

**REAL PROPERTY APPRAISER BOARD
LOWER LEVEL, ROOM "A"
NEBRASKA STATE OFFICE BUILDING
301 CENTENNIAL MALL SOUTH, LINCOLN, NE**

June 24, 2009

OPENING

Chairman Gregg Mitchell called to order the June 24, 2009, meeting of the Nebraska Real Property Appraiser Board at 9:02 a.m., in Lower Level, Room "A" of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

NOTICE OF MEETING

Chairman Mitchell announced the 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 R. Gregg Mitchell, Bradford Moore, Mathew 'Joe' Wilson, and James Bain, were present. Board Member David Hartman will be late but will be present. Director Kitty Policky was also present.

ADOPTION OF THE AGENDA

Chairman Mitchell reminded those present for the meeting that the Agenda cannot be altered 24 hours prior to the meeting except for emergency items according to the Open Meetings Act. Vice Chair Moore moved to adopt the Agenda as printed. Board Member Bain seconded the motion. With no further discussion, the motion carried with Moore, Wilson, Bain, and Mitchell voting aye.

WELCOME GUESTS

Chair Mitchell welcomed the guests to the meeting and asked that they please sign the guest log.

APPROVAL OF THE MINUTES FROM MAY 21, 2009

Chair Mitchell asked for any additions or corrections to the May 21, 2009 minutes. With no corrections or additions Board Member Bain moved to adopt the minutes as presented and Vice Chair Moore seconded the motion. With no further discussion the motion carried with Wilson, Bain, Moore and Mitchell voting aye.

REQUEST FOR CHANGE TO ORDER OF AGENDA

Chair Mitchell noted that John Bredemeyer was present and on the Agenda as number one under unfinished business. Mr. Bredemeyer has a time constraint and requested that he appear next on the agenda if it would not be an imposition to the Chair's Report or Director's Report. With no objection, Chair Mitchell asked for a motion to change the order of the agenda. Board Member Wilson moved to change the order of the agenda and permit Mr. Bredemeyer to proceed immediately with his report. Board Member Bain seconded. With no further discussion, the motion carried with Moore, Wilson, Bain, and Mitchell voting aye.

Unfinished Business

1. AMC / John Bredemeyer

John Bredemeyer was selected at a prior meeting to chair a task force to collect data and propose the formulation of regulation concerning the Appraisal Management Company issue. At the June meeting, Mr. Bredemeyer distributed data from states that had formulated regulations to date and the Appraisal Management Company Registration and Regulation Model Act as developed by the Appraisal Institute. The model act from the Appraisal Institute addresses general elements but does not make specific regulations. The packet continued an overview of what has been done to date by states designing legislation and regulation.

Mr. Bredemeyer suggested to the Board that their goal should be to address all the issues and concerns with the sincere hope that the basics can be accomplished. As regulation evolves, of course the legislation will continue to need changes but the goal should be to develop a comprehensive attempt at developing regulatory legislation. To attempt to develop a set of standards to render accountability and transparency is imperative. The attempt to regulate the AMC is not to be punitive but to render accountability and due diligence and accountability for public trust.

Mr. Bredemeyer stated the role of appraisal management system is necessary to the profession but the means by which the system has been implemented takes from the accountability to not only the appraisal profession but the public. There needs to be a clearer understanding of the role and responsibilities of the appraisal management companies.

Chairman Mitchell suggested that the target date to have the proposed regulation draft ready should be the month of September. Senator Langemeier, a certified general himself, has offered to assist by sponsoring the legislation. The goal is to make the final draft from the bill writers ready by December 1st and give the Senator a complete, organized set of regulations was unanimous.

A decision was made to have the task force meet prior to the July 16th meeting of the Board.

Chair Mitchell thanked Mr. Bredemeyer for his efforts in assisting the Board in setting a path for success concerning the AMC issues.

