

Matilde Miller, Interim Secretary

Rick Scott, Governor

**Amended Minutes of
THE FLORIDA REAL ESTATE APPRAISAL BOARD
December 5, 2016
General Meeting**

Chair Evalyn “Fran” Oreto called the meeting of the Florida Real Estate Appraisal Board to order at approximately 8:35 a.m., in Orlando, Florida, on this Monday, the 5th day of December, 2016.

The following Board members were present: Chair Fran Oreto, Members Benjamin Bush, Armando del Valle, Joshua Harris, Clay Ketcham, Michael Roy, and Matthew Simmons. Vice-Chair Tamara McKee had an excused absence. Assistant Attorney General Rachel Clark appeared as counsel for the Board. Director Watkins declared a quorum present.

Department and Division staff present at the meeting: Juana Watkins, Director; Lori Crawford, Executive Director; Allison McDonald, Deputy Chief Attorney, Alicia Bhambhani, Assistant General Counsel; Joe Helton, William Vogel, and Josh Whealdon, Assistant General Counsels appeared by video conference; Jocelyn Pomales, OMCII; Susan Bailey, Administrative Assistant II, Johanne Knudson, and Beverly Ridenauer, Government Analysts. American Court Reporting, Inc. (407.896.1813) provided court reporter services.

General Session
Approval of Minutes

The minutes of the October 3, 2016 General Meeting were presented. Mr. Bush moved, seconded by Mr. Harris to approve the minutes as presented. The motion carried without dissent.

Reports

Director Watkins presented the following reports and addressed questions from the Board.

- Exam Performance Reports – July and August, 2016
- Fiscal Year-End Financial Reports
- Licensee Count Report – October, 2016
- Mutual Recognition Report

Legal Case Report

Ms. McDonald presented the Year Old Case report to the Board and addressed questions and comments from the Board.

Rules Report

Board Counsel Clark provided the Rules Report for December 2016.

Legal Appearance Docket

The Board addressed the Legal Appearance Docket, hearing 6 docket items with the following results:

Tab C – Case No. 2016032482, Title Source Inc. – Respondent’s Request for Informal Hearing

Title Source Inc. was represented by Chris Riley, Esquire, who was present. Mr. Simmons was recused due to participation on the probable cause panel. Ms. McKee served on probable cause. Ms. McKee had an excused absence and was not present. Chair Oreto recused herself. Mr. Bush was acting Chair.

Mr. Helton represented the Department and presented the case to the Board. The Board heard comments from Mr. Riley and entered into discussion. Following discussion, Mr. Ketcham moved, Mr. Harris seconded; motion carried unanimously for the following:

Action Taken: Dismissal.

Agenda B

Tab A – Case No. 2015052650, Yvette Martinez – Settlement Stipulation

Yvette Martinez was not present, but was represented by counsel, Daniel Villazon. Mr. Bush and Mr. Roy were recused due to participation on the probable cause panel.

Ms. Bhambhani represented the Department and presented the case to the Board. After discussion, Mr. Ketcham moved, seconded by Mr. Harris; motion carried unanimously for the following:

Penalty imposed: Administrative fine of \$1,750.00; investigative costs of \$1,577.40; 12 month probationary period, complete 35 hours of specified appraisal education within 12 months; attend one (1) complete general FREAB meeting within 12 months. **Violation(s):** Florida Statute 475.624(15) by failing or refusing to exercise reasonable diligence in developing or preparing a Report; Florida Statute 475.624(4) and Florida Administrative Code Rule 61J1-9.001 by failing to comply with the USPAP (2014-2015).

Agenda A

Tab F – Case No. 2015019498, Thomas Wayne Dykhuizen – Motion for Waiver and Entry of Final Order

Thomas Wayne Dykhuizen was present, but was not represented by counsel. Mr. Bush and Mr. Roy were recused due to participation on the probable cause panel.

Mr. Whealdon represented the Department and presented the case to the Board. Mr. Harris moved to conduct an Information Hearing, accept the Findings of Facts and Conclusions of Law as presented. Mr. Simmons seconded; the motion carried without dissent.

The Board entered into discussion. Mr. Ketcham moved, seconded by Mr. Simmons; motion carried with one dissenting vote for the following:

Penalty imposed: Administrative Fine of \$1,500.00; investigative costs of \$1,386.00; complete four (4) four-hour specified Corrective Education Courses. **Violation(s):** Florida Statute 475.624(4) and Florida Administrative Code Rule 61J1-9.001 by failing to comply with the USPAP (2014-2015) and violation of Section 475.624(15) by failing or refusing to exercise diligence in developing or preparing the Report.

