

FLORIDA REAL ESTATE APPRAISAL BOARD MINUTES

Orlando, Florida
February 5 & 6, 2007

Chairman Frank Gregoire called the meeting of the Florida Real Estate Appraisal Board to order at 9:00 a.m., Monday, February 5, 2007.

Chairman Frank Gregoire offered the Invocation and Member Cynthia Wright led the Pledge of Allegiance. The Chair introduced the Members present: Patricia Birch, Joni Herndon, Cynthia Wright, Susan Dailey, Gary Rosner and Jay Small. June C. McKinney appeared as counsel for the Board. The Chair declared a quorum present.

Department and Division staff present at the meeting: Holly Benson, Secretary; Andy Edwards, Deputy-Secretary; Michael Martinez, Deputy General Counsel; Jean Whitten, Director of Budget and Financial Management; Thomas W. O'Bryant, Jr., Acting Director; Kathleen Koeberich, Bureau Chief of Enforcement; James Harwood, Chief Attorney; Raquel White, Senior Attorney; Patrick Cunningham, Senior Attorney; Fred Clanton, Investigation Supervisor; David Guerdan, Investigation Supervisor; Martin Straw, Investigator; Bruce Zessin, Management Review Specialist; JoEllen Peacock, Education Coordinator; Dr. Dan Combs, Exam Development Specialist, Bureau of Education and Testing; Beverly Ridenauer, Government Analyst II; Lori Crawford, Regulatory Supervisor/Consultant; and Sheila Hall, Government Analyst I. American Court Reporting, 407-896-1813, provided court-reporting services.

Upon motion by Member Small, seconded by Member Dailey, the Board approved the minutes of the December 4 & 5, 2006 meeting.

Acting Director, Thomas O'Bryant introduced Holly Benson, Secretary of the Department of Business and Professional Regulation. Secretary Benson extended greetings from Governor Crist. She introduced Andy Edwards, Deputy Secretary of Professions; Mike Martinez, General Counsel's Office; Jean Whitten, Director of Budget and Financial management. Ms. Benson outlined several areas within the Department she is working to improve and then thanked the Board for their service to the People of Florida.

Mr. O'Bryant introduced Jean Whitten, Director of Budget and Financial Management who presented a budget report for the period ending June 30, 2006 and a first quarter report for December 30, 2006. She also provided a five-year projection and unlicensed activity report.

Director Whitten addressed questions from the Board. Chairman Gregoire asked about the lack of expenditures in the Unlicensed Activity fund. Mr. O'Bryant said the Department wants to increase marketing and education to address unlicensed activity.

Member Small asked the Department to consider increasing funding to Investigations and Legal staff to reduce the current backlog of cases before considering a reduction of the Board's assets. Member Small also asked the Department to send senior staff to the annual meetings held by the Association of Appraiser Regulatory Officials. Ms. Whitten said the budget was submitted in October 2006 and there is an opportunity to readdress budget requests and Division of Real Estate staffing is being considered.

Mr. O'Bryant stated the Department has recently added a new senior attorney position. Additionally, the Division has hired additional investigators in the last legislative budget process and has requested three additional investigators and support staff to support Investigations and Legal to help address the difficult issues addressed by the Appraisal Subcommittee field review.

Member Wright asked about additional staff for the Education Section. Mr. O'Bryant stated he had just hired another Government Analyst position and has requested another support staff position to help with that situation.

Chairman Gregoire thanked Secretary Benson and Director Whitten for attending the meeting. He also thanked Mr. O'Bryant for arranging the presentation.

Election of Chairman and Vice-Chairman

Member Herndon moved to have Chairman Gregoire stay on as Chair, with second by Member Dailey, the motion carried unanimously.