CHAIR REPORT

Chairman Mitchell emphasized focusing our attention on the AMC issue and to make thorough and calculated decisions in preparation for the upcoming legislative session as the next opportunity would not arise until the following year.

At the May meeting, Chairman Mitchell volunteered to develop an advisory memo in regard to AMCs concerning the client; intended use and user; appropriate disclosure whether the borrower is the intended user; and a suggestive communications policy. The memo will be forwarded electronically to each appraiser and displayed on the website for future reference. A rough draft was considered with a request for input and particularly in terms of a communication policy. The advisory is meant to render uniform guidance on what our credential holders should and should not be doing. With that emphasis, Mitchell requested that the members review the rough draft of the advisory and notify him of changes. The advisory would be discussed at the July meeting.

DIRECTOR'S REPORT

Monthly appraiser accounting:

The number of appraisers for June stands as follows: 126 Registered/ Conversion; 128 Licensed; 198 Certified Residential; and 389 Certified General for a total of 841 appraisers. The accounting includes the totals for June of 2008 with a total of 898 appraisers. The decrease of 57 credentials is mainly in the registered and conversion credentials either not renewing or upgrading to a new credential. The numbers of license credentials for Nebraska has decreased by 10 credentials and the certified residential credentials for Nebraska has increased by 26 appraisers and the number of certified general credentials for Nebraska has increased by 25 appraisers. A significant number of appraisers have achieved an upgraded credential.

The few remaining credentials have until June 30th to renew and an electronic notice has been sent to those individuals requesting they meet the June 30th deadline or return their wall document to this office.

A final issue is an article from the Appraisal Institute news online reporting Missouri, South Carolina, and Nebraska have become the latest states to enact a law designed to ensure that real estate appraisers remain independent third-parties free from outside influence. The new laws are virtually identical and “prohibit mortgage loan originators from making ‘any payment threat or promise directly or indirectly, to any appraiser of a property for the purpose of influencing the independent judgment of the appraiser with respect to the value of the property.’ These new appraiser independence laws were enacted as part of much broader legislation regarding the licensing of mortgage loan originators that is required under existing federal law – the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.”

Under the Nebraska law, a conviction in Nebraska could land an individual in jail for up to three months and subject them to a \$500 fine. The legislation can be found by searching LB328 – Change banking, mortgage bankers, and installment loan provisions @ www.nebraskalegislature.gov.

The final issue is a question brought to the Board by Tony Eggleston of AgriAffiliates in regard to the Farm Service Agency (FSA) engagement letter which indicates under federal law in relation to holding security that mineral rights should be identified at a \$1.00 amount. Appraiser refuses to use the \$1.00 amount since they are not engaged to appraise the mineral rights and do not have the competency to appraise mineral rights. The FSA appears to claim jurisdictional exception for USPAP but the act of giving a value to the mineral rights is inappropriate and outside the scope of work so therefore no value should be assigned. The appraiser feels that such claim opens the door for liability and for inaccuracy of value in regard to the value of the minerals which in effect is simply shifting the liability from FSA to the appraiser. Mr. Eggleston is asking this Board for an opinion under USPAP guidelines.

Vice Chair Moore presented the issue by beginning with what could be considered the key to the engagement letter in reference by asserting that “if the appraiser perceives that USPAP’s Jurisdictional Exception Rule should be invoked to meet certain standards in USPAP, the appraiser must contact the reviewer to obtain prior written approval.”

Vice Chair Moore discussed the use of the Jurisdictional Exception Rule as not something that is selective or optional. It cannot be invoked to fit the needs of exceptions that do not meet USPAP

and went on to bring to the Board's attention further considerations by addressing the engagement letter which further states as follows: "When no known minerals or potential exist that have market value, mineral rights and their value shall be addressed within the appraisal report. A Jurisdictional Exception is allowed and the following language shall be used to address mineral rights . . . The precise value of mineral interests in existence, as well as the economic feasibility to extract minerals from the subject property, or any anticipated future annual production or income from the production of minerals is unknown to the appraiser. This appraisal is not an exhaustive study of the actual or potential mineral production, but is based on the best information available at the effective date of the appraisal. The opinion of value of the mineral rights based on this information is \$1.00. Mineral rights run with the land and are not separate."