Tab D – Case No. 2015042922, Esley R. Azua – Settlement Stipulation

Esley R. Azua was present, but was not represented by counsel. Mr. Simmons was recused due to participation on the probable cause panel. Ms. McKee served on probable cause. Ms. McKee had an excused absence and was not present.

Ms. Bhambhani represented the Department and presented the cases to the Board. Following discussion, Mr. Roy moved, seconded by Mr. Bush; motion carried to accept the proposed settlement stipulation as follows:

Penalty imposed: Administrative fine of \$1,500.00; investigative costs of \$693.00; 25 hours of education including “Scope of Work: Appraisals and Inspections”, attend 1 complete FREAB meeting; 12- month probationary period. **Violation(s):** Florida Statute 475.624(4) and Florida Administrative Code Rule 61J1-9.001 by failing to comply with the USPAP (2014-2015) and violation of Section 475.624(15) by failing or refusing to exercise diligence in developing or preparing the Report.

Tab B – Case No. 2015035479, Peter S. Remie – Petitioner’s Motion for Informal

Peter S. Remie was present, but was not represented by counsel. Mr. Del Valle and Ms. Oreto were recused due to participation on the probable cause panel.

Ms. McDonald represented the Department and presented the case to the Board. The Board entered into discussion. Mr. Simmons moved; Mr. Roy seconded; motion carried unanimously to adopt the Findings of Fact and Conclusions of Law as amended. Following discussion, Mr. Roy moved, seconded by Mr. Simmons; motion carried without dissent for the following:

Penalty imposed: Administrative fine of \$2,500.00, investigative costs of \$1,437.15, 25 hours of education to include The Appraisal Foundation Corrective Course *What Am I Signing and why?*; 12- month probationary period, attend two FREAB meetings within twelve months. **Violation(s):** Florida Statute 475.624(4) and Florida Administrative Code Rule 61J1-9.001 by failing to comply with the USPAP (2014-2015) and violation of Section 475.624(15) by failing or refusing to exercise diligence in developing or preparing the Report.

Tab A – Case No. 2016001476, Jeffrey Richard Eiring – Respondent’s Request for Informal Hearing

Jeffrey Richard Eiring was not present, and was not represented by counsel. Mr. Bush and Mr. Roy were recused due to participation on the probable cause panel.

Ms. Bhambhani represented the Department and presented the case to the Board. Mr. Harris moved, Mr. Ketcham seconded, to accept the Findings of Fact and Conclusions of Law and conduct an information hearing. The motion carried without dissent.

The Board entered into discussion. Mr. Harris moved, Mr. Simmons seconded; motion carried without dissent to adopt the administrative complaint as amended. Mr. Simmons moved, seconded by Mr. Harris; motion carried unanimously for the following:

Penalty imposed: Administrative fine of \$1,500.00; investigative costs of \$1,300.00; complete 25 hours of education within 12 months, 12-month probationary period with early termination language. **Violation(s):** Florida Statute 475.624(15) by failing or refusing to exercise reasonable diligence in developing or preparing a Report; Florida Statute 475.624(4) and Florida Administrative Code Rule 61J1-9.001 by failing to comply with the USPAP (2014-2015); Florida Statute 475.624(4) and 475.623.

Tab E – Case No. 2016007970, Karen Marie Berger – Motion for Waiver and Entry of Final Order

Karen Marie Berger was not present, and was not represented by counsel. Mr. Del Valle and Ms. Oreto were recused due to participation on the probable cause panel.

Mr. Vogel represented the Department and notified the Board that the respondent requested a continuance due to a medical condition. Following discussion, Mr. Simmons moved, Mr. Ketcham seconded to continue the case to the February 2017 meeting. The motion carried without dissent.

Action taken: Continuance granted.

General Session Continued
Petitions for Variance or Waiver

Petition for Variance or Waiver of Section 475.617(3), Florida Statutes – VW 2016-227 received from Mr. Luke B. Johnson

Director Watkins presented the Petition for Variance or Waiver as received from Mr. Luke B. Johnson. Mr. Johnson was present to address the Board. The Board discussed the petition and Mr. Johnson's circumstances. Following discussion, Mr. Johnson withdrew his petition and application verbally on the record at the meeting.

