

## FLORIDA REAL ESTATE APPRAISAL BOARD MINUTES

Orlando, Florida  
June 4 & 5, 2007

Chair Frank Gregoire called the meeting of the Florida Real Estate Appraisal Board to order at 9:00 a.m., Monday, June 4, 2007.

Member Cynthia Wright offered the Invocation and Member Jay Small led the Pledge of Allegiance. The Chair introduced the Members present: Vice-Chair Joni Herndon; Cynthia Wright and Jay Small. Susan Daily was excused. Member Birch was delayed by travel. Mary Ellen Clark, 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; James Harwood, Chief Attorney; Racquel White, Senior Attorney; Fred Clanton, Investigations Supervisor; JoEllen Peacock, Education Coordinator; 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.

### **Approval of Minutes**

Upon motion by Member Small seconded by Member Wright, the Board approved the minutes of the April 2 & 3, 2007 meeting as amended.

### **Summary of Applicants**

#### **Informal Hearings**

Ms. Clark presented the Summary of Applicant informal hearings and the Board decisions are as follows:

01-06-07 Hector Ricardo Medina – Registered Trainee – Sent to Department of Administrative Hearings (DOAH)

#### **New Applicants**

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

02-06-07 John Gus Paulin – Certified Residential – Approved  
03-06-07 Alexis David Acuna – Registered Trainee – Approved  
04-06-07 Jennifer P. Anthony-Mims – Registered Trainee – Approved

05-06-07	Fidel Ernesto Araica – Registered Trainee – Approved
06-06-07	Alain J.L. Bedard – Registered Trainee – Denied
07-06-07	Terrance Lamont Boatman – Registered Trainee – Denied
08-06-07	P.L. CherRenfro – Registered Trainee – Approved
09-06-07	Joel Christopher Cooper – Registered Trainee – Denied
10-06-07	Mario Del Moral, Jr. – Registered Trainee – Denied
11-06-07	Kevin Clayton Drummond – Registered Trainee – Approved
12-06-07	Robbin Dennis Erickson – Certified Residential – Approved
13-06-07	Pablo Falcon – Registered Trainee – Approved
14-06-07	Jose Lenin Frixione – Registered Trainee – Denied
15-06-07	Alfredo Hernandez – Registered Trainee – Approved
16-06-07	Angela Karen Kildare – Registered Trainee – Approved
17-06-07	Karen J. Koontz – Registered Trainee – Denied
18-06-07	Brian Patrick Kuypers – Registered Trainee – Denied
19-06-07	William David Lynn – Registered Trainee – Denied
20-06-07	Christopher James McClemens – Registered Trainee – Approved
21-06-07	Carl George Webb, Jr. – Registered Trainee – Approved
22-06-07	Robert Steven Westmoreland – Registered Trainee – Approved
23-06-07	Karen Lynn White – Registered Trainee – Approved
24-06-07	Nicole Rhea York – Registered Trainee – Approved
25-06-07	Kevin Patrick Pearce – Registered Trainee – Approved
26-06-07	Harold Eugene Mulholland – Registered Trainee – Denied
27-06-07	Michael D. Bailey – Certified Residential – Denied

### **Board Business:**

#### **Board Counsel Matters - Rules Report**

FREAB Counsel Clark addressed the Rules Report and reported the following rules were voted upon by the Board on April 2, 2007 and the notice for them was published on June 1, 2007.

- 61J1-4.010 – Supervision of Registered Trainees: The revision removed the language requiring the Client Name and Address from the work experience log form.
- 61J1-3.001 – Application by Individuals: Proposed language to amend the rule was separated out into Proposed Rule 61J1-3.0012.
- 61J1-3.0012 – Endorsement of Certified Residential or General Appraisal Licensure: The rough draft of the proposed rule was discussed. 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, which is about AQB compliance.

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 August 2007 meeting.

- 61J1-4.001 – Education Requirements: The proposed language incorporated the outline of the required material for the Roles and Rules of Supervisory Appraisers course. 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.

- 61J1-4.003 – Continuing Education: Member Wright made a motion to notice the rule for Rule Development with proposed language. Upon second by Vice Chair Herndon, the motion carried.

The Board and Department both asked Counsel to leave all rules that have been changed on the Rules Report as a reference until the January 1, 2008 criteria changes have been completed.

#### Petition for Variance or Waiver of Marvin Powers

Member Birch made a motion to grant a request by Mr. Powers to continue his petition to the August 2007 meeting subject to Mr. Powers' agreeing to waive the rule that requires the Department to act upon his petition within ninety days. Vice Chair Herndon seconded the motion, which carried. If Mr. Powers should fail to agree to the waiver of time, the Board may deny the application.

