

**REAL PROPERTY APPRAISER BOARD
Conference Room “F”, Lower Level
NEBRASKA STATE OFFICE BUILDING
301 CENTENNIAL MALL SOUTH, LINCOLN, NE**

October 26, 2012 Meeting Minutes

A. OPENING

Chairman Brad Moore called to order the October 26, 2012 meeting of the Nebraska Real Property Appraiser Board at 9:00 a.m., in conference room F located on the lower level of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

B. 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 email. Publication of official notice of the meeting appeared in the October 23, 2012 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 Bradford Moore, Tom Kubert, Philip Barkley, Marc Woodle and Eldon Terrell were present. Also present were Director, Tyler Kohtz, and Staff Assistant, Kirsten Casburn.

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

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

Board Member Barkley moved that the Board go into executive session for the purpose of reviewing applicants for credentialing, applicants for appraisal management company registration, investigations, and other sensitive matters. A closed session is clearly necessary to prevent needless injury to the reputation of those involved. The time on the meeting clock was 9:01 a.m. Board Member Kubert seconded the motion. The motion carried with Kubert, Woodle, Terrell, Barkley and Moore voting aye.

Break from 10:20 a.m. to 10:26 a.m.

Board Member Barkley moved to come out of executive session at 12:34 p.m. Board Member Kubert seconded the motion. The motion carried with Woodle, Terrell, Barkley, Kubert and Moore voting aye.

Break from 12:34 p.m. to 12:44 p.m.

WELCOME GUESTS

Chairman Moore welcomed the guests to the meeting and asked that they please sign the guest log. Diane Moore was the only public member in attendance. Tim Engler, Nanci Weissgold, Kimberly Drake-Loy, Adam Musiel, Mark Kopp, Lee Volmer, and Heather Russell-Schroeder appeared before the Board at scheduled times throughout the meeting.

F. APPROVAL OF THE MINUTES FROM SEPTEMBER 2012

Chairman Moore asked for any additions or corrections to the September 20, 2012 minutes. Board Member Barkley requested that “asks” be changed to “ask” in the second sentence found under “Reciprocity Application Update.” Board Member Barkley also brought attention to the action shown for applicant L605, and indicated that it should read “Request written explanation from applicant and supervisor detailing applicant’s participation in the appraisal process.” Director Kohtz informed the Board that the requested changes will be made to the minutes. With no further discussion Board Member Barkley moved to adopt the minutes as amended. Board Member Woodle seconded the motion. The motion carried with Woodle, Terrell, Barkley, Kubert and Moore voting aye.

G. CHAIRMAN’S REPORT

Chairman Moore welcomed board members and staff to the meeting, and brought attention to credential renewals. The Chairman indicated that renewal applications are starting to arrive at the Board’s office, and that the change to the process has been successful. He has received many positive responses. Chairman Moore proceeded to give an overview of the AARO Conference attended by himself, Board Members Barkley and Kubert, and Director Kohtz. The Chairman briefly summarized topics discussed at the conference that are relevant to current or future Board business, such as criminal background checks for appraisers, appraisal fraud, appraisal management company regulation, and the ASC audit coming up in July.

H. DIRECTOR’S REPORT

Director Kohtz presented ten charts outlining the number of appraisers and AMCs as of October 26, 2012. The Director summarized each chart and reported the number of appraisers as follows: 88 total Licensed, 81 resident and 7 reciprocal; 211 total Certified Residential, 177 resident and 34 reciprocal; 376 total Certified General, 264 resident and 112 reciprocal; and 16 Registered for a total of 691 appraisers. The total number of appraisers is up three from September, but significantly down from the 775 in October 2011 due to the drop in the number of Registered/Conversion appraisers. The number of appraisers is currently trending upwards slowly.

The Director also addressed the number of temporary permits issued. There were 19 permits issued in September compared to 11 permits issued in August. With the exception of June, the number of temporary permits has held steady during the previous twelve months, and has slowly increased during the previous five years. Finally, Director Kohtz reported 85 AMCs registered, and 2 new AMC applications have been submitted since the last meeting.

