

FLORIDA REAL ESTATE APPRAISAL BOARD MINUTES

Orlando, Florida
August 6 & 7, 2007

Amended

Chair Frank Gregoire called the meeting of the Florida Real Estate Appraisal Board to order at 9:00 a.m., Monday, August 6, 2007.

Member Cynthia Wright offered the Invocation and Member Joni Herndon led the Pledge of Allegiance. The Chair introduced the Members present: Vice-Chair Joni Herndon; Cynthia Wright, Jay Small, Susan Daily and Michael Rogers. Reginald Dixon, Assistant Attorney General, appeared as counsel for the Board. The Chair declared a quorum present.

Division staff present at the meeting: Thomas W. O'Bryant, Jr., Director; Elizabeth A. Hickman, Deputy Director; April Skilling, Deputy General Counsel; James Harwood, Chief Attorney; Kathleen Koeberich, Chief, Bureau of Enforcement; Bob Minarcin, Senior Attorney; Frank Roach, Senior Attorney; JoEllen Peacock, Education Coordinator; Beverly Ridenauer, Government Analyst II; Lori Crawford, Regulatory Supervisor/Consultant; Janice Taylor, Government Analyst I; and Sheila Hall, Government Analyst I. American Court Reporting, 407-896-1813 provided court-reporting services.

Approval of Minutes

Upon motion by Vice-Chair Herndon, seconded by Member Wright, the Board approved the minutes of the June 4 & 5, 2007 meeting.

Summary of Applicants:

Petition for Formal Hearing

Joseph R. Perog – Upon motion by Member Small, with second by Member Wright, the Board voted to dismiss the Petition for Formal Hearing with prejudice.

Request for Hearing

Earvin Keith Williamson – Upon motion by Member Small and second by Member Dailey, the Board dismissed the petition without prejudice and provided that the petitioner 21 days to file an amended petition that complies with Chapter 120, FS.

Reconsideration

John Martin Busiglio, Sr. - Upon motion by Member Dailey and second by Member Wright, the Board voted to set aside the previous Notice of Intent to Deny and approve the application.

Informal Hearings

Mr. Dixon presented the Summary of Applicant informal hearings and the Board decisions are as follows:

13-08-07 Christopher Owen Tucker – Registered Trainee – Approved
14-08-07 Hector Ricardo Medina – Registered Trainee – Upon motion by Member Wright, with second by Member Small, the Board dismissed the Petition for Formal Hearing without prejudice and provided the petitioner 21 days to file an amended petition that complies with Chapter 120, FS. to petition a formal hearing with the Department of Administrative Hearings (DOAH)

New Applicants

Ms. Ridenauer presented the Summary of Applicants and the Board decisions are as follows:

01-08-07 Walter Irving Coven – Registered Trainee – Denied
02-08-07 James Thomas Crumpler – Registered Trainee – Denied
03-08-07 Eddy Gorrin – Registered Trainee – Denied
04-08-07 Andrew Rainey Lyell – Certified Residential – Approved
05-08-07 Michelle Ann Mackey – Registered Trainee – Denied
06-08-07 George Morales – Registered Trainee – Denied
07-08-07 Edwin Adolfo Ortiz – Registered Trainee – Denied
08-08-07 Withdrawn by applicant
09-08-07 Jose Jesus Puentes – Registered Trainee – Approved
10-08-07 Donald Hugh Spellman – Registered Trainee – Approved
11-08-07 Craig Watson – Registered Trainee – Denied
12-08-07 Robert L. Brown – Registered Trainee – Approved
15-08-07 Eric Alan Lane – Registered Trainee – Approved

Board Business:

Petition for Variance or Waiver of Marvin Powers

A Petition for Variance or Waiver by Marvin Powers was discussed. The petition requested a variance or waver of Rule 61J1-4.001 Education Requirements (1)(a), (b), and (c); and Rule 61J1-5.001 Appraisal Examination Areas of Competency (1)(a), (b), (c), (d) and (e).