#### Motion for Reinstatement of Revoked License for Sergio Becerra

FREAB Counsel Clark advised the members that they have no jurisdiction to act on this request. The Board directed the Division to write to Mr. Becerra thanking him for his correspondence.

#### AQB Exam Equivalency Approval Process vs. National Exam

Mr. Gus Ashoo, Chief, Bureau of Education and Testing (BET) introduced members of his staff, Alex Bosque, Exam Development Unit Supervisor; Dr. Dan Combs, Exam Development Specialist; and Joseph Dean, Government Analyst over appraiser continuing education.

Mr. Ashoo presented the Board with information recently made available about the stringent process the Appraiser Qualifications Board (AQB) has developed for exam equivalency approval. He expressed his concerns about steps necessary to meet the level of complexity that must be met to achieve approval for Florida's exam within the short time available.

He reported Dr. Combs has begun the update process on the exam and has a projected completion date of November 2007. The first step in the task is to ensure there are enough consultants and subject matter experts to help with the exam development. Mr. Ashoo asked the Board to participate in the project so it could be completed within the short time remaining.

The Department has committed to 100% support in resources available to ensure the exam is updated and submitted to the AQB for their final certification in time to meet the 2008 requirements. Mr. Ashoo asked for the Board's approval to follow this course before committing the required resources to this project.

Mr. Ashoo explained the alternative to obtaining equivalency for Florida's exam is to use the National Exam as developed and approved by the AQB. He reported John Brennan, Director of Research and Technical Issues of the Appraisal Foundation recently confirmed that the certification to administer the National Exam is free at this time. Mr. Ashoo said he did not

receive any indication of how long the certification would be free. Additional concerns about use of the National Exam are:

- The AQB will not permit a preview of the exam items by the Department.
- The AQB will give a strengths and weakness report, but will not permit a review and challenge. Florida's Statutes provide an applicant the right to review and challenge an exam.
- There may be a large time delay between the date the Florida exam is submitted for approval and the actual date of approval by the AQB when the exam can be administered.
- Florida will lose control over its exam once it is submitted to the AQB for evaluation and approval, with no way to expedite the process.
- Some provision needs to be made for those applicants who will be ready to take the exam prior to the approval of Florida's exam.
- There will be an increase of time allotted to take exam from 3 hours for Florida to at least 8 hours for the National Exam. The current exam provider, Promissor will also seek AQB certification to administer the new exam. If Florida uses the National Exam, Promissor may require a new contract to increase the exam processing fee.
- At this time the AQB has not announced a determination of a passing score for their exam.
- The AQB won't be able to issue scores to exam takers for several weeks because the passing score will be established sometime after Jan 1, 2008.
- The acceptance and use of the newly developed National Exam there will be another set of questions that must be answered and it is important to realize the direction the program will be going with the use of the National Exam.
- As an alternative to the exclusive use of the National Exam, Florida can apply for certification to administer the National Exam until Florida's exam is approved.

Chair Gregoire thanked Mr. Ashoo for his presentation and opened a discussion that covered the following:

- The AQB has not yet established what the passing grade is for the National Exam, but has indicated they will not recognize any state's passing score where it is established by rule or statute.
- Rule 61J1-5.001, FAC - Examination Areas of Competency states Florida's passing grade will be 75 points or higher based upon a 100 point exam.
- The AQB has indicated they will not be able to establish a passing score until early in 2008 but has not disclosed how or when that will occur.
- The AQB will require three forms for each level of Florida's exam.

Member Wright recommended the Department work toward having at least one form of each exam level prepared for submission to the AQB as early as possible, submitting the balance of the exam forms in the same manner as they are completed.

Chair Gregoire stated he is not comfortable abandoning efforts with the Florida examination because it has been demonstrated in the past that anything being done nationally, despite the best efforts of the AQB, ends up being diluted and Florida will have a less effective examination. He would like to see the Department continue to work toward approval of the Florida examination.

Board Counsel Clark referred the Board to F.S. 455.217(1) (d) and 455.217(3), regarding the use of a national exam and exemption from candidate review of a national exam is it is used.

Mr. Ashoo asked the Board for direction regarding the development of a Florida Law exam if the National Exam is used, thereby creating mutual recognition or reciprocity. The Board said they do not want to put more pressure on the Bureau of Education and Testing at this time.

In response to Member Wright's questions, Dr. Combs stated there are 4 or 5 subject matter experts at this time and of those two are not paid. He reported that four or five experts for each exam would be more suitable. Mr. Ashoo explained the process to qualify a subject matter expert is relatively quick if the applicant's license is current an active. The Department will expedite the process in this instance.

