

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

17 March 2011

OPENING

Chairman Brad Moore called to order the March 17, 2011 meeting of the Nebraska Real Property Appraiser Board at 9:07 a.m., in Room “Y” located on the Main Level of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

NOTICE OF MEETING

Chairman Moore 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. Publication of official notice of the meeting appeared in the March 14, 2011 edition of the *Lincoln Journal Star*, a legal newspaper of general circulation in this State, as required by the public meeting law. 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, Brad Moore, Philip Barkley, Tom Kubert, and David Hartman were present. Director Kitty Policky was also present.

ADOPTION OF THE AGENDA

Chairman Moore 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. Board Member Kubert moved to adopt the Agenda as printed. Board Member Mitchell seconded the motion. With no further discussion, the motion carried with Mitchell, Barkley, Kubert, Hartman, and Moore voting aye.

WELCOME GUESTS

Chairman Moore welcomed the guests to the meeting and asked that they please sign the guest log.

APPROVAL OF THE MINUTES FROM FEBRUARY 17, 2011

Chairman Moore asked for any additions or corrections to the February 17, 2011 minutes. With no further discussion Board Member Mitchell moved to adopt the minutes as presented. Vice Chairman Barkley seconded the motion. The motion carried with Barkley, Kubert, Hartman, Mitchell, and Moore voting aye.

CHAIRMAN’S REPORT

First item of the Chairman’s report is the February 23rd meeting with the Dept. of Revenue Director Ruth Sorenson and Jon Cannon, legal counsel. Board Member Tom Kubert was also present. The Board received a preliminary report by email. The meeting was in regard to the proposed draft regulation to change Title 350 of the Nebraska Department of Revenue, Property Assessment and Taxation Division. Further discussion will take place under New Business as it is an agenda item.

The Governor signed AMC legislation, LB410 on March 10, 2011, effective January 1, 2012. The next step will be to select a committee to develop rules and regulations.

DIRECTOR’S REPORT

Director Policky reported the number of appraisers for March 18, 2011 stands as follows: 90 Registered/Conversion; 87 Licensed Residential; 209 Certified Residential; and 364 Certified General

for a total of 750 appraisers. The accounting includes the totals for March 2010 reporting 795 appraisers and the report for March 2009 reporting 828 appraisers. The renewal process, although almost completed, is ongoing until June 30, 2011.

Board Member Mitchell pointed out to individuals attending the meeting that the decline in numbers is a trend and not just a condition in Nebraska. Director Policky explained that with the implementation of the new criteria on January 1, 2008, the number of appraisers has declined nationwide. The Appraisal Foundation and Appraiser Qualifications Board have raised the level of training and education to a point where the transition of those qualified for a credential and those appraisers leaving the profession are not compensating for each other. The profession is in transition and will likely decline even more since the average age of an appraiser is probably around the age of 60 years.

Board Member Mitchell added that the profession is not compensating the number of individuals entering the profession. At a recent meeting attended, out of 300 appraisers only two currently had trainees. The conclusion was that the profession is not as attractive to younger people because of the standards required to earn a credential and the time requirement for experience. They want to advance at a more rapid rate and receive compensation at a higher level.

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

RECEIPTS AND EXPENDITURES REPORT – FEBRUARY 2011

The receipts and expenditures for February were reviewed by the Director by line item with the Board. A total of \$15,495.75 in expenditures and \$4,994.75 in receivables is reported. Considerations were made for expenditures for monthly obligations. In addition, the Budget Status Report shows the purchase of USPAP books for a total of \$1,200.00 under 534900, Miscellaneous Sup. Exp. The payable actually should have been paid under 521500, Publication & Print expense. A journal entry has been processed to change the payables account code to the appropriate payable of Publication & Print expense and will appear on the March Budget Status Report. A copy of the Budget Status Report, the General Ledger Detail Report and Receipt Journal for February are attached and considered part of these minutes.

