

**REAL PROPERTY APPRAISER BOARD  
LOWER LEVEL, ROOM “B”  
NEBRASKA STATE OFFICE BUILDING  
301 CENTENNIAL MALL SOUTH, LINCOLN, NE**

**18 February 2010**

**OPENING**

Chairman Gregg Mitchell called to order the February 18, 2010 meeting of the Nebraska Real Property Appraiser Board at 9:05 a.m., in Lower Level, Room “B” 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 Bradford Moore, Matthew ‘Joe’ Wilson, Philip Barkley, David Hartman, and R. Gregg Mitchell were 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 Barkley seconded the motion. With no further discussion, the motion carried with Moore, Wilson, Barkley, Hartman, and Mitchell voting aye

**WELCOME GUESTS**

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

**OPEN SESSION /APPROVAL OF THE MINUTES FROM JANUARY 21, 2010**

Chair Mitchell asked for any additions or corrections to the January 21, 2010 minutes. With no further discussion Board Member Wilson moved to adopt the minutes as presented. Vice Chair Moore seconded the motion. The motion carried with Wilson, Barkley, Hartman, Moore, and Mitchell voting aye.

**OPEN SESSION /APPROVAL OF THE MINUTES FROM FEBRUARY 4, 2010**

Chair Mitchell asked for any additions or corrections to the February 4, 2010 minutes. With no further discussion Board Member Wilson moved to adopt the minutes as presented. Board Member Barkley seconded the motion. The motion carried with Barkley, Hartman, Moore, Wilson, and Mitchell voting aye.

**CHAIRMAN’S REPORT**

Chairman Mitchell commented on how interesting the past month had been in dealing with the proposed legislation. Turning to a communication received from the Govt. Affairs Director of the Nebraska Realtors Association providing a position on broker’s price opinions Chairman Mitchell stressed that no changes were made to LB931 to alter or restrict the use of BPOs in our legislation

in the State of Nebraska. Also referenced were obligations of NRA's Code of Ethics relating to BPOs. In respect to real estate disciplines other than appraisal, they shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and where the realtor is an agent or subagent, with obligations of a fiduciary.

Chairman Mitchell continued by reporting on the testimony at the hearing on February 9<sup>th</sup>. The tasks were divided with Chairman Mitchell testifying on the changes represented in LB931 and Vice Chairman Moore testified against LB818. In addition to Board members, several other professional organizations had members present to testify for LB931 as well as against LB818. Scott Dibiasio and Leslie Sellers were present with testimony on behalf of the Appraisal Institute, American Society of Farm Managers & Rural Appraisers, American Society of Appraisers and the National Association of Independent Fee Appraisers. Past member and chairman of the Appraiser Board John Childears testified against LB818 as well as for LB931. Great efforts were made to explain the distinction between an appraisal and a broker's price opinion and the impact of including loan origination in the venue of performing a BPO or CMA. Testimony overwhelmingly cautioned Senators in their deliberations to keep the factors put together in mind. Both bills were still in committee and LB931 became a priority bill.

### **DIRECTOR'S REPORT**

Director Policky stressed it is not always apparent in that the public does not navigate under the same guidelines as the state in meeting adopted guidelines. A copy of LB 403 was distributed to each member, which became effective in the State of Nebraska on October 1, 2009, requiring state agencies to verify the status of individuals in Nebraska by use of the federal E-Verify program to ensure that any employee hired, or in the case of the Appraiser Board, any credential issued, is issued to an individual legally able to work in the United States. The E-Verify submissions are for newly-hired state employees or newly granted credentials. The information includes a copy of the citizenship attestation statement attached to our application form as adopted by the Board.

In addition, Director Policky distributed literature concerning how a bill becomes a law. In the past, the Board has not encountered opposition and the Director has simply testified and the bill has advanced. As a result of the opposition encountered and the amendment process in regard to the bill process, the literature is intended to assist members in basically becoming familiar with the procedures for adopting a bill into law.