Petition for Rule Variance of Section 61J1-4.010(1) (c), Florida Administrative Code – VW 2016-263 received from Mr. Lawrence H. Zegers

Counsel Clark explained recent changes to the Appraiser Qualifications Board Criteria pertaining to the supervision of registered trainee appraisers. Mr. Zegers was present to address the Board regarding his Petition for Variance or Waiver. The Board discussed the petition. Following discussion, Mr. Bush moved to grant the petition based upon the hardship as demonstrated by the Petitioner in this particular instance. Mr. Harris seconded and the motion carried with one dissenting vote.

Summary of Applicants Agenda - New Applicants

- A. Daniel J. Bizzoco – Certified General Appraiser – The applicant was present to address the Board. Following discussion Mr. Harris moved, Mr. del Valle seconded; motion carried unanimously to approve the application.
- B. Exactus Appraisal Management, LLC, Aaron Lively – Appraisal Management Company – The applicant was present. The Board heard comments from the Applicant. Following discussion, Mr. Simmons moved; Mr. del Valle seconded; motion carried unanimously to approve the application
- C. Wayne Famular, Jr. - Certified Residential Appraiser by mutual recognition (NY) – Informal Hearing
The applicant was not present. Following discussion, Mr. Ketcham moved, Mr. Simmons seconded; motion to uphold the previous action of the Board and deny the application. The motion carried with a without dissent.
- D. Andrew Klein - Certified Residential Appraiser by mutual recognition (NY) – The applicant was present to address the Board. Following discussion Mr. del Valle moved, Mr. Harris seconded; motion carried without dissent to approve the application.

- E. Market Valuation Services, LLC, Michael Ryan Moore – Appraisal Management Company – The applicant was not present. Following discussion, Mr. Bush moved, Mr. Harris seconded; motion carried with three dissenting votes to approve the application.
- F. James Morgan, Registered Trainee Appraiser – The applicant was present and addressed the Board. Following discussion, Mr. del Valle moved, Mr. Ketcham seconded; motion carried with one dissenting vote to approve the application.
- G. Scott John Weiss, Registered Trainee Appraiser – The applicant was present and addressed the Board. Following discussion, Mr. del Valle moved, Mr. Bush seconded to deny the application. The motion failed with a split vote of three yeas and four nays. After further discussion, Mr. Harris moved, Mr. Roy seconded; motion carried by split vote of four yeas and three nays to approve the application.

General Session Continued

Real Estate Appraisal Education Courses for Approval or Denial

- A. General Appraiser Report Writing and Case Studies – New Course (15 hours, Qualifying Education) – Application No. 6199 – Dynasty School

No representative from the organization was present in support the application. The Board discussed the matter. Following discussion, Mr. Harris moved, Mr. Ketcham seconded to approve the course if amended to update the language to the correct version of USPAP. The motion carried unanimously.

- B. General Market Analysis and Highest and Best Use – New Course (15 hours, Qualifying Education) – Application No. 6200 – Dynasty School

No representative from the organization was present in support the application. The Board discussed the matter. Following discussion, Mr. Ketcham moved, Mr. Harris seconded to approve the course; motion carried without dissent.

- C. Case Studies in Complex Valuation – New Course (7 hours, Specialty) – Application No. 6421 – Region X of the Appraisal Institute

No representative from the organization was present in support the application. The Board discussed the matter. Following discussion, Mr. Ketcham moved, Mr. Roy seconded to approve the course; motion carried without dissent.

Rules Discussion

Rule 61J1-2.002 Renewal Period

Board Counsel Clark introduced the rule, noting that it is being addressed for repeal. The language of the rule is covered by language in 61-6.001 Biennial Licensing, Florida Administrative code. The Board discussed the language content of the various rules. Mr. del Valle moved, Mr. Simmons seconded a motion to repeal the rule. Following further discussion and upon vote, the motion failed with three yeas and four nay votes.

Rule 61J1-4.010 Supervision and Training of Registered Trainee Appraisers

Ms. Clark presented Rule 61J1-4.010, reminding the Board that proposed amendments were considered at the October meeting. The proposal was rejected with no further action being taken. The rule will be brought back

for further discussion and consideration in response to recent changes by the Appraiser Qualifications Board. The Board discussed the rule and then opted to hold a special meeting in March, 2017. Once it has been set, the date and time will be made available on the Meeting website.

