

**REAL PROPERTY APPRAISER BOARD  
LOWER LEVEL B CONFERENCE ROOM  
NEBRASKA STATE OFFICE BUILDING  
301 CENTENNIAL MALL SOUTH, LINCOLN, NE  
November 15, 2007**

**OPENING**

Chair Sheila Newell called to order the November 15, 2007, meeting of the Nebraska Real Property Appraiser Board at 10:03 a.m., in the Lower Level B Conference Room of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

**NOTICE OF MEETING**

Chair Newell announced notice of the meeting was duly given, posted, published and tendered in compliance with the Open Meetings Act, and all Board members received notice simultaneously by e-mail. The agenda was kept current in the Nebraska Real Property Appraiser Board Office and on the Board's website. Materials generally used by the Board for this meeting were available in the public folder for inspection by the public and in accordance with the Open Meetings Act. A copy of the Open Meetings Act was available for the duration of the meeting. For the record, Board Members Sheila Newell, Mathew 'Joe' Wilson, Timothy Kalkowski, James Bain, and R. Gregg Mitchell were present. Director Kitty Policky was also present.

**ADOPTION OF THE AGENDA**

Chairman Newell reminded those present at the meeting that the Agenda cannot be altered 24 hours prior to the meeting except for emergency items according to the Open Meetings Act. Board Member Mitchell moved to adopt the Agenda as printed. Board Member Bain seconded. The motion carried with Bain, Wilson, Kalkowski, Mitchell and Newell voting aye. Motion carried.

**APPROVAL OF THE MINUTES FROM OCTOBER 18, 2007**

Chair Newell asked for any additions or corrections to the October 18, 2007 minutes. Board Member Bain moved to approve the minutes as presented and Mitchell seconded the motion. The motion carried with Wilson, Kalkowski, Mitchell, Bain, and Newell voting aye.

**CHAIR REPORT**

Chair Newell informed members that at the last Board of Trustees meeting in Washington, DC, John Bredemeyer will be Vice Chair for 2008 and Lynne Heiden and Kirk Manker were appointed as members. Since there are only 27 positions available on the Board of Trustees, recognition should be given to the Nebraska appraisers who are appointed to serve their profession.

**WELCOME GUESTS**

Chair Newell welcomed the guests to the meeting and asked them to please sign the guest log.

**DIRECTOR'S REPORT**

Director Policky introduced Gary Bush, the budget representative from DAS assisting the Real Property Appraiser Board and informed members that Mr. Bush had a commitment at 11:00 a.m. and would like to take the opportunity to address the Board. Director Policky

presented to the Board a copy of the request submitted to the budget office to increase the authority to send an additional \$51,500 in funds to assist with the overwhelming number of applicants trying to enter or upgrade under the current criteria. The fund allocation for demonstration report reviews has been depleted as well as every dollar that is not necessary to maintain the responsibilities of this office to the service of the profession and the obligations to the public. Director Policky stated that the remaining funds under the dedicated object code could not be spent for reviews but must be made available for the investigative process. The public must not question the trust of this office to meet its obligation to maintain and uphold the obligations of appraisers to produce USPAP compliant reports by a qualified and credentialed appraiser meeting the obligations of the prescribed scope of practice.

Board Member Kalkowski addressed the application process by asking Director Policky for a breakdown of the fees. Fees are a guideline of Title 298, Nebraska Rules and Regulations, Chapter 6. Applicants remit a non-fundable application fee of \$150.00 each. Each credential requires three demonstration reports of varying requirements. Resubmission fees for a license credential can be no more than \$200; resubmission fees for a residential certification can be no more than \$250.00 and the resubmission fee for a general certification can be no more than \$300.00. It costs this office \$150 to have a single-family residential appraisal report reviewed; \$250 to have a 2-4 family appraisal report and \$300 to review a report for the certified general credential. On average, an applicant for certified general is costing approximately \$1,500; an applicant for certified residential is costing \$950 and an applicant for license is costing approximately \$900. The costs for report review for each credential has historically been offset by two factors – twenty applications versus 120 applications and more applicants for the registered credential. As Director Policky explained to Mr. Bush, the overwhelming response by appraisers to upgrade and apply was simply unexpected. The response by applicants to upgrade simply could not have been anticipated to this degree.