The final consideration is for the Personal Services Limitation. An additional employee and family member have been added to the benefits. The budget was not developed for this small agency to absorb the additional costs of benefits for two individuals. Once the PSL is approved by the Legislature, a change can only come from the Nebraska Legislature. PSL cannot be changed by the Board or by accounting procedures. We will proceed with the recommendations of the Budget and Accounting departments to meet payroll without sufficient funding.

Board Member Mitchell moved to accept and file the February 2011 Receipts and Expenditures report for audit. Vice Chairman Barkley seconded the motion. With no further discussion the motion carried with Kubert, Hartman, Mitchell, Barkley, and Moore voting aye.

UNFINISHED BUSINESS

1. AMC Legislation / LB410

A history of the advancement of LB410 is before the Board. The Governor was presented the final bill on March 4, 2011 and signed the bill on March 10, 2011. LB410 has an effective date of January 1, 2012. The next step will be to develop the rules and regulations to support the legislation.

Chairman Moore described the legislation for Nebraska as probably one of the first twenty-five states to adopt AMC legislation. The Appraisal Subcommittee will not release the recommendations for the

regulation of AMCs until this summer so obviously the new legislation will have updates and changes for the next session of the Nebraska Legislature.

2. 10-11 USPAP Compliant Report / Danny Stoeber

The recommended changes to the Standard 3 Compliance Report form from the February 17th meeting of the Board were made for consideration. Board Member Mitchell requested two additional clarifications be made to the form. The first change is on page one and should read as follows . . .

“This report will be used by the NRPAB to determine if there are substantial errors or inadequacies in the appraisal report indicating the report ‘does or does not’ meet the minimum Uniform . . .” The next change is on the certification page and reads as follows . . . “I (have) or (have not) provided any services ‘related to the subject property’ as either an appraiser . . .” With no further changes, Board Member Mitchell proposed to motion to accept the 2010-2011 Standard 3 Compliance Report as submitted by Mr. Stoeber and amended by this Board. Vice Chairman Barkley seconded the motion. With no further discussion the motion carried with Hartman, Mitchell, Barkley, Kubert, and Moore voting aye.

NEW BUSINESS

Mr. Daley was scheduled to meet with the Board at 10:00 a.m. Since the Board is ahead of schedule, the discussion will proceed to the Property Assessment Division proposed NRPAB alternatives.

2. Comment / Property Assessment Division / PAD Regulations & Proposed NRPAB Alternatives.

Chairman Moore opened the discussion of the proposed draft regulations to Title 350 to the several assessors that were in attendance. All attendees declined stating they were present to listen. With that said, the Chairman proceeded to the testimony in letter form that was developed on the part of several members to Director Ruth Sorensen and Legal Counsel Jon Cannon. Just as a brief history for those assessors in attendance, Chairman Moore reviewed the meeting that he and Board Member Tom Kubert had in regard to draft regulation of Title 350, Property Assessment Division of the Nebraska Department of Revenue. The proposed draft regulations add such vernacular as “certified,” “appraiser” and “appraisal” to the regulations of assessors. The purpose is to create something called a “mass appraisal credential.” Achieving the mass appraisal credential goes through a designation process and not a credentialing process. The proposed hearing testimony before the Board is to be submitted for a public hearing to be held on Friday, March 18th.

Chairman Moore began the discussion by asking to removing the sentences in the very last paragraph . . . “The proposed draft program in its current form is deficient as a credentialing and designation program. The NRPAB has attached a conceptual organizational chart to assist PAD in developing a comprehensive program . . .” suggesting the chart be postponed until another time for discussion.

Chairman Moore requested additional changes or comments citing the intent of the written testimony as public comments on the proposed changes to the program and the use of vernacular relevant to the credentialing of appraisers. Sensing that Revenue is on a fast track to make changes, the Appraiser Board would not be available until 2012 to develop an opportunity to include the assessors in the credentialing system of the state. Board Member Kubert emphasized that the discussion was not to be destructive or critical of the proposed changes but to make them cohesive with the programs in existence. The meeting was more of a fact finding basis.