Member Birch nominated Member Herndon as Vice-Chairman and, with second by Member Wright, the motion carried unanimously

Summary of Applicants

Informal Hearings:

Ms. Bartell presented the Summary of Applicant informal hearings. The Board's decisions are as follows:

01-02-07	Richard Castillo – Registered Trainee – Approved
11-02-07	Joshua Luke Craig – Registered Trainee – Denied
15-02-07	William Thomas Clegg – Denied

New Applicants:

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

02-02-07	Luis D. Aleman – Registered Trainee – Denied
03-02-07	Stephanie Asleson – Registered Trainee – Approved
04-02-07	Ricardo J. Callado – Registered Trainee – Approved
05-02-07	Richard J. Cutler – Registered Trainee – Denied
06-02-07	Ricky Cruz – Registered Trainee – Denied

07-02-07 Oscar E. Miranda – Registered Trainee – Denied
08-02-07 Joseph R. Perog – Certified General – Denied
09-02-07 Stacey D. Spence – Registered Trainee – Approved
10-02-07 Carlos A. Vigo – Registered Trainee – Denied
12-02-07 Freddy J. Aviles – Registered Trainee – Denied
13-02-07 Hector R. Medina – Registered Trainee – Denied
14-02-07 Victor M. Tarin – Registered Trainee – Approved

Ben Faulk Petition

Continued until 3:00 p.m., Tuesday, February 6, 2007.

Board Business

Mr. Rosner offered his official resignation, thanking the Governor for the opportunity to serve on the Board. He stated due to personal and work-related conflicts he could no longer fulfill his duties to the Board. Chairman Gregoire thanked Mr. Rosner for his service, saying his insight and diligence will be missed by the Board. Acting Director O'Bryant stated that the Division has notified the Governor's office of Mr. Rosner's resignation and the upcoming vacancy for the Consumer Member position.

Board Counsel Matters

Rules Report

FREAB Counsel McKinney addressed the Rule Report and reporting the following:

- Rule Development: Rule 61J1-6.001 – Experience Requirement

Rule 61J1-6.001 (5) (b) (5) – Member Herndon moved to amend language to strike Subsection (5) (b) (5) in its entirety so Florida's experience requirements are in compliance with the rules of Appraisal Subcommittee (ASC). With second by Member Daily the motion carried.
- 61J1-6.001(7) – Member Wright moved to strike subsection 7 in its entirety. Member Birch seconded the motion and it carried unanimously.
- 61J1-2.001 – Fees: removing the fee for a wall certificate. Published January 19, 2007.
- 61J1-3.001 – Applications by Individuals: Published January 19, 2007.
- 61J1-3.004 – Issuance of Certification:

Member Birch moved to change language of the second sentence in Subsection (4) to state the "exam results are only valid for a maximum period of 24 months from the exam date." Seconded by Member Wright, the motion carried unanimously. The

proposed language will quote the criteria guidelines as set forth by the Appraiser Qualifications Board.

Mr. Gregoire explained that the purpose of this rule is to implement a segmented approach. The ASC's view of a segmented approach has changed; applications can now be received after 2008, but the education component and the experience component will be evaluated for compliance based upon when each component was completed.

Upon motion by Ms. Birch, with second by Ms. Dailey, the Board voted unanimously to promulgate Rule 61J1-3.004, with subsections amendments as discussed.

- Rule 61J1-4.001 – Education Requirements has been adopted and should become effective on February 6, 2007.
- Rule 61J1-3.001 – Application by Individuals was withdrawn on January 27, 2007 due to JAPC comment on Subsection 1 language about application forms.

Kentucky Mutual Recognition Agreement

Ms. McKinney reported that the mutual agreement is almost identical with a clarification of license categories to be defined as only certified residential or certified general appraiser currently licensed in one of the states.

Ms. Wright moved to approve the agreement and with second by Ms. Birch the Board voted to approve the agreement as amended.

Chairman Gregoire thanked Ms. McKinney for her work and said he hopes she will have a long working relationship with the Board.

Response to Appraiser Qualification Board Exposure Draft

Chairman Gregoire reported the AQB has reversed their opinion and will now allow continuing education credit for attending regulatory board meetings, but it will be limited to no more than seven hours of credit per renewal cycle. Florida currently allows five hours of credit for attending the disciplinary portion of the meeting and up to ten hours total within a renewal cycle. Mr. Gregoire has asked the AQB to adopt criteria equal to Florida. He also asked that licensees be granted continuing education credit for participating in the volunteer expert witness program.