Director O'Bryant confirmed with the Chair that the consensus of the Board is for the Bureau of Education and Testing to take the two prong approach for the development of the Florida exam and the apply to the AQB for certification to administer the National Exam so we will be prepared should we need to move forward. Member Birch asked the Department to track the hardship to the Department created by the use of the National Exam as stated in F.S. 455.217(1) (d).

### **Rule Discussion**

#### **61J1-3.004 – Issuance of Certification**

Director O'Bryant asked the Board to clarify the language in Rule 61J1-3.004 as it pertains to completion of the components of the examination process at the request of the Bureau of Education and Testing (BET). The wording in question is the "and" for the completion of the education and experience components prior to submission of the application.

Mr. Joseph Dean, Government Analyst with the BET reported the Staff's understanding of the rule was to permit an applicant to submit their application in segments, such as application and experience or application and education. The language of the rule prevents that application approach.

Following discussion, the Chair stated the language and intent of the rule is exactly what the Board intended due to the restrictions placed upon the application process by the one year expiry date and the Attest Statement language. Chair Gregoire further explained Subsections 2 and 3 of Rule 61J1-3.004 were designed to permit the applicant to use their 2007 compliant education and experience regardless of when the application will be submitted during 2008.

#### **61J1-4.002 - Equivalency Education**

Director O'Bryant asked for direction from the Board on how the Department should evaluate the courses currently being taken for a real estate degree or its equivalent. These courses need to be evaluated for compliance with 2008 Criteria.

Chair Gregoire stated this specific question was posed to the AQB at May 4<sup>th</sup> AARO meeting and it was pointed out that we have individuals who have degrees in real estate and finance, both four year and post graduate degrees, who want to become appraisers. The Board may disagree with asking those individuals to attend a proprietary school's course, but under current interpretation of the criteria that is what is required.

The AQB will be considering making some recommendations on this matter. Chair Gregoire stated he is reluctant to propose a rule or make suggestions on granting a blanket equivalency because the AQB will most likely change that decision. Director O'Bryant thanked the Board for their insight and comments.

#### Response to letter to Appraisal Subcommittee

Director O'Bryant reported the following to the Board:

- We've done a tremendous amount to be sure we've answered the ASC's questions appropriately, accurately, and generally in responding to the three issues named in their Field Review Report.
- Issuing tax assessors credentials without documentation that the experience conformed to the AQB criteria:
  - We've written to all county property appraisers and have received responses from the majority of them; four large counties have yet to respond. At this time there are approximately seventy individual licensees on the list and we will audit each license. Director O'Bryant feels the Division has used due diligence in the effort to locate these individuals. Specific dates for the project were given to the ASC and we are following the schedule.
- The Complaint Resolution Process:
  - This process has been discussed at length with Chief Attorney, James Harwood. In an effort to resolve the matter, two new attorneys have been hired and all the attorneys in the Legal Section are being cross-trained to ensure the attorneys can work on both real estate and appraisal cases. The Legal Docket of cases before the Board has increased as well.
  - Has implemented a different management report which shows how long complaints take to move through the complaint, investigative and legal prosecution processes. We will continue to provide quarterly reports to the ASC as required.
- Two continuing education courses did not conform to AQB criteria: The Bureau of Education and Testing has contacted the provider who has agreed to cease offering them as appraiser education.
- We have not received a response from the ASC to date.
- The Chair thanked Director O'Bryant for his report.

#### **Chairman' Comments:**

##### Proposed Amendments to ASC Policy Statement 10

Chair Gregoire stated he has not written a response letter, but plans to do so. He said he will make comment that the use of demonstration reports to verify experience for each applicant is not reasonable, but the rest of the proposed changes are very reasonable.

Discussion of Policy Statement 10 addressed the following:

- Title XI requires a 100% audit of applicants for compliance with AQB experience criteria.
- Currently, the Department is completing only a 10% audit for experience compliance, which is not in compliance with Title XI.

- Director O'Bryant reported until such time as the Legislature provides the funds for more staff positions, a 100% audit will not be done.
- Chair Gregoire said he disagrees with the use of mass appraisal experience to demonstrate compliance with AQB experience criteria for certified general fee appraiser credentials. He will recommend in the future that the Board disallow any mass appraisal experience for such certification.
- Member Wright suggested a separate license category for mass appraisers. Chair Gregoire stated that it is up to the mass appraisal industry to petition the Legislature because they are not regulated by this Board.
- Director O'Bryant said he will put a request for additional staff into the budget request for next year and will attempt to obtain emergency funding for those positions now.