Board Member Kubert addressed the shortage of private sector appraisers and the inability to achieve dual credentialing. It’s problematic when you have to start over. Future appraisers could come from

places like assessment, roads, and realtors but the inability to cross over requirements is a shortcoming. A candidate must start over with education and experience to fulfill the requirements for an appraisal credential. The appraiser credentialing program lacks portability with state credentialing.

The loss of the Registered credential by December 31, 2011 has created great concern by the assessment professionals as many hold the Registered credential. The loss of the credential has had an impact on the assessment professionals who want a designation or title to deal with the agencies such as the TERC Board, the court, or even the taxpayers, is understandable. The concept to have a designation program is great but there are concerns.

Rob Ogden, an assessor with the Lancaster County Assessor's office, commented on the need to render some type of designation for credibility stressing the designation doesn't impact the assessor and their ability to perform their responsibilities as an assessor. The proposed changes are a work in progress. The elimination of the Registered credential rendered cause for change as even the job description requires at least a Registered credential.

Roger Morrissey, Douglas County assessor expressed how unfortunate it has been that states haven't recognized the mass appraisal side. Currently only 25% of the experience of the mass appraisal functions can be used for experience. But as Morrissey points out, it is evident that the future of the appraisal profession is in the procedures practiced by the assessor. The education approval requests listed on the agenda are a good example. The education requests address topics and procedures assessors have implemented for years such as "Statistics, Modeling, and Finance." Private sector regression models for support. Transition of the appraisal profession created new reporting requirements using standard techniques. Mass appraisal and Standard 6 as recognized by the Appraisal Foundation created a failure by states to recognize the assessor profession.

Chairman Moore expressed how tough it is to write a certification program and administer a certification program. Roger Morrissey pointed out that the proposed changes to the assessor program are just a start and should be considered a work in progress as mentioned by Mr. Ogden.

Board Member Mitchell explained that the Registered credential was created to accommodate the Licensed appraisers and the degree of testing and experience but has since turned into a trainee position. Prior to the implementation of the Scope of Practice that went into effect January 1, 2008, we faced the issue with unqualified people doing valuation work they were not qualified to perform. Such valuation work by the Registered appraiser led to enforcement and as a result became the basis for sun setting the Registered credential. It should be stressed that the designations for the assessors should emphasize assessment and not the appraisal.

Board Member Kubert emphasized that much preparation has gone into the recommendations. At this point, the recommendations are to be submitted as hearing testimony with the modifications to the last paragraph, eliminating sentence two and three would appear to be appropriate for the hearing process. Chairman Moore recognized the proposal as a motion and asked for a second. Board Member Mitchell seconded the motion opening the floor for any discussion.

Vice Chairman Barkley emphasized he approved the letter but requested an additional change. This letter is advice based upon our knowledge of the profession. In keeping with the tone of support and assistance, Barkley suggested a friendly amendment to the motion by asking to also remove the last sentence of number five. Board Member Kubert accepted the amendment to the motion. Board Member Mitchell accepted the amendment and seconded the motion. With no further discussion the motion carried with Mitchell, Barkley, Kubert, Hartman, and Moore voting aye.

1. Frank Daley, Accountability & Disclosure

Chair Moore introduced Frank Daley, Executive Director, Accountability and Disclosure Commission, the state agency which regulated personal financial disclosure and conflicts of interest, political committee organization, campaign financing, and lobbying or as they would apply to state and executive branch officials. Mr. Daley expressed appreciation to the Board for the invitation to provide information about some of the more important laws and rules and regulations that apply to Board members as state government officials. Mr. Daley explained to the Board that not knowing the conflict of interest laws and the laws applicable to Board or Commission members makes appointees particularly vulnerable in the environment in which Board members operate. He went on to explain that a person, who is not happy with a decision, may feel perfectly free to malign a public official. With the intention of presenting the basic information of what applies and how it applies, Mr. Daley gave each Board member a summary of the accountability laws and how they apply to Board members. Mr. Daley followed the outline of his handout as he covered and expanded on each topic. A copy of the handout is attached and made a part of these minutes.