Special Agenda
Correspondence

Patrick D. Kirchner

Director Watkins presented a communication from Mr. Patrick D. Kirchner of Minnesota. Mr. Kirchner submitted an application for an assignment that he stated is not a federally related transaction. The department's processing unit sent him a letter explaining that permits may be granted only when it is a federally related transaction. Upon receipt of the letter from the department, Mr. Kirchner submitted this letter, asking that his application, No. 13183, be placed before the Board.

Ms. Watkins reminded the Board that the ASC Policy Statements are very specific. Board discussed the application, the assignment, and other options available to the applicant. Following discussion, Mr. Simmons moved; Mr. Roy seconded a motion to deny the application, number 13183, because it would require the Board to grant a waiver from a federal rule and the Board cannot waive federal rules. The motion carried unanimously.

Rick Logan

Director Watkins provided information about the communication from Mr. Rick Logan. The Board reviewed the communication from Mr. Logan of Florida regarding replacement cost estimates. Board Counsel Clark advised the Board that this communication appears to be a request for legal guidance, which is a matter they are unable to rule upon. The Board took no further action.

Lori Ann Carroll

Director Watkins reported that Ms. Carroll will be filing a Petition for Variance or Wavier and has requested this communication regarding the current education criteria requirement be withdrawn from this agenda. The Board agreed to the request and the item was withdrawn.

Board Business

AMC Update

Director Watkins explained that there is no update to offer to the Board at this time. She further commented upon the following issues:

- The department is very mindful of the rapidly approaching Session beginning in March
- The department is also very mindful that AMC regulation and customary and reasonable fees are issues that are very important to the Board and the industry as a whole
- Legislative proposals on behalf of the department require a lot of discussion and coordination with the industry and the Governor's Office
- We do not yet have concrete information that can be shared at this time, but work on it continues and the department hopes to have information by the first of the year to communicate with each member individually
- Items still under consideration and discussion include:
 - Work is being done to determine the best way to do a study about customary and reasonable fees
 - The best way to be able to pay for an independent study

- There is also consideration of adopting the federal industry standard

Chair Oreto thanked Ms. Watkins and stated that the Board looks forward to whatever information is forthcoming.

2017 Probable Cause Panels

The Board considered the adopted calendar for 2017 and established panels for the probable cause meetings.

News and Updates

The following items were considered by the Board to be information only, taking no further action:

- Appraiser Qualifications Board (AQB) Second Exposure Draft proposed changes to Criteria
- Appraisal Standards Board (ASB) Second Exposure Draft proposed changes to 2018-2019 USPAP
- *Foundation News* and updates from The Appraisal Foundation (TAF) and its Boards

House Bill 499

Mr. Ketcham asked Counsel Clark to provide her assessment of the intention of the content of House Bill 499, which amended the Department of Revenue's Value Adjustment Board (VAB) process used by county property appraisers as it pertains to real estate appraisers licensed under Chapter 475 and real estate brokers licensed under Chapter 475.

Ms. Clark reminded the Board that she does not practice before the board that is covered under HB 499 and it may be best to ask these questions of that board. However, this circumstance could be seen as being no different than a Qualified Representative appearing at a Chapter 120 hearing. In such a hearing, if someone has the knowledge to give testimony to represent a property owner, and the body that is hearing the case agrees that the person has the knowledge, then that person can represent the property owner.

Mr. Ketcham expressed interest in the following:

- If you are a licensed real estate broker and a certified appraiser, can this representation be done as a broker without consideration of the fact you are also an appraiser?
- Does this advocacy require compliance with USPAP?
- Are there any standards under this new law to provide guidance?

Chair Oreto suggested a review of the information received from The Appraisal Foundation titled *Yes, I can accept that Assignment!* The document does include ad valorem assignments.

Director's Comments

Deputy Director Johnson commented on the following for Director Watkins:

- Association of Appraiser Regulatory Officials (AARO), April 7th – 9th, 2017 – the Director is trying to make it possible for all members to attend.
- The Congressional hearing regarding the future of the appraisal industry was held on November 16th and, as it was recorded, the information to view the meeting will be passed along as soon as it's available.
- The ASC Compliance Review will be held February 7th – 13th, 2017. The notification letter has been received and we are already working on our response.

Public Comments

The Board heard comments from a member of the audience.


Adjournment

There being no other business, the Chair adjourned the meeting at approximately 5:10 p.m. The next general meeting of the Florida Real Estate Appraisal Board will held February 13, 2017 in Orlando.

ATTEST:



Evelyn "Fran" Oreto, Chair
Florida Real Estate Appraisal Board



Lori Crawford, Executive Director
Florida Real Estate Appraisal Board