I. FINANCIAL REPORT – SEPTEMBER 2012

The receipts and expenditures for September were reviewed by the Director by line item with the Board, and Director Kohtz made note of some specific September expenses. For the Real Property Appraiser Program, which includes both the appraiser fund and the AMC fund, a total of \$21,671.27 in expenditures and \$11,100.75 in receivables were reported. As of the end of September, expenses amount to 16 percent of the budgeted expenditures for the fiscal year. Considerations were made for expenditures for monthly obligations. No considerations were made for expenditures other than monthly obligations. Director Kohtz presented three charts outlining the Agency twelve month expenses and revenues, historic cash balance, and twelve month cash balance.

Director Kohtz also provided a report on his meeting with Mike Lovelace with the Legislative Fiscal Office regarding the Board's 2013-2015 Biennial Budget Request. The Director indicated that the meeting was very positive, and that Mr. Lovelace did not bring attention to any major concerns that he had with the Board's request. Mr. Lovelace will make a recommendation to the Appropriations Committee, and the committee will develop a preliminary funding allocation for the Board.

Board Member Barkley moved to accept and file the September 2012 Budget Status reports for receipts and expenditures for audit. Board Member Terrell seconded the motion. The motion carried with Terrell, Barkley, Kubert, Woodle and Moore voting aye.

J. GENERAL PUBLIC COMMENTS

Chairman Moore asked for any public comments. With no comments the Chair proceeded to education.

K. EDUCATION

1. AQB/CAP Core Curriculum Requests: None

Board Member Barkley moved to approve the following continuing education courses as listed:

2. New Continuing Education Requests

A. McKissock, Warren, PA:

- 1. Disciplinary Cases: What Not To Do / 7 hours / C21248-I**
- 2. Land and Site Valuation / 5 hours / C21249-I**

Seconded by Kubert. Chairman Moore called for the vote. The motion carried with Kubert, Woodle, Terrell, Barkley and Moore voting aye.

Board Member Barkley moved to approve the following instructors as listed:

3. Instructor Approval Requests

A. McKissock, Warren, PA:

- 1. Tracy Martin - Disciplinary Cases: What Not To Do / C21248-I
Land and Site Valuation / C21249-I**
- 2. Dan Bradley - Disciplinary Cases: What Not To Do / C21248-I
Land and Site Valuation / C21249-I**
- 3. Charles Huntoon - Disciplinary Cases: What Not To Do / C21248-I
Land and Site Valuation / C21249-I**

Second by Kubert. With no further discussion, Chairman Moore called for the vote. The Motion carried with Kubert, Woodle, Terrell, Barkley and Moore voting aye.

L. UNFINISHED BUSINESS

- 1. CHANGE IN OWNERSHIP FOR CAREER WEBSCHOOL:** At the September meeting, the Board asked that staff check with the AQB to see how it is addressing the change in ownership for Career WebSchool. Staff Assistant Casburn was charged with this task. Ms. Casburn reported that the AQB will accept the change in ownership with no additional requirements. The Career WebSchool courses approved under the Cengage Learning ownership are approved under the OnCourse Learning Corporation ownership. The Board agreed that courses and not providers are approved by the Board, so no action is required on the Board's part concerning the change in ownership for Career WebSchool.
- 2. COUNTY APPRAISER CONTRACTS UPDATE:** Director Kohtz is in the process of drafting the letters as discussed at the September meeting, but no letters have been sent to date.
- 3. NEW CREDENTIAL UPDATE:** Director Kohtz presented a plan regarding associate pool legislation for the Board to review. The Director has established a timeline to benchmark progress for developing statutory concept language, establishing a review committee, completing the review process, drafting rule changes related to the associate pool, and meeting with Senator McCoy to discuss bill sponsorship. The Board felt that the steps are well laid out in the plan presented by the Director, who will begin to develop statutory concept language for the Board to review prior to February 1, 2013.
- 4. NRPAB MISSION AND VISION STATEMENTS:** The board members each reviewed the proposed mission and vision statements prior to the meeting, and agree that the statements accurately reflect the Board's current mission and vision. Board Member Barkley made a motion to approve the mission and vision statements as presented. The motion was seconded by Kubert. Chairman Moore called for a vote, and the motion carried with Barkley, Kubert, Woodle, Terrell and Moore voting aye.