The AQB meets in Las Vegas later in February and will meet in St. Petersburg on May 4, 2007.

Course Provider Curriculum for 2008 Criteria Changes

Chairman Gregoire asked the Department if the Bureau of Education and Testing has a course approval process in place for the 2008 criteria changes. Mr. O'Bryant explained that the Department has a plan in place and will be sending a matrix out to the course providers. Education Coordinator Jo Ellen Peacock explained that the providers will be asked to show where their course fits into the criteria form. Mr. O'Bryant reported that the AQB matrix is

complex and is being evaluated for compliance with Governor Crist's Plain Language Initiative.

Mr. Gregoire asked the Department if the existing AQB evaluation form could be used rather than developing a new form and asking the providers to duplicate their work. Mr. O'Bryant said the Department would work toward that goal.

Three Hour Supervisor / Trainee Roles and Responsibilities Course

The Board considered three outlines and public comment for the possible content for the three-hour course. Following a lengthy discussion and public comment, the consensus of the Board was to implement the outline provided by Chairman Gregoire because it specifically addresses Florida Statutes and Administrative Code.

Board suggestions regarding Three-hour Ethics Course

Ms. Peacock addressed the Board regarding the three-hour ethics course identified Policy Manager, Denise Graves of the Appraisal Subcommittee as outside the guidelines for appraisal course material. Discussion of the course content identified the lack of material devoted to appraising versus the material devoted to the practice of real estate.

Ms. McKinney advised that the Board does not have authority to rescind a course that has been approved for a term of two years.

Ms. Peacock asked about business courses not being permitted to qualify for continuing education under the new AQB guidelines. She asked should be done about the business courses that have already been approved. Ms. Wright asked Ms. Peacock to identify the existing courses and the expiration dates for each.

Report on Fannie Mae Complaints

Fred Clanton reported on the research into the Fannie Mae related complaints. The report was developed in response to Chairman Gregoire's request to respond to allegations made by Mark Simpson of Fannie Mae. Mr. Simpson identified Florida specifically as being non-responsive to the complaints referred by Fannie Mae.

The outcome of the research indicated the following outcome for the 73 records identified as Fannie Mae complaints:

- 1 Case pending in Department of Administrative Hearings
- 2 Cases pending Probable Cause Panel
- 3 Cases have Administrative Complaints filed
- 19 Cases have Final Orders issued
- 7 Cases were Nolle Pross.
- 15 Cases had warning letters issued
- 20 Cases were dismissed for various reasons

3 Cases with no action taken due to:

- a. 1 Case - the license was revoked prior to receipt of complaint
- b. 2 Cases – the names of the subjects were not found as licensees in Florida

Chairman Gregoire asked the Department to issue a press release concerning the efforts of the Division of Real Estate and the Florida Real Estate Appraisal Board to prosecute appraisers referred to it by Fannie Mae. Ms. Dailey asked if the Board should write a letter of rebuttal to Fannie Mae. Mr. Gregoire suggested Fannie Mae would bury it and the public should be made aware. The Board thanked Mr. Clanton for his report.

Ms. Herndon asked if the Department could track the origin of incoming complaints from this point forward as a basis of reference for Board members. Mr. Gregoire suggested this type of information would be beneficial to developing courses to target areas that

Status of Request to Meeting with Dept. of Financial Services

Mr. O'Bryant reported that the Division of Real Estate has made contact with the Department of Financial Services (DFS). Their agency has had a recent meeting and agreed to meet with Real Estate. The meeting will take place with DFS staff, the Department, a Board member and a member of the Florida Real Estate Commission.

Process Used to Determine "Legal Sufficiency" for Complaints Against Appraisers

Investigations Supervisor, Fred Clanton provided an outline of the basic guidelines and requirements the Division uses to determine the "legal sufficiency" of a complaint.

Mr. Gregoire referred to Chapter 455.225 (2), Florida Statutes in regards to the Department's obligation to allocate sufficient and adequately trained staff to determine legal sufficiency. Mr. Clanton explained that the process of reviewing the files has been changed to include his personal review of each appraiser complaint. He then provides guidance to both the analyst and the investigator.