First topic of discussion addressed the statements of financial interests required to be filed by April 1, 2011 to cover the 2010 calendar year.

Mr. Daley moved to item two or the Conflict of Interest. He explained that a person has a conflict of interest as a state public official if faced with taking an official action or making an official decision which could result in a financial benefit or a financial detriment to the official, whether it is to a family or business which the official is associated. He explained that “business with which you are associated,” has a very broad definition. He noted that as a member of the Board that the associations to entities could become a conflict of interest if something related to an entity comes before the Board for a decision. He went on to explain that a “family member,” is defined as a spouse, a child residing in household, a federal income tax dependent, a very narrow definition. Mr. Daley explained that Nebraska law does not take the position that there is something wrong with having a conflict of interest. That interpretation, he noted, would prohibit most citizens from public service. Nebraska law provides a process for dealing with conflicts. He advised that if one believes he has a potential conflict of interest, it must be disclosed in writing to the Accountability and Disclosure Commission on the Commission forms. The Commission will respond in writing. If the Commission believes there is a conflict, the Commission will advise what must be done to deal with the situation. “Typically,” he said, “if the Commission finds a conflict of interest exists, the Commission advises the official to abstain from voting on the matters in which the conflict exists.”

Mr. Daley noted that there are exceptions in entering into contracts with other government entities and those exceptions do require steps that will ensure all business dealings and processes are on top of the table and open to public view.

According to Mr. Daley, state law does not prohibit public officials from accepting gifts, but there are guidelines. There is a law against receiving gifts from lobbyists and principals, who are prohibited from giving gifts with a value of no more than \$50 per month. He also spoke about prohibition against use of the power of public position for financial gain, including use of any confidential information received as a member of a Board and personal use of Board resources. He added that there is a public perception that the Board members should consider. What may be legal may not be publicly acceptable.

A topic of interest has been the topic of nepotism or the act of hiring, promoting, or advancing a family member in state government, including the initial appointment and transfer to other positions in state government a situation that would probably not be encountered by a member of the Board.

Mr. Daley affirmed the Commission's goal is to provide information needed so that state government officials can comply with state law. Responses are given to all questions by telephone, even "hypothetical" questions. If something more formal is required, the Commission will provide an answer in writing.

Chair Moore and members of the Board expressed sincere appreciation to Mr. Daley for his informative presentation. The handout is attached and made part of these minutes.

GENERAL PUBLIC COMMENTS

Chair Moore asked for any public comments.

With no comments, the Chair proceeded to education.

Board took a break at 10:30 a.m.

Board meeting reconvened at 10:44 a.m.

EDUCATION

Board Member Mitchell moved to approve the following continuing education seminar and respective instructors as listed:

Continuing Education New:

1. McKissock, LP, Warren, PA:

- A. "Residential Appraisal Review" / 7 hours / C2510-I / ONLINE
Instructor: Alan F. Simmons
- B. "Residential Report Writing: More than Forms" / 7 hours / C2849-I / ONLINE
Instructor: Daniel Bradley

2. Appraisal Institute, Chicago, IL:

- A. "Appraising the Appraisal: Appraisal Review / General" / 7 hours / C2509
Instructor: Stephanie Coleman
- B. "Residential Applications: Using Technology to Measure & Support Assignment Results" / 7 hours / C21108
Instructor: Jim Atwood

3. Cengage Learning, Atlanta, GA:

- A. "Advanced Residential Applications and Case Studies" / Online / 14 hrs. / C2885-I
Instructors: Dr. A.M. Black
Lisa Virruso Musial
Mark Munizzo
- A. "Statistics, Modeling, & Finance" / Online / 14 hrs. / C2884-I
Instructors: Dr. A.M. Black
Lisa Virruso Musial
Mark Munizzo

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

The Nebraska Real Property Appraiser Board will meet in executive session for approval of applicants and enforcement matters.