M. NEW BUSINESS

- 1. APPOINTMENT OF REAL ESTATE BROKER/CREDENTIALLED APPRAISER BOARD MEMBER:** Board Member Moore's term as the At-Large Licensed Real Estate Broker/Credentialed Appraiser Board Member expires on December 31, 2012. The State of Nebraska is currently accepting applications to fill this position. Director Kohtz mentioned that he will keep the Board up to date regarding any communication with the Governor's office and applicants for the open position. The process will be very similar to the process used to fill David Hartman's position on the Board. The Director asked if the Board had any specific directions for him. Board Member Kubert made a motion to authorize Director Kohtz to send a "Memo from the Board" notifying Nebraska appraisers of the opening on the Board for the At-Large Real Estate Broker/Credentialed Appraiser Board Member. The motion was seconded by Woodle. Chairman Moore called for a vote, and the motion carried with Woodle, Terrell, Kubert, Barkley and Moore voting aye.

- 2. APPRAISER BACKGROUND CHECKS:** Director Kohtz presented the Board with an email response received from AAG Hart regarding the Board's ability to conduct background checks on appraisers. AAG Hart indicated that the safest course would be to make a statutory change to authorize background checks on appraisers and applicants. AAG Hart also recommended that the appraiser or applicant should be responsible for the costs associated with the background check. The 2015 AQB Criteria requires background checks on all appraiser applicants, so the Board will take AAG Hart's advice into consideration during the 2015 law rewrite.
- 3. APPRAISER TWO YEAR RENEWAL/CONTINUING EDUCATION CYLCE:** During preparation for the 2013-14 renewal period, it was discovered that a number of appraisers were approved for two-year renewal of their credential after completing only one year of the two-year continuing education cycle. None of the appraisers granted the two-year renewal met his or her requirements for the two-year education cycle. This resulted in an offset of requirements. The Director presented a plan to send a letter to each appraiser that meets this scenario informing him or her of his or her obligation to meet their continuing education requirements for the current two-year renewal period. For those that successfully meet the continuing education requirements prior to December 31, 2012, the two-year continuing education period will change from 2013-14 to 2012-13. Those that do not complete the continuing education requirements prior to December 31, 2012 will be placed on the Board's agenda for review and the consideration of a Board initiated grievance filed against the appraiser. Board Member Kubert made a motion to accept the plan described by the Director as presented. The motion was seconded by Barkley. Chairman Moore called for a vote, and the motion carried with Kubert, Woodle, Terrell, Barkley and Moore voting aye.
- 4. ENGAGEMENT LETTER FOR APPRAISAL SERVICES:** Board Member Kubert presented an engagement letter that states "In the event all or any portion of this credit is transferred to or purchased by another Bank, said Bank shall be considered a part of the intended user(s)/client(s)." Board Member Kubert indicated that an appraiser adhering to this request may put that appraiser in violation of USPAP. A discussion took place regarding the applicability of USPAP, and how it defines what a client or intended user is. Board Member Terrell brought attention to the fact that banking regulations allow for an appraisal to be transferred to and used by another bank. Board Member Kubert mentioned that if the request in the engagement letter is adhered to, then the bank that receives the appraisal could request that the appraiser make changes to the appraisal because it becomes a client by receiving the appraisal report. Board Member Moore added that USPAP does not define who the intended user or client is, or that the intended user(s) and client(s) must be specified. It could be one person, or an entire industry or governmental entity. The Board agreed that more research is needed on this topic, and that the Board will continue this discussion at the November meeting.
- 5. 2013 BOARD MEETING SCHEDULE:** A calendar with the state holiday dates marked off was presented to the Board for selection of the 2013 board meeting dates. A discussion took place regarding the Board's current standard of holding the meeting on every third Thursday of each month. No board member saw a need to make a change to the standard. The Board proceeded to schedule the board meetings on the third Thursday of each month in 2013. Board Member Kubert made a motion to accept the 2013 board meeting schedule as established. The motion was seconded by Barkley. Chairman Moore called for a vote, and the motion carried with Kubert, Woodle, Terrell, Barkley and Moore voting aye.