Mr. Bush took the opportunity to brief the Board on the procedures in place to meet a request by an agency for additional authority for spending explaining that the definition of a “deficit request” is the procedures for requesting additional authority for spending. The procedure simply constitutes an increase in the spending authority and not an increase in funding as referenced. Mr. Bush explained the process the request will go through the Governor and Legislative procedures and stressed the Governor’s desires to keep funding under control. Mr. Bush stressed the obligation of the Board to manage resources and implement management decisions to face the reality that perhaps there would be no additional appropriation and to manage what is available.

Board member Kalkowski explained to Mr. Bush the situation was not simply the original applicants but the number of times the reports are failing and being resubmitted for review. The policy of the Board has been to let a candidate resubmit reports for application. That is not to say all three reports fail, but simply one may fail. After two attempts, the candidate has been obligated to complete additional education before submitting reports for a third time.

Director Policky explained the Board would participate and practice efficient management by reviewing the single family reports and reviewing the qualities of other reports to be sent out for review. The Board is also sponsoring a review session for appraisers who review reports to give assistance and training in the USPAP definitions for compliance. Perhaps education and expectations for applicants can better determine the quality of reports.

Mr. Bush continued to explain that the federal government was often the cause of added expense to an agency and that the requirements being imposed should be viewed with caution and that perhaps better planning should have been implemented for the new criteria. Perhaps changes can be made to the process to conserve the amount of spending. Chairman Newell assured Mr. Bush that our procedures must be consistent and must be viewed as such by the federal subcommittee and that the overwhelming number of applicants has simply been as a result of the implementation of the 2008 criteria but no matter the cause, the procedures for reviewing reports must assuredly be consistent.

Vice Chairman Wilson explained our obligation to federal requirements and the importance of staying in compliance with federal guidelines and the consequences of not meeting that obligation. Federal decertification would mean Nebraska could not perform federally-related transactions and the financial environment would be greatly impacted. Addressing the cost of reviews, Mr. Wilson expressed the dedication of individuals to their profession and that the obligation was far greater than the compensation. Offering less money would not be an option to save costs but the Board would perform their duties as fiscally responsible as funds permit by becoming more active in the review process.

With that said, Chairman Newell turned the Board's attention to an item under New Business. Mr. Bob Hallstrom from the Nebraska Banker's Association was present to address the Board in place of Ron Arrigo. Mr. Hallstrom stated that as an observer to the conversation surrounding the financial dilemma, addressing the financial obligation disparity of the applicant and the process or \$150 application fee versus \$900 review fee and suggested that perhaps the industry was not assuming the responsibility for their fair share. As part of good fiscal management, it is imperative to address the obligations of both to be financially responsible to not only the applicants but to the appraisers who are an active part of the profession.

Mr. Bush did suggest to the Board before departing to meet another obligation, that memos and supporting documents can be sent to the Governor concerning the deficit and encouraged individuals to do so by December 1<sup>st</sup>. He assured the Board that he would relate the concerns expressed here today to the Governor at the deficit request meeting.

Mr. Hallstrom turned his concerns to the financial environment and their concerns for the fraud and appraisal manipulation. Although education would be a means of informing the financial community of the current requirements, there was limited opportunity for such a presentation at conferences but he would surely make a point to consider an education offering at an upcoming conference. Mr. Hallstrom commented that Director Policky had sent an electronic copy of the 2008 Scope of Practice to include in print communication and asked what measures the Board could take to assist the financial community with understanding the obligations of the new criteria. Mr. Hallstrom assured Board Member Tim Kalkowski that education would certainly be included.

Board Member Kalkowski went on to present to Mr. Hallstrom a copy of the seminar the Board paid Past Chair Lynne Heiden to present the Mortgage Brokers Association. The seminar was informative and valuable as described by the reviewer comments. Emphasis was placed on qualifications of reviewers in the financial community that had little or no

qualifications to fulfill that role. The environment created by financial institutions requesting and pressuring appraisers to meet values for loans was a dilemma.

Mr. Hallstrom assured the Board that he would take the discussion and opportunities back to the education division to implement whenever possible.

Mr. Kalkowski and the Board thanked Mr. Hallstrom for his time and comments and assuredly any assistance the Board might lend to understanding the role in assuring compliance for appraisers.