Information was also included to report communication between Director Greg Lemon of the Real Estate Commission and this office to clarify questions that were brought to light in the testimony of February 9<sup>th</sup>. The most important question is in regard to the coverage under the current state sponsored Errors & Omissions insurance. The current policy would not permit real estate licensees to perform valuations for financial institutions. Mr. Lemon did reply that such coverage would have to be reevaluated and changes made to the policy if real estate licensees were to perform valuations for financial institutions. The communications were simply to include questions and answers that came to light in testimony and are for informational purposes. Director Policky did extend an offer to Director Lemon that the Chairman and Vice Chairman would make themselves available to answer any questions members of the Commission might have during the Legislative Session of their agenda on Thursday, February 18th in regard to LB931 and LB818.

A topic of interest for future consideration involves the authority to issue a cease and desist to an

individual performing services without a proper credential. LB691, introduced by Senator Langemeier for the Real Estate Commission, addresses the issuance of a cease and desist. At the foundation is an opinion, "Exercise of Personal Jurisdiction Over Unlicensed Persons Who Engages in Activities Described in Neb. Rev. Stat. §81-885.01(2)," written by Attorney General Jon Bruning and Assistant Attorney General Lynn A. Melson at the request of Senator Chris Langemeier. LB691 would authorize the State Real Estate Commission Director to issue a cease and desist and impose civil fines. The act of issuing a cease and desist has created controversy for the Appraiser Board. LB691 defines such actions and should be given future consideration by this Board in formulating guidelines for legislation in regard to the foundation and procedures of issuing a cease and desist.

Director Policky continued reporting the number of appraisers for February 2010 stands as follows: 109 Registered/Conversion; 102 Licensed; 205 Certified Residential; and 375 Certified General for a total of 791 appraisers. The accounting includes the totals for February 2009 with a total of 815 appraisers. The renewal process, although almost completed, is ongoing until June 30, 2010. The fluctuation with the certified appraiser totals are most generally in the reciprocal numbers. It is the goal of the Board and this office to encourage an upgrade to a certified credential.

Director Policky closed the report by thanking the Board for their service and assistance.

#### **RECEIPTS AND EXPENDITURES REPORT – JANUARY 2010**

The receipts and expenditures for January were reviewed by the Director by line item with the Board. A total of \$35,808.91 in expenditures and \$12,193.26 in receivables is reported. Note the \$19,183.00 expense under Publications & Print expenses is the statutory obligation of the Board to supply each resident credential with a current copy of USPAP. Receivables are not significant as prior months but we are still in the process of renewals for 2010. A copy of the Budget Status Report, the General Ledger Report and Receipt Journal for January is attached and considered part of these minutes.

Board Member Moore moved to extend a contract under other contractual services to Jon Goc to assist the Board in the legislative process. Board Member Wilson seconded the motion.

Board Member Wilson moved to amend the motion to read the contract is not to exceed \$2,000.00. With no further discussion, the motions were adopted with Hartman, Moore, Wilson, Barkley, and Mitchell voting aye.

Chairman Mitchell called for a motion to approve the January 2010 Receipts & Expenditures. Board Member Barkley moved to accept and file the January 2010 Receipts & Expenditures report for audit. Board Member Wilson seconded the motion. With no further discussion, Chairman Mitchell called for the vote. The motion carried with Moore, Wilson, Barkley, Hartman, and Mitchell voting aye.

Board took a break at 10:00 a.m.

Board meeting reconvened at 10:10 a.m.

#### **UNFINISHED BUSINESS**

##### **1. LB931**

On January 22<sup>nd</sup>, the Board did submit correspondence to the office of Senator Rich Pahls expressing the strong opposition to the amendments to the Real Property Appraiser Act as

introduced in LB818 emphasizing that for almost 20 years the current regulations have protected Nebraska consumers and financial institutions. LB818 would allow financial institutions to loosen underwriting guidelines and remove appraisal requirements for loans in Nebraska by permitting the use of real estate agent value opinions for non-federally related transactions.

Proceeding with the legislative process, a hearing took place on February 9<sup>th</sup> to hear testimony before the Banking, Commerce and Insurance Committee in regard to LB931. Chairman Mitchell appeared before the Committee to review the changes and answer any questions the Committee members may have in regard to the proposed legislation. LB931 was made a priority bill for the Committee. The experience from Mr. Goc will assist in determining our procedures in dealing with the legislative process. Chairman Mitchell did emphasize that we respectfully request Senator Langemeier's office to be included in negotiations involving LB931.