Vice Chair Moore went on to explain that essentially the client is suggesting what value to place on the mineral rights and continued by addressing the Jurisdictional Exception Rule as arguably one of the most difficult Rules in USPAP to comprehend.

In effect, this is a disagreement between the appraiser and the client. The appraiser has every right to decline the assignment or to compromise the requirements of the engagement letter. It is not the place of the Board to negotiate engagement letters or regulate clients.

Board Chair Mitchell felt the placement of \$1.00 value as inappropriate as the \$1.00 does not reflect the true value of the mineral rights. The situation is basically a scope of work issue and should state that the valuation of mineral rights is outside the scope of work of this particular assignment and that no value will be assigned and no analysis will be done. The conditions of the assignment and the engagement should be between the appraiser and the client and not the Appraiser Board but a greater concern should be considering the liability of misrepresenting the value of the mineral rights. Stating any opinion of value without supporting documentation in the workfile could certainly expose the appraiser from a liability viewpoint. But again, the real issue is the client relationship and not an issue for which the Board should become involved.

Board took a break at 10:32 a.m.

Board meeting reconvened at 10:45 a.m.

The Board unanimously agreed that it would be appropriate for Vice Chair Moore to continue his discussion with Mr. Eggleston in determining a viable solution.

Director Policky closed the report by thanking the Board for their efforts and concerns.

Board Member Dave Hartman joined the meeting.

RECEIPTS AND EXPENDITURES REPORT – MAY 2009

The receipts and expenditures for May were reviewed by the Director by line item with the Board. A copy of the Budget Status Report is attached and considered part of these minutes. There were no significant expense items.

Board Member Bain moved to accept and file the May 2009 Receipts and Expenditures report for audit. Board Member Wilson seconded the motion. With no further discussion the motion carried with Wilson, Bain, Hartman, Moore, and Mitchell voting aye.

UNFINISHED BUSINESS

1. Ed Tour / Bradford Moore & Joe Wilson

Director Policky presented to the Board an itinerary and registration form confirming the times and dates for the presentation and Board meetings. The registration will be available on the website and distributed electronically to appraisers.

Director Policky contacted Nancy Mock at the Strategic Air & Space Museum to confirm a reservation for the ConAgra Theater for a fee of \$500.00 on September 16th. It was also understood that the cost for the use of the theater also includes the entrance fee for those attending the event. It was also confirmed with Tom Gorman at North Platte Community College that the theater would be reserved for the educational offering on Tuesday, September 15th at minimal cost.

Board Chair Mitchell requested a motion to approve the itinerary and format for Ed Tour 2009. Board Member Bain proposed approval of the itinerary and format for Ed Tour 2009. Board Member Wilson seconded the motion. With no further discussion, the motion carried with Bain, Hartman, Moore, Wilson, and Mitchell voting aye.

Ed Tour will be returned to the July meeting agenda for further planning.

3. Rules & Regulations Committee

The Board approved committee members Sheila Newell, Cay Lacey, and Diane Moore presented changes to Title 298, Nebraska Rules and Regulations. The changes would reflect the adopted appraiser update guidelines as well as all other adopted policies by the Board. The committee addressed changes concerning the Appraisal Management Company issues and the Director added the policy changes that had been adopted by the Board. The changes and additions were discussed, edited, and a final combined effort was produced. The combined changes to Title 298, Nebraska Rules and Regulations were sent to the attorney general's office for review. Attorney Natalee Hart eliminated many of the changes in such edits as eliminating Chapter 10, which addressed the AMC issue, as the changes were not addressed in the statutes therefore not permitting such changes to the rules and regulations. Consideration of changes will be brought to the July meeting.