Board Counsel Dixon recommended the Board deny the request because the education requirement is statutorily required under Chapter 475.617(1), Florida Statutes.

Upon motion by Member Wright, with second by Vice Chair Herndon, the Board voted to deny Mr. Powers' Petition for Variance or Waiver of the education requirement.

Petition for Declaratory Statement by Harold Lee Vivarette

Board Counsel Dixon explained the Declaratory Statement process and explained the statement is a written response to a specific question.

Upon motion by Vice-Chair Herndon, with second by Member Rogers, the Board voted to decline to make a declaratory statement in response to Mr. Vivarette's petition.

Board Counsel Matters - Rules Report

Director O'Bryant advised the Board that the published rules are pending. Rule 61J1-4.010 will become effective on 8-12-07. Chair Gregoire pointed out that the new version contains a scrivener's error which removed Subsection (6)(g) from the rule.

➤ **61J1-4.010 – Supervision of Registered Trainees:**

Upon motion by Vice-Chair Herndon and second by Member Dailey, the Board voted to correct a scrivener's error that removed Subsection (6)(g) and return the language "Signature and state license / certification number of the supervising appraiser." to the rule.

Rules Discussion

➤ **61J1-1 Internal Organization and Operation – No change.**

➤ **61J1-2.001 Fees.**

(13) Upon motion by Vice-Chair Herndon with second by Member Dailey the Board voted to repeal this subsection.

➤ **61J1-2.0045 Exemption of Members of Armed Forces from renewal Provisions.**

With a motion by Member Small and second by Member Wright, the Board asked Counsel Dixon to work with the Division and the Department to research the options and legal authority of the Board regarding compliance with interpretations of the AQB 2008 Criteria.

➤ **61J1-3.001 – Application by Individuals.**

(2) Upon a motion by Member Wright, seconded by Vice-Chair Herndon, the Board voted to have Counsel work with the Department to separate the qualifications language into three separate sections for registered trainee, certified residential and certified general.

(6) With a motion by Member Dailey, with second by Member Wright the Board voted to have the Department work with Board counsel to develop language for electronic fingerprinting requirement as the first step to the application process.

➤ **61J1-3.0012 – Endorsement of Certified Residential or General Appraisal Licensure**

The rough draft of the proposed rule was discussed. The Board voted on a motion by Vice-Chair Herndon, with second by Member Dailey, to have Counsel and the Department work together to draft alternative language to implement Guide Note 5 of the AQB 2008 Criteria.

The Board asked the Division of Real Estate (DRE) staff to work with the Office of the Attorney General to include the proposed language in existing Rule 61J1-3.004 – Issuance of Certification.

➤ **61J1-3.004 – Issuance of Certification.**

The language should include wording such as "The applicant must hold an "active certification", submit a letter of good standing, must sign an affidavit that they have familiarity with Florida law, and must take a state exam referenced in 475.616, Florida Statutes.

The draft language will be brought back to the Board for discussion at the October 2007 meeting. Upon motion by Vice Chair Herndon with second by Member Wright, the Board voted to Notice the rule for Rule Development with language as presented.

➤ **61J1-4.001 – Education Requirements.**

(2) and (3) Following discussion, the Board agreed there is no need to change the existing language.

(4) The fifteen hour requirement for Subsection (4) Discussion is accurate and requires no changes.

(5) Discussion of the current language revealed the intent of the rule is to include the required six hours of Florida laws, rules and regulation and the required three hours coverage of the roles and rules of supervisor and trainee appraisers within the content of the 100 hour course for registered trainee appraisers. Course providers will add material to the required nine hours to meet the 100 hours required.

(13) Upon motion by Member Dailey, with second by Member Rogers, the Board voted unanimously to repeal this subsection for failure to conform to AQB criteria.

(14) Upon motion by Member Dailey, with second by Vice-Chair Herndon, the Board voted unanimously to clarify the language of this rule to implement AQB Guide Note 5.