Board took a break at 11:10 a.m.

Board meeting reconvened at 11:25 a.m.

Chairman Newell announced at the request of a board member, the meeting would again move to New Business, No. 4 – Re-submission fees and/or processing fees.

Past Board Member and Chairman John Bredemeyer expressed his concern for adequately compensating the reviewers and offered his assistance through whatever means to assure legislative, banking, or budget, the serious nature of compensation to the reviewers. The Board has strained the good will of the profession and must consider adequate compensation a serious budgetary item and has to be maintained. Public trust from both credentialing and enforcement must be maintained. There must be assurance that the review is being done adequately and that the supporting documentation is adequate. Reviewing for both credential and enforcement really takes the best and brightest to do a credible review. Although appraisers do have a responsibility to give back to the profession, Bredemeyer was not sure reviews were the right place to do it. The review process will requires both budget and legislative changes that can't be implemented today but he would be available to testify on behalf of the Board if need be.

Board Member Bain asked Bredemeyer his views on the procedure and asked if the Board should pay for the reviews through the state budgetary process or should the Board request that demonstration reports be sent directly to a board-approved reviewer and the applicant pay the reviewer directly?

Mr. Bredemeyer expressed his concern that third-party disinterested is clouded and that the Board needs to retain the control of the review process. Best thing – is to budget the right amount and in special cases such as this, solutions are difficult to project. The system needs adjustment and the adjustments were not made even during his tenure but offered support to the Board for any assistance for future changes and needs.

The Board thanked Mr. Bredemeyer for his time and comments.

Chairman Newell reviewed the resubmission fees schedule once again and assured that we would be charging the maximum for reviewing resubmissions.

Vice Chairman Wilson asked the Board to consider the topic of resubmission. Could the Board create a system by which an applicant who fails and is required to resubmit chose from a list of Board-approved reviewers and pay the fee directly to the reviewer?

Chairman Newell addressed the question of the manner in which reviews or resubmissions can be handled by referring to the Appraisal Subcommittee Policy Statement 1 – “Some state agencies contract with private entities (i.e., third parties) to assist them in performing appraiser regulatory activities. Such arrangements can assist in managing costs and providing expertise that might not be available internally. At the same time, potentially reduced financial and operational control over a private entity’s activities might pose certain risks. State agencies using private entities need to establish appropriate internal controls, procedures, and safeguards to assure that the entity performs its duties in an effective and consistent manner in compliance with the State’s responsibilities under Title XI. The types of activities covered by this Statement include, but are not limited to: Receiving, reviewing, and/or approving applications for initial certification or licensure; . . . A State agency should exercise due diligence to identify and select a private entity. As part of this process, the State agency should determine its needs and objectives and convey them to prospective private entities. In selecting a private entity, the State agency should perform sufficient analysis to determine that the entity is competent and experienced in providing the activities that the State plans to outsource. This analysis should include an evaluation of an entity’s ability, both operationally and financially, to meet the State agency’s needs. Any contract, agreement, or arrangement between a State agency and such a private entity needs to comply with State procurement requirements and be in writing.

Chairman Newell stressed that although an applicant could submit reports that were approved by a reviewer prior to submission, the Board must still accept or deny the reports. If the Board should disagree with the reviewer, the applicant would have to reapply. Reviewers would submit the reports directly to the Board and not return the reviews to the applicant.

Board Member Mitchell stressed the documentation required and to emphasize that the Board is the final determination and that applicants would not be “shopping” for a reviewer but that the Board would retain the control over who would be performing the reviews. Engagement would be submitted and approved for an agreement with a reviewer. Because of state statute and the budgetary process we are limited in our ability to adapt. Vice Chair’s suggestion for report review may lend some flexibility. Board would select the reviewer and the applicant would pay the reviewer directly. Control would be retained by the Board.

Diane Moore of the Moore Group pointed out that knowledge of the reviewer by the applicant would create problems in that a reviewer would be pressured by an applicant if the reports were not accepted. And how many reviewers would want an applicant to know who was reviewing their reports? The situation may create conflict and limit the number of individuals who are willing to perform demonstration report reviews.

Discussion continued on the determination of what could be charged and how that charge could be collected and paid circumventing the funding process.