4. October meeting date.

Chairman Mitchell requested the meeting date for October be returned to the agenda for consideration as a conflict has developed and requested the meeting be returned to the original date of October 15th. Board Member Bain requested the October 15th date for the meeting. Board Member Wilson seconded the motion. With no further discussion, the vote was unanimous changing the meeting date to October 15th.

NEW BUSINESS

1. USPAP Q&A

The monthly distribution of the USPAP Q&A for May is available and will be electronically distributed to all appraisers. In addition, the Q&A is permanently located on the website for future reference.

2. USPAP (AQB) Q&A

Director Policky notified the Board that in addition to the monthly ASB USPAP Q&A distribution, the AQB has developed a Q&A in a form of guidance issued to respond to questions raised by appraisers, enforcement officials, users of appraisal services and the public to illustrate the applicability of the Real Property Appraiser Qualification Criteria and Interpretations of the Criteria in specific situations and to offer advice from the AQB for the resolution of appraisal issues and problems. The first issuance of the Q&A includes such subjects as foreign college degrees; required core curriculum and appraisal subject matter electives; applicability of core curriculum hours earned for one credential toward satisfying hours for another credential; additional education and experience when changing a credential; and preparation for the licensed residential, certified residential, and certified general national examinations. The ASB Q&A will be distributed once every six months.

Board Member Bain proposed a motion to permanently locate the AQB Q&A on the website for future reference. Vice Chair Moore second. With no further discussion, the motion carried with Hartman, Moore, Wilson, Bain and Mitchell voting aye. The Q&A will be electronically distributed to appraisers and permanently referenced on the website.

3. Update Form / Certified General elective presentation

Director Policky distributed the form for upgrading a credential. The Board adopted the requirement for the registered credential applicant to complete the Residential Report Writing and Case Studies to complete the 90 hours of AQB/CAP approved education. In making such a change, the form needed to be upgraded which in effect subtracted 15 hours of education from the licensed credential applicant and the certified residential credential applicant. The question remained as to how to present the certified general elective. An upgrade from a certified residential would leave only ten hours of elective credit needed but an upgrade from the license credential would require meeting the complete 30 hours of elective credit. The form does not state an elective requirement when in fact the requirement exists.

Chairman Mitchell suggested the question be tabled until the July meeting and ask for an AQB opinion on the question of elective requirements. Vice Chair moved to table the question. Board Member Bain seconded the motion. With no further discussion, the motion carried with Moore, Wilson, Bain, Hartman, and Mitchell voting aye.

Board took a break at 12:18 p.m.

Board meeting reconvened at 12:35 p.m.

4. Adopt 2010-2011 edition of USPAP

The 2010-2011 edition of USPAP to include the revisions was formally adopted by the Appraisal Standards Board. The 2010-2011 edition of USPAP will be valid for two years and becomes

effective January 1, 2010 through December 31, 2011. The new edition will maintain its format by including the *Advisory Opinions* and the *USPAP Frequently Asked Questions*. Board Member Wilson moved to adopt the 2010-2011 edition of USPAP to become effective January 1, 2010 through December 31, 2011. The new edition of USPAP will be distributed to appraisers who renew for 2010 by statute. Board Member Bain seconded. With no further discussion, the motion carried with Wilson, Bain, Hartman, Moore, and Mitchell voting aye.

5. LB533 Signed by Governor / Adopt Changes Travel Policy

With the signature of Governor Heineman, LB533 has become law and requires State Accounting to implement revisions where required by the bill. The changes are reflected in the Travel Expense Policies 5, 6, and 8. The changes can be summarized as follows: meal receipts will be required for all food/meal expenses equal to or greater than \$5.00 and expenses will need to be submitted 60 days from the date of the expense or from the last day of a trip. The changes implemented by LB533 will need to be adopted to make appropriate adjustments to the NRPAB Travel Policy. Board Member Bain moved to adopt the changes to the Travel Policy requiring receipts for all food/meal expenses equal to or greater than \$5.00 and that the expenses must be submitted 60 days from the date of the expense. Board Member Wilson seconded. With no further discussion, the motion carried with Bain, Hartman, Moore, Wilson, and Mitchell voting aye.