➤ **61J1-4.002 – Equivalency Education.**

During discussion the Board provided a response to questions posed by Education and Testing staff with regards to distance education as follows:

Question #1: Is it possible for licensees from another jurisdiction to use AQB approved distance education courses to satisfy their qualifying education in Florida?

Answer: Yes, with the implementation of AQB Guide Note 5.

Question #2: Is it possible for Florida to approve distance education qualifying education courses under Chapter 475.615(2), F.S. "Qualifications for registration or certification."?

Answer: No; to do so or have this language in rule would be in conflict with F.S. 475.617.

During discussion, the Board agreed that it does not want the language of this rule to be specific in regards to distance education as approved for pre-licensure education as that would be in conflict with F.S. 475.617. The Board prefers the broad view of the equivalency language for this rule in that a person who resides in another state; holds a certified credential; has completed the required experience which demonstrates competent and ethical work; is current and active in that state; and has no disciplinary record is AQB compliant and therefore meets equivalency requirements of this rule. Member Wright reminded the Board this person will still have to pass a Florida exam.

➤ **61J1-4.003 – Continuing Education.**

(7) Upon motion by Member Dailey, with second by Vice-Chair Herndon the Board voted to amend the existing language of the rule to grant a maximum of seven (7) classroom hours of the required thirty (30) hours of continuing education by attending an entire meeting where the Board considers disciplinary cases.

➤ **61J1-4.009 – Post Licensing Education for Registered Trainee Appraisers.**

(1) - (9) – Director O'Bryant provided comments from the Bureau of Education and Testing (BET) Staff. BET staff asked if the post licensure education courses should follow the increased pre-licensure education requirements. Director O'Bryant offered to work with

the BET and DRE staff to draft language to define post-licensing education for trainees who are on a track to become a certified general appraiser. The draft will be brought back to the Board for discussion.

Chair Gregoire asked the Director to contact some of the education providers so they can provide input to the proposed language. Member Wright pointed out that there is nothing in this rule that prohibits the course providers from developing post-license education courses for certified general appraisers as the is currently written.

➤ Vice-Chair Herndon asked if the Board could hold a teleconference or a noticed meeting to go over the rule changes prior to final adoption by January 1, 2007. Director O'Bryant stated he will look at the budget to see if it is possible. The Chair asked the Director to tentatively plan a special meeting of the Board in November to finalize the rules with plans to be completed at the October 2007 meeting.

➤ **61J1-4.010 Supervision and Training of Registered Trainee Appraisers.**

(4) Upon motion by Member Rogers, with second by Vice Chair Herndon, the Board voted to reduce the number of registered trainee appraisers that can be supervised by a certified appraiser to three. The motion carried with a split vote of four yes and two no. Members Wright and Small voted against the motion.

➤ **61J1-5.001 Appraisal Examination Areas of Competency.**

A motion by Member Dailey to have Department work with Board Counsel to draft the necessary language to prepare for the use of the National Exam was tabled until the October meeting.

Chair Gregoire and Vice Chair Herndon expressed their concerns over Florida's use of the Nation Exam exclusively. The major concern is the quality of the National Exam will not meet the high standard that Florida has held since the appraiser program began.

Director O'Bryant recommended this topic be moved to the October agenda. He will work with BET staff and Board Counsel Dixon to draft language for the rule and will arrange a formal presentation at that time.

➤ **61J1-6.001 Experience Requirement.**

(1) Upon motion by Member Wright, with second by Member Dailey, the Board voted to have the Department and Counsel draft language to implement Guide Note 4 and grant experience credit for completion of practicum course work; experience should not begin until the applicant has an active credential as a registered trainee appraiser and is registered under the supervision of a certified residential or certified general appraiser; or holds a credential as a certified residential appraiser.

(5) Upon motion by Member Dailey, with second by Vice Chair Herndon, the Board voted to remove the reference to "client name and address" from this rule.

