BEFORE THE IOWA FINANCE AUTHORITY, TITLE GUARANTY BOARD

DAVIS COUNTY ABSTRACT & TITLE, L.L.C. APPLICATION FOR EXTENSION OF TRACT INDEX WAIVER	))))))	RULING GRANTING APPLICATION FOR EXTENSION OF TRACT INDEX WAIVER

INTRODUCTION

Davis County Abstract & Title, L.L.C. (hereinafter DCAT), an abstractor in Davis County has applied for an extension of its provisional waiver of the 40-year title plant and tract index (hereinafter title plant) requirement. The Title Guaranty Board (hereinafter Board) granted DCAT the provisional title plant waiver at its December 13, 2011, Board meeting and approved the written ruling at its March 6, 2012 meeting. That provisional title plant waiver was granted by the Board subject to a requirement that the title plant be in compliance with Iowa Code §16.91(5)a(2) by December 13, 2012. Mr. Truitt informed Title Guaranty that DCAT would not be able to comply with this requirement in early September 2012, because their title plant is not yet complete. He submitted to Title Guaranty a ledger of "Data Entry Records" showing the years of recordings that had been indexed. DCAT also described the process and difficulty in attempting to update the title plant. An Extension Application was provided to DCAT on October 12, 2012. An extension of provisional waiver request is described in 265 IAC 9.7(8)"a".

For the reasons explained below, the Board grants DCAT's request for an extension of its December 13, 2011 provisional waiver.

RECORD

The record before the Board includes the following:

- Davis County Abstract & Title, L.L.C.'s Application for Waiver.
- Eleven letters in support of the Application for Waiver.
- Recommendation from Title Guaranty Director granting the one year waiver.
- Davis County Abstract & Title, L.L.C.'s Application for Extension of Waiver.
- Three Letters of support for the Extension.
- Recommendation from Title Guaranty Director granting the extension of the waiver.

On December 4, 2012, the Board held a hearing on DCAT's Application for Extension of

Provisional Waiver (Extension Application). David Truitt, as manager of DCAT appeared before the Board. The Board has taken into consideration the information contained in the Extension Application as well as the testimony provided at the Board meeting.

APPLICABLE LAW, ANALYSIS AND RULING

DCAT has the right to apply for a title plant extension, and the Board may, at its discretion, extend the waiver for up to one additional year pursuant to 265 IAC 9.7(8)a (emphasis added).

The process for extension of a waiver is similar to the original application for provisional waiver, without the necessity of confirming the continued public purpose and hardship requirement. Because the Board is allowed to rely upon the hardship and public purpose criteria and findings under which the original ruling was approved, it is unnecessary to reestablish these criteria in an Extension Application or this written ruling.

ANALYSIS

Has DCAT satisfied 265 IAC 9.7(8)a?

After considering the record, the Board in its discretion finds that 265 IAC 9.7(8)a has been satisfied. DCAT submitted a completed title plant extension application to Title Guaranty on or about October 26, 2012. The application identified the company requesting the extension, described the business generally, identified the county, expressed a statement of intent to develop and complete the 40-year tract index, described the circumstances of why the initial waiver period was not sufficient to complete the title plant, and included a signed statement attesting to the accuracy of the facts contained in the Application. The application included two new letters in support of DCAT.

The Board finds several factors contributing to the title plant not being completed by December 13, 2012, and believes this is sufficient evidence to allow for an extension. The Extension Application stated that the plant was not completed because the original estimate of the time to build the plant was based on a Recorder estimate of approximately 1,000 recordings per year; in reality, that estimate was only half of the actual amount of recordings. Further, in the Extension Application and through testimony at the Board meeting DCAT stated that it was not originally known that many Davis County legal descriptions were largely "made up" and

difficult to follow as well as index. The Extension Application and testimony reflected that it was previously unknown to DCAT that Davis County contains recorded documents that require between 20-182 entries into the title plant. In addition, DCAT stated that steps are being taken to cross-reference entries for documents containing legal description errors and indexing documents several ways to be sure they can find everything in the title plant. The Board finds that all of these factors contributed to the plant not being complete in one year as originally intended.

The Board has taken into consideration the DCAT statement that as of October, the index consists of approximately 22,600 documents spanning thirteen years. Based on actual instrument recording numbers, DCAT stated that there are 30,000 documents remaining to be indexed. Further, DCAT testified at the hearing that documents recorded from 1972 to July, 1980 and 2001-2012 had been indexed making the plant 35-40% complete. The Board finds that the progress made by DCAT shows an intent to complete the title plant during the extension period.

The Board finds that the Extension Application as well as DCAT's testimony reflects that DCAT has implemented several steps that will accelerate the completion of the title plant. DCAT testified that as of November 1, 2012, an additional staff member was hired to assist in the process. The Extension Application also stated that DCAT has rented additional space in which to operate more efficiently. After considering the Extension Application as well as DCAT's testimony the Board finds that DCAT has the intent and the ability to complete the title plant.

The Board has also taken into consideration the letters of recommendation from two attorneys who do business in Davis County attesting to the quality and timeliness of DCAT's work, as well as expressing a desire to continue to work with DCAT. Further, one letter points out that they believe that an extension of the provisional waiver is in the best interest of the public and those professionals who need abstracting services in Davis County. This Board has also taken into consideration the letter in support of the extension from the Iowa Land Title Association.

RULING

DCAT asks the Board for an extension of the provisional waiver granted December 13, 2011, to allow it to continue to participate in the Title Guaranty program as an abstractor while

completing their title plant. The Board notes that granting an extension of provisional waiver of the title plant requirement has a long-standing precedent in prior Board actions. Historically, when this Board has granted an extension of a provisional waiver it places requirements on the abstractor to have the plant built in a certain time period. Iowa Administrative Code 265 IAC 9.7(8)a gives the Title Guaranty Board the authority, at its discretion, to grant an Applicant an extension of up to one additional year.

The Board finds the following:

- Since the grant of the provisional waiver DCAT has made progress towards completion of their title plant.
- The original goals for a waiver continue and allow DCAT to provide abstracting in Davis County while completing the title plant, the use of which furthers the public purpose of Title Guaranty.
- The resulting title plant will benefit buyers and lenders in Davis County through added availability of Title Guaranty, along with additional competition leading to good service, competitive pricing, and the increased use of Title Guaranty.
- When the plant is complete, it will be the only complete title plant in Davis County.

For the reasons set forth above, the Board grants DCAT's Application for Extension of Provisional Waiver of their Title Plant Waiver to December 3, 2013, with the following conditions. Upon completion of the title plant, DCAT will need to be certified as up-to-date pursuant to Title Guaranty requirements and 265 IAC 9.7(10). Further, certification of the title plant must occur prior to the December 3, 2013, Board meeting before the Board may grant up-to-date title plant status to the DCAT. Additionally, DCAT must provide Title Guaranty monthly status reports on their progress towards completion of the title plant.

SO RULED this 5th Day of March, 2013.

Deb Petersen, Board Chair

Geri Huser, Secretary