6. 10/11 Fiscal Year Budget.

Director Policky distributed the final fiscal budget approved and signed by the Governor. The budget request and final are clearly in discrepancy. Gary Bush, representing the DAS Budget Division, clearly deliberately and recklessly adjusted the PSL budget request. The Nebraska Real Property Appraiser Board is a cash agency and has never displayed abuse of spending or budget but the budget submitted had clearly had cuts made which were in violation of the approval of the Board. As Director Policky pointed out, the PSL for a two-person agency has been cut to the point that the basic raise cannot be implemented. Any employee with the experience and knowledge of budget procedures as Mr. Bush clearly knew what was done and did so consciously. Unfortunately, this office does not have a budget expert or position and must rely on the generosity and assistance of the Budget Division.

Mr. Bush explained to the Board that avenues existed to make adjustments much to the Board's dismay.

Chair Mitchell called for a motion in regard to the budget. Board Member Wilson reluctantly offered a motion to approve the budget with the caveat that we examine the budget versus our fiscal needs concerning the PSL and budgetary items and attempt to work with the Legislative Fiscal Office to acquire the discrepancies for a working budget. Board Member Bain seconded the motion.

Chair Mitchell asked for any further discussion. Vice Chair Moore asked Mr. Bush if the Board had the option of not adopting the budget as presented. Mr. Bush explained that the accounting division requires a plan to be submitted by the end of July and that was what the Board was viewing for discussion. Failure to submit the plan by not completing the requirement of entering the plan into NIS would put the Board in violation of statute.

With no further discussion, the motion carried with Hartman, Moore, Wilson, Bain, and Mitchell voting aye.

GENERAL PUBLIC COMMENTS

Chair Mitchell asked for any public comments. With no comments, the Chair proceeded to education.

Board took a break for lunch at 1:21 p.m.

Board meeting reconvened at 1:35 p.m.

EDUCATION

Vice Chair Moore moved to approve the following new continuing education seminars and respective instructors as listed:

Continuing Education New:

1. Appraisal Institute, Chicago, IL:

- A. "ONLINE / Intro. to Valuing Commercial Green Buildings" – 7-hrs. – C2941-I
Instructor: Alan F. Simmons
- B. "ONLINE / Data Verification Methods" – 5-hours – C2939-I
Instructor: Alan F. Simmons
- C. "ONLINE / Advanced Internet Search Strategies" – 7 hours – C2938-I
Instructor: Jim Amorin
- D. "Discounted Cash Flow Model: Concepts, Issues, and Applications – 7 hours –C2935
Instructor: Dr. Kenneth Lusht

2. JIV / Just Valuation, Inc., Lake Mary, FL:

- A. "Appraising REO Properties" – 7 hours – C2825
Instructors: Robert McKenna

Board Member Wilson seconded the motion. With no further discussion the motion carried with Moore, Wilson, Bain, Hartman, and Mitchell voting aye.

Chairman Mitchell thanked those in attendance for their input and interest as the Board prepared to go into closed session.

APPLICANTS & ENFORCEMENT

Vice Chair Moore moved that the Board go into executive session for the purpose of reviewing applicants for credentialing and consideration of written complaints and disciplinary action for individuals who have not requested a public meeting. A closed session is clearly necessary to prevent needless injury to the reputation of the individual or individuals relating to the issues of credentials or qualified applicants and relating to the alleged violations of performance in real property appraisal practice and also to discuss pending litigation or litigation which is imminent with our attorney from the Nebraska Attorney General's Office, who has received a threat of litigation against the Appraiser Board. The time on the meeting clock was 1:55 p.m. Board Member Wilson seconded the motion. The motion carried with Wilson, Bain, Hartman, Moore, and Mitchell voting aye.