Chairman Newell referenced the Real Property Appraiser Act, 76-2241 Fees. “The Board shall charge and collect appropriate fees for its services under the Real Property Appraiser Act as follows: (1) . . .”

The nature of the collection is not the situation as much as the distribution of the collection. Director Policky reminded the Board that once any fee or monies were deposited, they were no longer at the disposal of the Board for distribution.

Board Member Kalkowski stressed that there were really two issues. First issue being the collection and the second is the issue of how do you pay for services. Kalkowski went on to suggest perhaps the reviewers could set up an independent accounting system for allocation of funds. Applicants would submit their review fees and deposit that fee into an independent LLC account to protect the identity of the reviewer.

Director Policy requested the Board meet twice for the months of December and January to assist in the review of reports and to determine which reports qualified to be sent out for review. Although applicants supposedly submit their best work, we’re paying \$250 and \$300 for review of reports missing pages; reports that have not completed forms; the list of negligence has been endless. The Board will make an initial review of the certified general and the 2-4 family before sending out for review. The Board decided that would be a viable means of assisting and would set the date of December 12<sup>th</sup> for the purpose of reviewing reports. The meeting will convene and go directly to closed session. The general public meeting participation would be held December 13<sup>th</sup>. Both meetings will begin at 9:00 a.m.

Board Member Kalkowski request legal counsel opinion as to how to charge for reviews and in what manner can we compensate without distributing through the general fund. Board Member Kalkowski moved to table #4 under New Business until legal counsel arrives. Board Member Mitchell seconded the motion. Motion carried with Tim, Greg, Jim, Joe and Sheila voting aye.

Returning to the Director’s Report, Policy handed to the Board the latest correspondence from Dr. Lawrence Fabrey of Applied Measurement Professionals, Inc. concerning the submission of the examination as well as approval of examination equivalency by AMP to the Appraisal Qualifications Board on November 9, 2007. The correspondence also indicated that each state regulatory agency was expected to submit to the AQB our intent to use AMP’s equivalent examination.

Director Policy asked that a member of the Board respond to Philip Erdman’s request to carry the 180 hours of education required for a certified general qualification for application into 2008 to stand alone. An explanation of the policies adopted by this Board for sequential application does not seem to adequately answer the question of carrying over education. Mr. Erdman was informed that the education could be carried over but it would be required to fulfill the core curriculum and meet the education requirements to qualify for application in 2008. Chairman Newell volunteered to answer any questions Mr. Erdman might have concerning education qualification.

## **RECEIPTS AND EXPENDITURES REPORT – OCTOBER**

The receipts and expenditures for October were reviewed by the Director by line item with Board discussion. The overwhelming number of applicant demonstration reports that were sent for review generated a \$10,300 expense for the month of October. Application fees totaling \$7,850 to include five (5) temporary applications at \$100 each and \$150 each for credential application indicates 52 new applicants were received in October. Director Policky informed the Board that all encumbrances or obligations for the prior year have been liquidated so the funds are as presented. Adjustments have been made to the Budget Status Report to drain every account, except those necessary to meet the obligations of the public in keeping the service of this office open, have been accounted for under the object code for review fees. The only large expense to be removed from the budget at this point will be the distribution of the 2008-09 USPAP books.

Board Member Mitchell questioned the expense for distribution of the 2008-09 USPAP. Director Policky explained that it was an obligation as dictated by the Rules and Regulations, Chapter 2 Section 001 and that the cost would be \$22.00 to mail each book. Mitchell requested that changes be considered to the rules and regulations for requirement of distribution of USPAP since USPAP is available electronically and anyone who cannot access USPAP electronically cannot navigate in the current environment.

Board Member Mitchell moved to accept and file the October 2007 Receipts and Expenditures report for audit. Vice Chair Wilson seconded. The motion carried with Mitchell, Bain, Wilson, Kalkowski, and Newell voting aye.

## **UNFINISHED BUSINESS**

### **1. Review Training Session/North Platte**

Chair Newell reported an update to the Board for the reviewer training session in North Platte with the assistance of Lynne Heiden, a Certified General appraiser and AQB certified USPAP instructor from Kearney on November 14<sup>th</sup> from 1-5 p.m. A room at the Sandhills Convention Center was reserved for the session. Board Member Bain also attended the session in addition to 13 attendees. Chair Newell stressed to the attendees reviewing the report for USPAP compliance and not the applicant. Cay Lacey would assist with the review training on November 16<sup>th</sup> in Lincoln. Many favorable comments had been forwarded concerning the quality of the review session.