### Discussion of Federal Oversight and Private Board

Chair Gregoire addressed his displeasure about the way the Appraisal Subcommittee (ASC) provides oversight over two private boards, the Appraisal Standards Board (ASB) and the Appraiser Qualifications Board (AQB). His concern is that the AQB can meet in secret, without notice, without opportunity for public comment, and make decisions that require this Board to provide immediate response, require the Legislature to adopt laws and require the Board to operate contrary to existing Florida Statutes.

He will address part of his concerns with the members of the ASC because they do have an opportunity to provide oversight. He also believes no one has ever talked to the actual members of the ASC about the effect of decisions made by those boards, especially the AQB.

### Administrative Matters:

#### License Reinstatement Ratification

With a motion by Member Small, followed by a second from Member Birch, the Board voted unanimously to ratify the re-instatement of Robert Austin'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 for the dates of April 17, April 26, and May 11, 2007.

### Director's Comments

Director O'Bryant provided a brief update on the following topics:

- Rules Discussion - Rules discussion for August meeting to ensure the rules are in place for the 2008 criteria changes and to be sure the rules support the statutes.
- Financial Disclosure – The Board Member financial forms are due.
- Instructor's Seminars – the first was held on May 25<sup>th</sup> and went very well. Director O'Bryant thanked Board Member Birch and Member Dailey for participating and making it such a success. Two additional dates have been added.
- Sound System - Final approval for a new sound system has been given.
- Special Renewal – The Legislature amended the language of the hardship statute by removing the word "physical" so it now reads "hardship" only. It gives the Department the

authority to grant a six month extension to those registered trainees who were set to Null and Void during the 2006 renewal due to deficient post licensing education. Director O'Bryant sent a letter to approximately 4,000 licenses granting the extension and giving specific directions on how the process will work. This process will allow the Department to make their license whole again.

- Board Member Picture – The State does not permit the purchase of picture frames with State funds.
- Chair's Comments

Chair Gregoire commented on the following topics:

- Meeting with the Department of Financial Services - Member Herndon was asked to conduct inquiries about a meeting date with Mr. John Harper, Director of the Office of Financial Regulation because that agency has not yet responded to Director O'Bryant's requests.
- Meeting with ASC – Is confirmed for July 12, 2007. Director O'Bryant confirmed it is on his calendar. Chair Gregoire will confirm attendance of all members.
- Legal Docket Changes – The Chair asked Member Small to present his outline of how to process the growing quantity of prosecution cases. Member Small suggested all stipulated cases as a consent agenda for approval with no discussion for voluntary surrenders and stipulations; any case where there are questions would be pulled. He would like to see this begin with the June 7<sup>th</sup> Legal agenda.

Board Counsel Clark advised if someone voluntarily surrenders their license for any reason other than a disciplinary action, that situation should be verified and supported by documentation to the Board for review.

### **Public Comments**

Howard Clark – Suggested the advertising rule needs to be reviewed because registered trainee appraisers are creating websites and advertisements which lead a potential client to believe that person is a certified appraiser. He further suggested use of license number in ad to clarify who has placed the ad and their appropriate designation.

Doreen Campbell – Asked the Board to consider restricting the telephone numbers used in advertising to the supervisor's phone number, rather than permitting the use of the trainee's telephone number, especially on business cards.

The Chair adjourned the meeting at approximately 6:00 p.m.

### **June 5, 2007**

Chair Frank Gregoire reconvened the meeting of the Florida Real Estate Appraisal Board at approximately 8:45 a.m. on Tuesday, June 5, 2007. Chair Gregoire offered the Invocation and Member Patricia Birch led the Pledge of Allegiance.

The Chair introduced the Members present: Vice-Chair Joni Herndon; Cynthia Wright, Patricia Birch, Susan Dailey, and Jay Small. Mary Ellen Clark 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; James Harwood, Chief Attorney; Racquel White, Chris Lindamood, Senior Attorneys; Fred Clanton, Investigation Supervisor; JoEllen Peacock, Education Coordinator; Beverly Ridenauer, Government Analyst II; and Lori Crawford, Deputy Clerk - Regulatory Supervisor/Consultant;. American Court Reporting, 407-896-1813, provided court-reporting services.

Mr. Harwood presented the Legal Agenda, consisting of 54 cases. The Board approved eight cases on the Consent Agenda, heard thirty-three cases, withdrew nine cases, and three were continued. The Board's decisions on these matters are attached to the official minutes as maintained at its headquarters in Orlando, Florida.

The next general meeting of the Florida Real Estate Appraisal Board is scheduled for August 6 & 7, 2007, in Orlando, Florida.

ATTEST:

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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 \_\_\_\_\_