. Willard is opposed. **Motion carried.**

Complaint No. 2011050647 and No. 201202144 (Carl Hegewald, Investigator)
Mr. Glenn presented this matter to the Board.

Complaint No. 2011050647 and No. 201202144 the report alleged violations of: USPAP – Ethics Rule and Conduct Section; Competency Rule; Scope of Work Rule;

Standard 1; Standards Rule 1-1(a), 1-1(b), and 1-1(c); Standards Rule 1-2(g) and 1-2(h); Standards Rule 1-3(a) and 1-3(b); Standards Rule 1-4, 1-4(a), 1-4(b), 1-4(c), and 1-4(g); Standards Rule 1-6(a); Standard 2; Standards Rule 2-1(a) and 2-1(c); and Standards Rule 2-2(b)(viii), 2-2(b)(ix), and 2-2(x); Standards Rule 2-3; and §12-61-710(1)(g), C.R.S

Staff's investigation revealed serious deficiencies and professional standards violations that included, but were not limited to: plagiarism; the improper use of the term "prospective" (future) despite the fact that the market value opinion was a current value opinion "as if complete as proposed"; inadequate site valuation analysis and reconciliation; inappropriate inclusion of personal property in the cost approach valuation of the building improvements; use of inappropriate retail rental data within the income capitalization approach; incorrect reconciliation in the sales comparison approach; failure to identify an intended user prior to accepting the assignment; the omission of the prior sale of the subject property; inadequate local market analysis; inadequate analysis to derive an overall capitalization rate; and, a lack of market evidence to support the value opinion of the personal property related to the real estate.

Ms. Delaney moved and Mr. Beltran seconded that the Board finds that reasonable grounds exist to believe that violations of appraisal law occurred in Case Number 2011050647 and 201202144. The Board voted to refer back to Staff for a settlement offer consistent with Staff recommendations of Level 4 discipline including public censure; a fine in the amount of up to \$5,000; and revocation of the appraiser's license.

Motion unanimously carried.

Complaint No. 2012010056 (Carl Hegewald, Investigator)

Mr. Glenn presented this matter to the Board.

Complaint No. 2012010056 the report alleged violations of: USPAP – Ethics Rule and Conduct Section: Competency Rule; Scope of Work Rule; Standard 1; Standards Rule 1-1(a), 1-1(b), and 1-1(c); Standards Rule 1-2(c) and 1-2(h); Standards Rule 1-3(a) and 1-3(b); Standards Rule 1-4, 1-4(a), and 1-4(b); Standards Rule 1-6(a); Standard 2; Standards Rule 2-1(a); Standards Rule 2-2(b)(v), 2-2(b)(viii), 2-2(b)(ix); and §12-61-710(1)(g), C.R.S.

Staff's investigation revealed deficiencies and professional standards violations in the development and reporting of the Respondent's real property appraisal that included, but were not limited to: misleading assignment results resulting from altering adjustments used in the original report and in the revised report with no discernible bases for the alterations; inadequate analysis and verification of comparable sales information; failure to properly reconcile the data used in the sales comparison approach; and making adjustments in the sales comparison approach with no discernible basis for the adjustments and summary to support the methodology applied in the adjustment development process. These and other violations in the

development and reporting resulted in an appraisal and assignment results, specifically the value opinions, that were not credible.

Mr. Navarro moved and Mr. Hunsperger seconded that the Board finds that reasonable grounds exist to believe that violations of appraisal law occurred in Case Number 2012010056. The Board voted to refer back to Staff for a settlement offer consistent with Staff recommendations of Level 2 discipline for a Stipulation for Diversion including a fine in the amount of up to \$1,000; and review of three appraisals in three months.

Motion unanimously carried.

Complaint No. 2012010057 and No. 2011050629 (Carl Hegewald and Future Davis, Investigators)

Mr. Glenn presented this matter to the Board.