(5)(2) & (3) The experience criteria for mass appraisal experience is required by the AQB criteria and cannot be removed from rule. No change was recommended.

➤ **61J1-8.001 Citation Authority.**

(2)(a)(5)(a) and (6) Upon motion by Member Dailey, with second by Vice Chair Herndon, the Board voted to correct a scrivener's error by amending the Statute Section ~~475.221(1)~~ to Statute Section 475.6221(1).

(2)(a)(9) Upon motion by Member Wright, with second by Member Dailey, the Board voted to make a violation of Section 475.623 Registration of firm or business name and office location a citation with a fine of \$500 under 61J1-8.001 Citation Authority.

➤ **61J1-8.002 Disciplinary Guidelines.**

(3) Upon motion by Vice Chair Herndon, with second by Member Dailey, the Board voted to amend 61J1-8.002 (3) by adding Subsection (cc) to include the language "the usual action of the Board for violation of Section 475.6222, F.S., failure to provide direct supervision of a registered trainee appraiser shall be a \$5000 fine up to revocation". Member Small voted against the amendment.

➤ (3)(bb) Vice Chair Herndon made a motion to amend Subsection (bb) so it reads the same as Subsection (cc) "the usual action of the Board for violation of Section 475.6222, F.S., failure to provide direct supervision of a registered trainee appraiser shall be a \$5000 fine up to revocation". Member Small voted against the amendment.

➤ **61J1-9.001 Standards of Appraisal Practice.**

The language must include the date of the Uniform Standards of Professional Appraisal Practice (USPAP) currently in use for the purpose prosecuting cases in the Department of Administrative Hearings (DOAH). When the 2008 version of USPAP is published, the Board will amend the date of the "current" version for the rule to "2008 USPAP".

Administrative Matters:

License Reinstatement Ratification

With a motion by Member Dailey, followed by a second from Member Small, the Board voted unanimously to ratify the re-instatement of John Hille's Certified Residential license.

Ratification of Course Approvals

With a motion by Member Herndon, followed by second from Member Wright, the Board voted unanimously to ratify the course approvals for the dates of May 24, 2007, June 18, 2007, and July 9, 2007.

Public Comment:

Kevin Flankey – certified residential from Orlando: Due to the slow market at this time, has the Board considered extending the timeframe for completion of the 2,000 hours of supervised training for an extra year to allow trainees to have sufficient exposure that they wouldn't have in the current economic climate.

Chair Gregoire responded that the experience requirement is 2,500 hours and it can be earned over more than two years. The 24 months is a minimum.

The meeting adjourned at approximately 6:45 p.m.

August 7, 2007

Chair Frank Gregoire reconvened the meeting of the Florida Real Estate Appraisal Board at approximately 8:40 a.m. on Tuesday, August 6, 2007. Member Susan Dailey offered the Invocation and Member Jay Small led the Pledge of Allegiance.

The Chair introduced the Members present: Vice-Chair Joni Herndon; Cynthia Wright, Michael Rogers, Susan Dailey, and Jay Small. Reginald Dixon appeared as counsel for the Board. The Chair declared a quorum present.

Division staff present at the meeting: Thomas W. O'Bryant, Jr., Director; Elizabeth A. Hickman, Deputy Director; Counsel; James Harwood, Chief Attorney; Kathleen Koeberich, Chief, Bureau of Enforcement; Bob Minarcin, Senior Attorney; Frank Roach, Senior Attorney; Chris Lindamood, Senior Attorney; JoEllen Peacock, Education Coordinator; Beverly Ridenauer, Government Analyst II; Lori Crawford, Regulatory Supervisor/Consultant; Sheila Hall, Government Analyst. American Court Reporting, 407-896-1813 provided court-reporting services.

Correspondence:

Chair Gregoire stated that three of the four items of correspondence discussed the same subject matter, which was implementation of the 2008 Real Property Appraiser Qualification Criteria. He has already responded to those individuals so there was no need to discuss further unless someone disagreed with his comments to those individuals.