Larry Saxton, Appraisal Institute, Nebraska Chapter requested to be part of the negotiating process. Chairman Mitchell stressed that the Board was interested in working closely with the Institute but our process would most likely be dictated by Senator Langemeier's office or by Mr. Goc but expressed sincere thanks for assistance and support.

Chairman Mitchell asked Board members if a resolution should be presented to allow the Chairman and Vice Chairman to negotiate for the Board during the process. Board Member Wilson so moved. Board Member Dave Hartman seconded the motion. With no further discussion the motion passed with Wilson, Barkley, Hartman, Moore, and Mitchell voting aye.

## **2. LB818**

Considering the placement of LB818, it is obvious that LB818 will be incorporated into LB931 and brought out of the Banking Committee under the auspice of LB931. Time is limited in the short Legislative session. Taking into account the priority status of LB931, a letter was presented to Senator Langemeier by the Board to respectfully request that the Committee not advance LB931 for further action given the prospect of the Committee in amending LB931 to incorporate LB818. The proposed amendments would woefully exhibit the lack of administration, oversight and enforcement in addition to the blatant violations of consumer protection. The Board felt it could not support such actions.

The performance of BPO and CMA valuation methods are not a threat to the appraisal profession in that they do not apply the same requirements of valuation. Recognizing such valuation methods as legal is probably imperative to the financial sector in that such valuations have supported many of the transactions, whether legal or not, for financial transactions that are not federally related. Opposition to the use of such valuation methods would not be quite so strong if safeguards for the public and standards of reporting and development could be included with the proposed legislation. It is imperative to development standards of oversight to ensure there is consistency and accountability for the services rendered.

Board Member Hartman pointed out that this is a very temperamental time. Even under regulation, which appraisal method is the most reliable and which approach is more applicable? Such questions lend diversity and are especially applicable in the commercial market. The guidelines and methods applicable three years ago are not the same today. The markets and conditions are changing so drastically and so fast that it is difficult to project accurately. The environment is difficult to grasp and the methods difficult to apply.

Vice Chair Moore requested that a letter of thanks and appreciation be sent to participants who testified at the hearing on February 9<sup>th</sup> including Mr. Mike Foley.

With no further discussion, the Board moved to New Business.

### **NEW BUSINESS:**

There was no new business but present was Larry Saxton from the Appraisal Institute, Nebraska Chapter to offer assistance.

### **GENERAL PUBLIC COMMENTS**

Chair Mitchell asked for any public comments. Present was Larry Saxton from the Nebraska Chapter of the Appraisal Institute to continue the tradition of attending the meetings of the Board and to offer any assistance.

With no further comments, the Chair proceeded to education.

### **EDUCATION**

Board Member Wilson moved to approve the following continuing education seminars and respective instructors as listed:

#### *Continuing Education New:*

1. Mid-West Appraisers Association, Kearney, NE:
  - A. "2010-2011 National USPAP Update" / 7 hours / C21001 & C21101  
Instructors: Lynne Heiden & Danny Stoeber
  
2. Jerry Slusky / CREW Midwest, Omaha, NE:
  - A. "2010 Commercial Real Estate Workshop" / 8 hours / C21020  
Instructors: Listing available.
  
3. Career WebSchool, Atlanta, GA:
  - A. "FHA Single Family Appraisal" / 14 hours / C21031-I  
Instructor: Dr. A.M. Black

Vice Chairman Moore seconded the motion. With no further discussion, Chairman Mitchell called for the vote. The motion carried with Barkley, Moore, Wilson, Hartman, and Mitchell voting aye.

### **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. 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 and relating to the alleged violations of performance in real property appraisal practice. The time on the meeting clock was 12:00. Board Member Wilson seconded the motion. The motion carried with Barkley, Hartman, Moore, Wilson, and Mitchell voting aye.

Vice Chair Moore moved to come out of executive session at 1:30 p.m. Board Member Wilson seconded the motion. The motion carried with Hartman, Moore, Wilson, Barkley, and Mitchell voting aye.

Vice Chair Moore moved to take the following action for the Registered applicant:

R871: Approve to sit for examination and credential upon submission of document indicating successful completion of examination to the Appraiser Board office.