Vice Chair Moore moved to come out of executive session at 2:50 p.m. Board Member Wilson seconded the motion. The motion carried with Bain, Hartman, Moore, Wilson, and Mitchell voting aye.

Vice Chair Moore moved to take the following action for the Supervisor/Trainee applicants:
ST204 / Hold as request for strategy has not been submitted to date.

Vice Chair Moore moved to take the following action for the Registered applicants:
R864 / Approve. Submit for examination.
R865 / Approve. Submit for examination.

Vice Chair Moore moved to take the following action for the License applicant:
L584 / Hold. Demonstration report Standard 3 reviews are not complete.

Vice Chair Moore moved to take the following action for the Certified Residential applicants:
CR350 / Select additional report(s) and submit for Standard 3 review.

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

Vice Chair Moore moved to take the following enforcement actions:

- 06-22 Send notice that education must be complete by Nov. 30th and report submission completed by Dec. 31st. Hold
- 08-11 Hold / Education requirement of Consent Agreement due 6/30/2009.
- 08-15 Granted request for extension of Consent Agreement deadline for education offering on August 27 & 28th.
- 08-22 Hold. Litigation. Filing by Attorney General's office.
- 08-23 Granted request to approve education to meet requirements of Consent Agreement.
- 09-08 Dismiss. Advisory letter. CLOSE
- 09-10 Dismiss. Advisory letter. CLOSE.
- 09-11 Standard 3 review found report USPAP compliant. Dismiss. CLOSE.
- 09-12 Standard 3 review failed. Invite informal conference.
- 09-13 Hold as Standard 3 review is not complete.
- 09-14 Standard 3 review found report USPAP compliant. Dismiss. CLOSE.
- 09-15 Request true copy of report and workfile. Send for Standard 3 review.
- 09-16 Request true copy of report and workfile. Send for Standard 3 review.

Board Member Wilson seconded the Motion. Motion carried with Moore, Wilson, Bain, Hartman, and Mitchell voting aye.

Vice Chair Moore proposed to take the following enforcement action:
09-07 Consent Agreement.
09-09 Hold.

Board Member Bain seconded the motion. Motion carried with Moore, Bain, and Hartman voting aye. Board Members Wilson and Chairman Mitchell abstained.

PERSONNEL MATTERS

Vice Chair Moore moved to go into executive session for the sole purpose of discussing personnel matters. The purpose of a closed session is necessary for the prevention of needless injury to the reputation of the individual or individuals in these personal matters involving the evaluation of job performances. The time on the conference clock was 3:00 p.m. Board Member Wilson seconded the motion. The motion carried with Bain, Hartman, Moore, Wilson, and Mitchell voting aye.

Chair Mitchell restated the sole purpose for the executive session was to discuss personnel matters. The time was 3:00 p.m. Present for the executive session were Board Members Moore, Wilson, Bain, Hartman, and Chairman Mitchell.

Vice Chair Moore moved to come out of executive session at 3:30 p.m. Board Member Wilson seconded. The motion carried with Hartman, Moore, Wilson, Bain, and Mitchell voting aye.

Board Member Wilson moved to accept the performance evaluation for Director Policky and approve the recommended 2.9 percent pay raise. Director Policky thanked the Board for their support and leadership through such a demanding time but declined a raise at this time due to the lack of funds that exist in the budget for PSL. The required raise would be given to the staff assistant position but the adjustment can wait until the budget cuts can be worked out with the Legislative Fiscal office.

Tentative meeting dates were approved as follows:

- August 20, 2009
- September 17, 2009
- October 15, 2009
- November 19, 2009
- December 17, 2009

ADJOURNMENT

Vice Chair Moore moved to adjourn the June 24, 2009 meeting. Board Member Bain seconded the motion. Motion carried unanimously.

At 3:40 p.m. Chairman Mitchell adjourned the June 24, 2009 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Kitty Policky, Director

These minutes were available for public inspection on July 2, 2009, in compliance with Nebraska Statute §84-1413(5).