APPLICANTS & ENFORCEMENT

Vice Chair Barkley 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 11:01. Board Member Kubert seconded the motion. The motion carried with Kubert, Hartman, Mitchell, Barkley, and Moore voting aye.

Vice Chair Barkley moved to come out of executive session at 2:15 p.m. Board Member Mitchell seconded the motion. The motion carried with Mitchell, Barkley, Kubert, Hartman, and Moore voting aye.

Vice Chair Barkley moved to take the following action for the Licensed Residential by reciprocity applicant:

L592 / Meets statutory obligations of §76-2230. Approve for credential.

Vice Chair Barkley moved to take the following action for Certified Residential applicants:

CR384 / Approve to sit for examination and select appraisal reports for Standard 3 Compliance Report: residential <20 years; residential >20 years; and 2-4 family.

CR385 / Approve to sit for examination and select appraisal reports for Standard 3 Compliance Report: residential <20 years; residential >20 years; and 2-4 family.

Vice Chair Barkley moved to take the following action for Certified General applicant by reciprocity:

CG614 / Candidate meets all statutory obligations of §76-2232. Approve for credentialing.

Vice Chair Barkley moved to take the following action for Certified General applicant:

CG615 / Approve to sit for examination and select appraisal reports for Standard 3 Compliance Report: Select three non-residential reports; reports must be in summary or self-contained format; two reports must demonstrate all three approaches to value.

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

Vice Chair Barkley moved to take the following enforcement actions:

09-07 Hold. No action taken.

09-09 Hold. No action taken.

09-25 Hold until Case #09-07 & #09-09 are completed.

09-26 Signed Stipulation & Order by appraiser requires signature of Chairman. Credential inactive effective 3/25/2011 until terms to Consent Agreement has been met. Stipulation and Order to inactivate credential for violation of §76-2238(18).

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

Vice Chair Barkley moved to take the following enforcement actions:

10-03 Hold. Issued Stipulation and Order to inactivate credential for violation of

- §76-2238(18). Consent Agreement 15-hour National USPAP & General Report Writing & Case Studies by 11.30.2010. Board Chairman sign Order. Credential inactivated until terms of Consent Agreement has been met.
- 10-15 Hold. Signed Consent Agreement to 15-hour National USPAP and 15-hour Residential Report Writing & Case Studies. No supervisory or advisory. Education due 4/30/2011.
- 10-19 Hold / Respondent has not submitted fee for State Treasurer costs for processing check for insufficient funds. Violation of §76-2238(21).
- 10-21 Hold. Signed Consent Agreement to 15-hour National USPAP and 15-hour Residential Report Writing & Case Studies. No supervisory or advisory. Education due 4/30/2011.
- 10-28 Respondent declined informal. Consent Agreement to 15-hour National USPAP and 15-hour Residential Report Writing & Case Studies. No supervisory or advisory. Education due 90 days from signing of Agreement. Respondent declined Consent Agreement and surrendered credential. Accept surrender of credential in lieu of enforcement action. Notify Appraisal Subcommittee. Close.
- 11-02 Return report and workfile to April meeting for evaluation. Related to #11-05.
- 11-03 Return report and workfile to April meeting for evaluation. Related to #11-05.
- 11-04 Request Standard 3 Compliance Report.
- 11-05 Request true copy of appraisal and workfile. Return to report to April meeting for evaluation.

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

ADJOURNMENT

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

At 2:15 p.m. Chairman Moore adjourned the March 17, 2011 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Kitty Policky, Director

These minutes were available for public inspection on March 31, 2011, in compliance with Nebraska Statute §84-1413(5).