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Vice Chair Moore moved to take the following action for the License Residential applicants:

L588: Approve to sit for examination. Request the three selected reports for review. Select two alternate reports.

Vice Chair Moore moved to take the following action for Certified Residential applicant:

CR357 / Candidate meets all AQB upgrade requirements to qualify for CR credential.

Approve for credentialing when successful completion of exam is submitted.

CR369 / Candidate meets all AQB upgrade requirements to qualify for CR credential.

Approve for credentialing when successful completion of exam is submitted.

CR372 / Select three (3) appraisal reports for a residential: <20 years; residential >20 years and a 2-4 family for Standard 3 Report. Approve to submit for examination.

CR373 / Select three (3) appraisal reports for a residential: <20 years; residential >20 years and a 2-4 family for Standard 3 Report. Approve to submit for examination.

Vice Chair Moore moved to take the following action Certified General Reciprocity applicant:

CG598: Deny. Request log for 2008 and 2009 to select work product.

Log submitted select reports for review.

CG599: Approve for reciprocity credential.

CG600: Approve for reciprocity credential. Note enforcement action as temporary permit.

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

Vice Chair Moore moved to take the following enforcement actions:

06-22 Hold. Education must be completed by Nov. 30<sup>th</sup> and report submission completed by Dec. 31<sup>st</sup>. Failure to meet deadlines / Dec. 31, file Formal Complaint. Appraiser has not renewed credential for 2010.

08-04 Hold. Education due by December 31, 2009. Credential suspended until requirements of Consent Agreement are met. Appraiser has not renewed credential

08-21 Cease & Desist. Litigation. Close.

08-22 Cease & Desist. Litigation. Close.

09-02 Respondent submitted requested 3<sup>rd</sup> quarterly log. Select appraisal for review.

09-21 Notify appraiser falsified application and renewal forms. Send notification terminate right to renew. Surrender right to appraise in Nebraska.

09-22 Report sent for Standard 3 Review Report. Accepted report. Dismiss.

09-23 Report sent for Standard 3 Review Report. Advisory and close.

09-26 Schedule informal conference.

09-27 Schedule informal conference.

10-01 Hold. Send for Standard 3 Compliance Report.

10-02 Assign case number. Request true copy of appraisal and workfile.

10-03 Assign case number. Request true copy of appraisal and workfile.

10-04 Assign case number. Request true copy of appraisal and workfile.

- 10-05 Assign case number. Request true copy of appraisal and workfile.
- 10-06 Assign case number. Request log for last three years. 1/1/2007 to 1/1/2010.

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

Vice Chair Moore moved to take the following enforcement action:

- 09-07 Formal / Hearing 3/8/2010 10:00 a.m. continued.
- 09-09 Formal / Hearing 3/8/2010 10:00 a.m. continued.
- 09-25 Informal 2/15/2010 2:00 p.m., NSOB. Hold until prior hearing is completed.

Board Member Barkley seconded the motion. The motion carried with Moore, Barkley, Hartman, and Mitchell voting aye. Board Member Wilson abstained.

Vice Chair Moore moved to take the following enforcement action:

- 09-24 Advisory Letter and Close.

Board Member Wilson seconded the motion. The motion carried with Barkley, Hartman, Moore, and Wilson voting aye. Chairman Mitchell abstained.

Vice Chair Moore moved to take the following enforcement action:

- 08-11 Hold / Board granted another extension for education until March 1, 2010. Stress to appraiser there will be no further extensions. Appraiser has not met conditions of Consent Agreement. Appraiser has not renewed to date.

Board Member Wilson seconded the motion. The motion carried with Hartman, Moore, Wilson, and Mitchell voting aye. Board Member Barkley abstained.

Tentative meeting dates were approved as follows:

- April 15, 2010 / 1Y
- May 20, 2010 / 1Y
- June 17, 2010 / 1Y
- July 15, 2010 / 1Y

## **ADJOURNMENT**

Vice Chair Moore moved to adjourn the meeting. Board Member Barkley seconded the motion. Motion carried unanimously.

At 2:00 p.m. Chair Mitchell adjourned the February 18, 2010 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Kitty Policky, Director

These minutes were available for public inspection on March 1, 2010, in compliance with Nebraska Statute §84-1413(5).