Complaint No. 2012010057 and No. 2011050629 the report alleged violations of: USPAP – Ethics Rule, Conduct Section, and Record Keeping Section; Scope of Work Rule; Standard 1; Standards Rule 1-1(a) and 1-1(b); Standards Rule 1-4 and 1-4(a); Standard 2; Standards Rule 2-1(a) and 2-1(b); and Standards Rule 2-2(b)(vii) and 2-2(b)(viii).

The Division received complaints for appraisals completed solely by the Respondent or which the Respondent signed as the supervisor. Staff found the Respondent, as the supervisor, altered adjustments used in an original report in a revised report with no discernible basis for the alterations; he permitted an employee to communicate a misleading report; he inadequately analyzed and verified comparable sales information. Two other residential appraisals revealed that the Respondent failed to inspect the subject property when he attested that he had done so, and he failed to provide the required summary of the support used to reach his conclusions of the HBU for the properties.

Ms. Secret moved and Mr. Navarro seconded that the Board finds that reasonable grounds exist to believe that violations of appraisal law occurred in Case Number 2012010057 and No. 2011050629. The Board voted to refer back to Staff for a settlement offer consistent with Staff recommendations of Level 2 discipline for a Stipulation for Diversion including a fine in the amount of up to \$2,400; successful completion of a 15-hour USPAP course; and a file audit to be completed by the Division within one year.

Motion unanimously carried.

Authority to Address Assessor's Conference-

It was moved by Ms. Delaney and seconded by Mr. Navarro to grant authority to Mr. Frank Beltran to speak at the Assessor's summer conference in early June about the Sunset Review of the Appraiser Program and the Board of Real Estate Appraisers.

Motion unanimously carried.

Expedited Settlement Program (ESP) Matters:

ESP Matter, Complaint #2008040478- Penny Elder presented this matter to the Board.

The Board was requested to reconsider discipline from the respondent in Complaint #2008040478. The respondent has been compliant and the terms of the Stipulation have been met. The respondent requests removal of formal discipline on their record. After discussion, it was by Mr. Willard and seconded by Ms. Delaney to reconsider.

Ms. Delaney withdraws her second to the motion. **Motion fails.**

It was moved by Mr. Navarro and seconded by Mr. Hunsperger to defer consideration of ESP Matters A - Complaint Number 2008040478; B – Complaint Number 2008081040; C - Complaint Numbers 1999020106 and 2006010102; and D – Complaint Number 2006010049. Staff has been requested to bring back samples of a new agreement after consulting with counsel.

In an amended motion, it was moved by Mr. Navarro and seconded by Mr. Hunsperger to defer consideration, until the next BOREA meeting scheduled for July 12, 2012, unless the Board decides to meet earlier, of ESP Matters A - Complaint Number 2008040478; B – Complaint Number 2008081040; C - Complaint Numbers 1999020106 and 2006010102; and D – Complaint Number 2006010049. Staff has been requested to bring back samples of a new agreement after consulting with counsel.

Mr. Willard is opposed. **Motion carried.**

EXECUTIVE SESSION

At 11:59 a.m., Ms. Anderson moved that the Board of Real Estate Appraisers enter into executive session pursuant to Colorado Revised Statutes section 24-6-402(3)(a)(II) for the purpose of receiving legal advice concerning disputes that are the subject of pending or imminent court action and/or for the purpose of receiving legal advice on specific legal questions regarding Complaint Number 2008050641. Mr. Hunsperger seconded the motion and the Board entered into Executive Session.

Motion unanimously carried.

The Board re-entered open session at 12:16 p.m.

EXECUTIVE SESSION – Complaint Number 2008050641

It was moved by Mr. Hunsperger and seconded by Mr. Beltran to accept the counteroffer regarding Complaint Number 2008050641 as presented by legal counsel.

Motion unanimously carried.

ADJOURN:

The regular meeting of the Colorado Board of Real Estate Appraiser's meeting adjourned at 12:18 p.m. on May 3, 2012.

Robin Anderson, Chair

Frank Beltran, Vice-Chair

Deborah Delaney

Wayne Hunsperger

Anthony Navarro

Susan Secrest

Bruce Willard

Marcia Waters, Director
Colorado Division of Real Estate