Board Member Kalkowski presented a motion to reimburse Chair Newell for review training expenses such as training pamphlets, copies, mileage, lodging and meal expenses.

Vice Chair Wilson seconded the motion. Motion carried with Bain, Wilson, Kalkowski, and Mitchell voting aye. Newell abstained.

Board took a break at 12:40 a.m.

Board meeting reconvened at 1:14 p.m.

## **NEW BUSINESS**

### **1. Rules and Regulations amendments**

Chair Newell stated the Board needs to consider all changes that need to be made to the rules

and regulations as it is almost time to set into motion the procedures for changes and requests for legislation for statute changes.

## **2. Pocket Card ASC Requirement/FRT.**

Director Policky asked the Board if prior to distribution of the renewal pocket cards the process of physically stamping all registered pocket card to indicate – “This credential is not valid for federally related transactions” would assist the financial community in complying with the 2008 Scope of Practice. Board Member Kalkowski asked for a definition of federally related transactions. Chairman Newell read the definition from Title XI Sec. 1121 (4) *Federally related transaction*. The term “federally related transaction” means any real estate-related financial transaction which – (A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and (B) requires the service of an appraiser.”

The intention is not to put a registered appraiser out of business or is the intention meant to be malevolent but simply a solution for abiding by USPAP. Board Member Kalkowski proposed a motion to stamp the registered pocket cards. Board Member Wilson seconded the motion. The motion carried with Wilson, Kalkowski, Mitchell, Bain and Newell voting aye.

## **3. Meeting Board Prior Approval for Reporting of Enforcements.**

Director Policky related to the Board that William Blake, legal counsel for the Nebraska Real Property Appraiser Board has issues with the amount of information being distributed to the public under the “Enforcement” section of the web page. The information is inconsistent and invasive. The reporting of enforcement needs to be more professional and consistent and less controversial manner. The example from Mr. Blake of rewrite meets the criteria of the policy for enforcement reporting that was adopted at the February 21, 2007 meeting. The format adopted requires the case number, name, items of agreement or order and also include any fees paid. The Board granted editing to case reporting consistent with the format adopted by the Board.

## **GENERAL PUBLIC COMMENTS**

There were no public comments.

## **EDUCATION**

Vice Chair Wilson moved to approve the following continuing education seminars and instructors:

Appraisal Institute:

On-Line/ “Eminent Domain and Condemnation” – 7 hours – C0099-I

Instructor: John Underwood

On-Line/ “GIS – The Novice Case Study” – 7 hours – C2772-I

Instructor: Christopher Miner

On-Line / “Resi. Market Analysis and Highest and Best Use” – 14 hrs. – C2773-I

Instructor: Sara Schwarzentraub

IAAO:

“Income Approach to Valuation” – C2776 – 30 hours

Instructor: Application indicates to be determined.

Board Member Bain seconded the motion. The motion carried with Kalkowski, Mitchell, Bain, Wilson, and Newell voting aye.

Vice Chair Wilson moved to deny the following continuing education seminar citing lack of content and not applicable as the reasons for denial.

Bobbitt and Company, Inc.:

“Foreclosures” – 3.5 hours – C2774-I

Instructor: John Wilson

Board Member Bain seconded the motion. The motion carried with Bain, Wilson, Kalkowski and Newell voting aye and Board Member Mitchell voting against the motion.

Vice Chair Wilson moved that the Board go into executive session for the purpose of reviewing applicants for credentialing and enforcement. A closed session is clearly necessary to prevent needless injury to the reputation of the individual or individuals relating to the issues of qualifying applicants or enforcement. The time on the meeting clock was 1:38. Board Member Bain seconded the motion. The motion carried with Wilson, Kalkowski, Mitchell, Bain, and Newell voting aye.

Vice Chair Wilson moved to come out of executive session at 3:03 p.m. Board Member Bain seconded the motion. The motion carried with Kalkowski, Mitchell, Bain, Wilson, and Newell voting aye.

Vice Chair Wilson moved to:

Approve all sequential applicants for credentialing.