In response to Member Small's question, Mr. Clanton stated approximately 90% of all anonymous complaints are closed. Mr. Small also asked what training materials has been provided to the complaint analysts to ensure they have adequate training to determine legal sufficiency. Mr. Clanton reported that the analyst training is on the job training.

Ms. Herndon asked the Department to maintain and report the quantity of anonymous complaints received and the disposition of those complaints. Ms. Dailey said that many times the lenders do not want their name connected to a complaint, so the only option is to file it anonymously.

Mr. O'Bryant reported that one of the Division's weakest links is cross training. He reported that the Department has authorized a professional training group to provide a course to ten of the Division's investigators. Mr. Gregoire pointed out that Kentucky conducts appraisal specific training for their investigators. Mr. Small suggested training that uses case law to raise the standard of what is determined to be a legally sufficient complaint thereby reducing

the number of cases being investigated in the field. He then commended the closing of anonymous complaints due to the difficulty in prosecuting such a case.

Out of State Review of Florida Appraisal Reports

Mr. Clanton reported that based upon research conducted by the Legal staff a license is required to complete an appraisal of property that is located in Florida; there is no distinction as to whether or not that is a review appraisal or a regular appraisal report. In addition, USPAP requires competency in conducting an appraisal report. The Division can and does open unlicensed activity cases on individuals that are conducting review appraisals and are not appropriately licensed in Florida. Completing a technical review of an appraisal report does not require a license.

License Reinstatement Ratification

With a motion by Member Birch, followed by a second from Member Small, the Board voted unanimously to ratify the re-instatement of Wade H. Singletary, III's Certified Residential license.

Ratification of Course Approvals

With a motion by Member Birch, followed by second from Member Small, the Board voted unanimously to ratify the course approvals, dated January 4, January 12, and January 19, 2007.

Mr. Gregoire asked about the one provider on the list that has a National USPAP Update and a National USPAP post-licensing course, but the provider is not an AQB certified instructor. JoEllen addressed the Board's inquiry.

Null & Void Reinstatement Form

Acting Director O'Bryant asked the Board to review and approve the Department's Form PRO 4951 – Application to Reinstate Null and Void License, PRO 4952 – Explanation of Hardship form, and Form PRO 4953 – Attest Statement. He explained that this set of forms will be used to help the licensees affected by the 2006 renewal.

Mr. O'Bryant stated the Board did not need vote on the form, as it is already a Department form used by other agencies. But, the Department wanted the Board to be aware the Division will be putting this form into place for upcoming events. Currently there is no other form to gather information. Mr. O'Bryant addressed questions from the Board. Board agreed that having the form is a good idea.

In response to Mr. Gregoire's question, Mr. O'Bryant advised that licensees wishing to obtain a refund should call the Customer Contact Center for information, but per statute, they will have to put their request in writing.

Correspondence

- Texas Appraiser Board Survey – Conclusions of survey
- Michael J. Tipton – Chairman Gregoire explained Mr. Tipton's letter includes comments that were addressed to Governor Crist's Transition Team.
- Deanna Mulaly – Mr. Gregoire deferred Ms. Mulaly's request for information about working for more than one supervising appraiser to DRE Legal Section

Chairman's Remarks

Chairman Gregoire thanked the Board and the Division of Real Estate. He stated he appreciates the way Mr. O'Bryant has jumped right in. He appreciates the work done by JoEllen Peacock and Beverly Ridenauer. He also thanked the Board for their confidence in him by electing him as Chair for 2007.

Acting Director's Comments

Mr. O'Bryant advised the Board of the following:

- The Division has filled 5 positions
- Is asking for 8 more positions to include three investigators and five support staff.
- Changes to Division to clarifying responsibilities of staff to clear out backlogs
- One area we remain to have backlog which we are working on.
- Has instituted a management team which meets weekly for about 2 to 3 hours.
- FREAB Newsletter is almost ready to send to Communications for final review and will be soon going to the printer.
- Board will have a financial report every meeting.
- Wants Board to have idea of what legislative requests Department is making.
- June meeting will be in Tallahassee.