Mary Ann Kelly wrote comments regarding the supervision of trainees and detailed the problems trainees are having finding supervisors. She asked the Board about how to get around the rule. In response, the Chair commented that in light of the motion at Monday's meeting to reduce the trainees under a supervisor from four to three, the process of finding a competent supervisor will become more stringent and difficult in the future.

Director's Comments:

Director O'Bryant reported the following to the Board:

- **Instructor's Seminars:** He has been with the DRE staff presenting the Instructor's Seminars around the state. He thanked the Board members who participated and staff for a job well done.
- **Staff:** Has presented service awards to 31 DRE staff members across the state
- **Experience Audit update:** He has been working with the Secretary's office and has sent paperwork to request two more positions from the Legislature during the Special Session in September to add staff to do the 100 percent experience audit.
- **Meeting with the Department of Financial Services:** He met with Mr. Tedcastle, the new director for the Division of Financial Regulation to discuss a meeting between the two divisions. The meeting will take place in September and he is coordinating final dates now. The meeting will be with Staff from each division and one member of FREAB and one member of FREC.
- The Chair thanked Director O'Bryant for his report.

Chair's Comments

Chair Gregoire commented on the following topics:

- Instructor's Seminars - Has participated in 4 seminars - enjoyable because along with Director O'Bryant, members of the FREC, members of the Legal staff and other members of this Board. He encouraged other members of the Board to attend and participate. The Chair thanked Dir O'Bryant for the new break-out format for the program, saying it was a welcome change and made the seminars entertaining and useful.
- Meeting with ASC – On July 12th he and Director O'Bryant attended a meeting of the Appraisal Subcommittee (ASC) in Wash D.C. They were able to address the six-member panel and made comments regarding the reality of state government and the struggles a state regulatory board has in implementing the many directives made by the independent boards of the Appraisal Foundation. Comments to the ASC addressed the following:
 - Less effective enforcement as a result of one-year time frame for complaint resolution detailed in Policy Statement 10.
 - Constant change in policies and regulations cause this state agency to pull resources from enforcement to administrative use to manage the continual rulemaking process, which is counter productive.
 - More effectively monitor the activities of the independent boards of the Appraisal Foundation and make an attempt to adhere to some of the open government rules, regulations and laws which most states have in place.
 - Objection to the fact that the two independent boards of the Appraisal Foundation meet behind closed doors, very often with no public notice and no means of public participation. They have established a history of reaching a decision with an immediate implementation date and failing to notify the boards that are responsible for implementing those decisions.
 - He received a very nice letter from the Chair, Virginia Gibbs, thanking them for visiting with them.
- New Board Member – Mike Rogers was appointed by Governor Crist on June 12, 2007. While he welcomes Mr. Rogers, he is sorry to see Member Pat Birch Leave.
- Budget – The Chair said he had received a letter from Deputy Secretary Edwards asking his input on the budget. He reported on his response to the request
- Future Plans – Chair Gregoire stated that he plans to put forth a personal effort to seek amendments to Ch 475, Part II to regulate third parties that broker real estate appraisal services who are currently beyond any type of regulation. He feels it is time to seek relief for appraisers who face this type of pressure on a regular basis.
- Resolution for Member Birch – Chair Gregoire read a resolution into the record acknowledging the commitment and dedication of Member Pat Birch. Member Birch's term with the Board expired on October 31, 2006.

The Legal Staff presented the Legal Agenda, consisting of thirty-two cases. The Board heard twenty-eight cases and withdrew four cases. The Board's decisions on these matters are maintained at its headquarters in Orlando, Florida.

The next general meeting of the Florida Real Estate Appraisal Board is scheduled for October 8 & 9, 2007 at the Embassy Suites, 10450 Corkscrew Commons Drive, Estero, Florida, 33928

ATTEST:

Frank Gregoire, 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 _____