Ratify R836, R838, and R839 applicants.

Vice Chair Wilson moved to approve CG557, a reciprocity applicant from Colorado.

Vice Chair Wilson moved to take the following actions for the applicants for the license credential:

L550 – Deny application and request two new reports.

Vice Chair moved to take the following actions for the applicants for the certified residential credential:

CR141 – Deny application and request new application be submitted/expired.

CR170 – Approve application and select verification report.

CR182 – Deny application and request 2-4 family and house > 20 years.

CR194 – Approve application and select verification report.

CR197 – Approve application and select verification report.

Vice Chair moved to take the following action for the applicants for the certified general credential:

CG411 – Approve application and select verification report.

CG424 – Deny application and request one new report.

CG430 – Approve application and select verification report.

CG442 – Deny application and request two new report.

Board Member Bain seconded the motion. Motion carried with Mitchell, Bain, Wilson, Kalkowski, and Newell voting aye.

Vice Chair Wilson moved to take the following enforcement actions:

- 06-22 Hold, Review not received
- 07-02-07-03 Send reminder letter to complete mentoring program.
- 07-04 Consent Agreement to Board approved mentor.
- 07-08 Request true copy of reports and workfiles
- 07-13 Hold, Review not received
- 07-14 Informal conference December 12, 2007
- 07-16 Hold, Review not received
- 07-18 Hold, Review not received
- 07-19 Hold, Review not received
- 07-22 Hold, Review not received
- 07-24 Hold, Review not received
- 07-28 Request true copy of appraisal report and workfile.

Board Member Bain seconded the motion. The motion carried Bain, Wilson, Kalkowski, Mitchell, and Newell voting aye.

The Board took a 10 minute break.

Vice Chair Wilson moved that the Board go into executive session for the purpose of reviewing enforcement. A closed session is clearly necessary to prevent needless injury to the reputation of the individual or individuals relating to the issues of enforcement. The time on the meeting clock was 3:28. Board Member Bain seconded the motion. The motion carried with Wilson, Kalkowski, Mitchell, Bain, and Newell voting aye.

Vice Chair Wilson moved to come out of executive session at 4:05 p.m. Board Member Bain seconded the motion. The motion carried with Kalkowski, Mitchell, Bain, Wilson, and Newell voting aye.

Vice Chair Wilson moved to take the following enforcement action:

- 07-20 Credential returned. Close.

Board Member Bain seconded the motion. The motion carried Bain, Wilson, Kalkowski, Mitchell, and Newell voting aye.

Board Member Bain moved to take the following enforcement action:

- 02-28 Contact Attorney General office for legal counsel.

Board Member Mitchell seconded the motion. The motion carried with Mitchell, Bain, and Newell voting aye. Board Member Kalkowski and Wilson abstained.

Board Member Mitchell moved to take the following enforcement action:

- 07-09 Set for formal hearing and forward to legal counsel William Blake and appointment of hearing officer Samuel Van Pelt to proceed to formal hearing.

Board member Bain seconded the motion. The motion carried with Kalkowski, Mitchell, Bain, and Newell voting aye. Vice Chair Wilson abstained.

Board Member Wilson moved to take the following enforcement action:

07-23 Send out for review.

Board Member Bain seconded the motion. The motion carried with Mitchell, Bain, Wilson, and Kalkowski voting aye. Chairman Newell abstained.

Board Member Wilson moved to take the following enforcement action:

07-29 Request true copy of appraisal report and workfile.

Board Member Kalkowski seconded the motion. The motion carried with Bain, Wilson, Kalkowski, and Newell voting aye. Board Member Mitchell abstained.

There being no further business, Vice Chairman Wilson moved to close the meeting. Motion was seconded by Board Member Bain. Motion carried with Wilson, Kalkowski, Mitchell, Bain, and Newell voting aye.

Next meeting date is scheduled for December 12<sup>th</sup> & 13<sup>th</sup>. December 12<sup>th</sup> is scheduled for the purpose of reviewing demonstration report submissions and December 13<sup>th</sup> is scheduled for the regular meeting of the Board.

The meeting was adjourned at 4:30 p.m.

Respectfully submitted,

Kitty Policky, Director

These minutes were available for public inspection on November 25, 2007, in compliance with Nebraska Statute §84-1413(5).