Member Herndon said she is thankful for Governor Crist's plain language because she has been inundated with abbreviations that she does not understand and asked for a cheat sheet of acronyms to help her understand them.

Ms. Birch thanked Mr. O'Bryant and Staff who have been involved in resolving the problems of the licensees.

Public Comments

- Joel Greenberg asked why the state of residency isn't notified when Out-of-state appraisers complete reviews on reports completed for property located in Florida.
- It is his understanding that investigators get credit for the number of cases completed and appraisal cases are overlooked.

- Pamela Crowley asked if well documented anonymous complaints opened and investigated. Senior Attorney Racquel White responded that she has prosecuted at least one case recently.
- She doesn't appreciate being interrogated by an investigator and thinks those who investigate appraisal cases should be trained in reading and understanding appraisal reports so they can determine legal sufficiency.
- The newsletter is a wonderful thing and is something that every appraiser reads. A newsletter article about predetermined value

- Andre Hines asked if attending meetings could be incorporated into training
- Will the results of discussions regarding mortgage brokers be made public? Mr. Gregoire stated the results of those meeting will have wide distribution.

- Doreen Campbell suggested that the Board be able to meet once a month to facilitate more appraisers having access to the Board meetings.
- Suggested if the appraisal renewal was split into two segments so that half of the licensees renewed each year, then more appraisal education courses would be available to those who need to take them.

- The Board adjourned at approximately 5:15 p.m.; reconvening at 8:30 a.m. on Tuesday, February 6, 2007. Member Herndon provided the invocation and Member Rosner led the Pledge of Allegiance.

Ms. White presented the Legal Agenda, consisting of 36 cases. The Board heard 34 cases withdrew 1 and continued 1. The Board's decisions on these matters are attached to the official minutes.

Ben Faulk Petition

Attorneys J. Lane Smith and Anthony Cammarata of Tallahassee appeared on behalf of Mr. Faulk.

Board Counsel June C. McKinney explained that although Mr. Faulk's case was heard at the October 2006 meeting, the Board did not take a vote on the Disputed Issues of Material Fact and to forward the petition to the Department of Administrative Hearings (DOAH). Counsel McKinney recommended the petition be sent to DOAH because there are disputed issues of material fact.

Upon motion by Member Small, with second by Member Wright the Board voted unanimously to submit the petition to DOAH.

An Informal Hearing was held to discuss the Petition for Variance or Waiver on behalf of Mr. Faulk. Mr. Cammarata responded to the Board's order of Intent to Deny. He submitted into record a copy of their Motion to Amend Order to address the issues of disputed fact. The document was apparently sent to the wrong address and the Department did not receive the petition.

Mr. Smith stated the standard is substantial legal hardship and this is a hardship to Mr. Faulk. Mr. Smith detailed the experience and education accomplished by Mr. Faulk, although he is not employed by that agency at this time. He asked the Board to consider what he has told the Board what is in the record and asked the Board to grant a variance or waiver. Member Small cited the language in Chapter 61J1-6.001(5), F.A.C. which requires an experience log to be submitted. There is nothing in the rule to permit the Board to accept any other documentation for experience. The second rule is Chapter 61J1-6.001(5)(b)(5), which states the applicant must be a current employee of the county property appraiser. Based upon the foregoing, Mr. Small made a motion to uphold the previous denial, with second by Member Herndon, the motion carried.

Chairman's Comments

Mr. O'Bryant asked the Board to change the location of the June meeting from Tallahassee to Pensacola Beach. The Board had no objections.

Public Comments

None

The next general meeting of the Florida Real Estate Appraisal Board is scheduled for April 2 & 3, 2007, in Orlando, Florida.

There being no other business, the meeting adjourned at 6:20 p.m.

ATTEST:

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

Frank Gregoire, Chairman
Florida Real Estate Appraisal Board

Prepared by: _____
Beverly Ridenauer
Government Analyst II