

Charles W. Drago, Secretary

Charlie Crist, Governor

Minutes of
THE FLORIDA REAL ESTATE APPRAISAL BOARD
April 24, 2009
Teleconference Meeting
(As amended)

Director O'Bryant opened the meeting at approximately 10:05 a.m. this Friday, April 24, 2009. The teleconference attendees identified themselves. The members of the Board present were Cynthia Wright, Susan Dailey and Evalyn "Fran" Oreto. Catherine Lannon, Assistant Attorney General, appeared as counsel for the Board.

Division staff present at the meeting: Thomas O'Bryant, Jr., Division Director and Executive Director for the Board; Robert Minarcin, Senior Attorney; Beverly Ridenauer, Government Analyst II. Other department staff members present were Allison McDonald, Patrick Cunningham, and Jennifer Blakeman, Senior Attorneys. American Court Reporting (407.896.1813) provided court reporter services.

Attorney Tom Brady participated as counsel for the respondents.

Director O'Bryant announced that Chair Joni Herndon sat on the Probable Cause, therefore could not participate in this meeting. Vice-Chair Rogers had an excused absence. Member Wright agreed to chair the meeting.

Legal Matters:

Case # 2007-046700, DBPR vs. Kathleen Green and Case # 2007-046698, DBPR vs. Lee Ann Moody were read into the Record. Senior Attorney Bob Minarcin represented the department.

Ms. Lannon cited Chapter 455.207(3), the statute reads that 51 percent of the appointed members constitutes a quorum. There are five appointed members sitting on the Florida Real Estate Appraisal Board and three members are present.

Mr. Brady objected, citing Rule 61J1-1.003, F.A.C., which states four members of the Board constitutes a quorum. Ms. Lannon explained that a rule cannot override a statute. She asked the Board to rule on the subject. The Board determined that a statute takes precedence over a rule.

Member Dailey made a motion that a quorum has been established. Member Oreto seconded the motion, which carried unanimously.

The motions filed by the Respondents were heard. The Board's decisions are as follows:

Respondents' Motion to Appear Telephonically:

Member Oreto made a motion to proceed with the meeting by telephone, granting an hour or less to present oral argument. Member Dailey seconded the motion, which carried unanimously.

Respondents' Motion to Dismiss the Administrative Complaints for Failure to State a Cause of Action:

Following oral presentations Member Dailey made a motion to deny the Respondents' motion. Upon second by Member Oreto, the Board voted unanimously to deny the motion.

Respondents' Joint Motion to Dismiss For Lack of Florida Real Estate Appraisal Board Quorum

Based upon previous discussion, Member Oreto made a motion to deny the Motion to Dismiss for Lack of Florida Real Estate Appraisal Board Quorum. Member Dailey seconded the motion, which carried unanimously.

Petitioner's Exceptions:

Senior Attorney Minarcin presented the Petitioner's Exceptions to some of the Conclusions of Law as determined by the Administrative Law Judge.

▪ **Exception I:**

The Conclusion of Law that S. 475.629, the Records Retention statute, was not proven by clear and substantial evidence. Mr. Minarcin read into the record his written analysis of the Judge's conclusion.

Based upon the substituted conclusion of law presented by Mr. Minarcin, Member Dailey made a motion to grant the Petitioner's Exception I and the argument to support Exception I. Upon second by Member Oreto, the motion carried unanimously.

▪ **Exception II:**

Mr. Minarcin reported that Exception II has been withdrawn.

▪ **Exception III:**

Mr. Minarcin presented Exception III to Paragraph 38, lines 7-12, of the Conclusion of Law based on a scrivener's error in the identification of the count. Paragraph 38 addressed Count VII, not Count VI as was stated in the Recommended Order.

Upon motion by Member Dailey, with second by Member Oreto, the Board voted unanimously to grant the Petitioner's Exception III and the argument to support Exception III. Upon second by Member Oreto, the motion carried unanimously.

▪ **Exception IV:**

Mr. Minarcin presented Exception IV to the entirety of Paragraph 40 of the Conclusions of Law in the Recommended Order based on the evidence presented during testimony during the hearing as stated in his written analysis.

Following his argument Member Oreto made a motion to grant the Petitioner's Exception III and the argument to support Exception III. Upon second by Member Dailey, the motion carried unanimously.

With the exceptions presented, Mr. Minarcin asked the Board to impose a different penalty than a reprimand. He asked the Board to impose a penalty that would find the parties guilty of violating S. 475.629, F.S., the Record Keeping Section of USPAP Rule 2-1(b) and USPAP Rule 2-2(b) (viii)

Respondent's Exceptions:

Adjournment

There being no other business, the Chair adjourned the meeting at 3:40 p.m.

ATTEST:

Cynthia H. Wright, Acting Chair
Florida Real Estate Appraisal Board

Thomas W. O'Bryant, Jr., Executive Director
Florida Real Estate Appraisal Board

Date _____

Date _____

Prepared by: _____
Beverly Ridenauer
Government Analyst II

Date _____