N. BOARD POLICIES AND PROCEDURES

1. BOARD POLICIES

- a. CURRENT BOARD POLICIES:** No discussion took place

- 2. APPRAISAL REPORTING FORM:** Director Kohtz presented the Appraisal Reporting Form to the Board for review. Many appraisers are required to submit appraisal logs to the Board for various reasons. The information found in the logs submitted to the Board has been very inconsistent and is often inadequate. The Board requested that a form be developed for this purpose to establish a standard format for reporting completed appraisals to the Board. With no further discussion Board Member Kubert moved to accept the Appraisal Reporting Form as presented. Board Member Terrell seconded the motion. The motion carried with Woodle, Terrell, Barkley, Kubert and Moore voting aye.

- 3. STANDARD 3 REVIEW FORM UPDATE:** The updated 2012-2013 Standard 3 Review Report form was presented to the Board for review. Board Member Barkley asked that “Reviewer’s Comments” be changed to “Reviewer’s Explanation.” He expressed concern that a review appraiser may downplay the importance of explaining his or her findings if he or she feels that the Board is only asking him or her to provide a comment. Board Member Barkley moved to accept the 2012-2013 Standard 3 Review Report form as amended. Board Member Kubert seconded the motion. The motion carried with Barkley, Kubert, Woodle, Terrell and Moore voting aye.

O. OTHER BUSINESS

1. CONFERENCES/EDUCATION

- a. AARO CONFERENCE RECAP:** Director Kohtz asked for any further comments on the AARO Conference attended by Board Members Moore, Kubert, Barkley, and himself that has not yet been discussed during the meeting. Board Member Kubert said that attending the conference was well spent time and money for the Board.

Board Member Barkley moved that the Board go back into executive session for the purpose of reviewing applicants for credentialing and consideration of written complaints and disciplinary action. The time on the meeting clock was 2:25 p.m. Board Member Kubert seconded the motion. The motion carried with Woodle, Terrell, Barkley, Kubert and Moore voting aye.

Board Member Barkley moved to come out of executive session at 4:14 p.m. Board Member Kubert seconded the motion. The motion carried with Terrell, Barkley, Kubert, Woodle and Moore voting aye.

C. CONSIDERATION OF APPLICANTS

- 1. CREDENTIALING AS NEBRASKA REAL PROPERTY APPRAISER:** Board Member Barkley moved to take the following actions for credentialing applicants as listed:

L605 / Approved to sit for exam and select reports for review

CR398 / Hold

CG647 / Approved to sit for exam and select reports for review

CG649 / Approved for credentialing as Certified General Appraiser

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

- 2. REGISTRATION AS APPRAISAL MANAGEMENT COMPANY:** Board Member Barkley moved to take the following actions for AMC applicants as listed:

NE2012089 / Approved
NE2012085 / Approved
NE2012090 / Denied
NE2012083 / Approved subject to revised application
NE2012091 / Approved

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

D. CONSIDERATION OF DISCIPLINARY ACTIONS/ ENFORCEMENT MATTERS:

Vice Chair Barkley moved to take the following enforcement actions:

11-03 / Send letter to Respondent requesting clarification regarding exam status for the 30-hour General Report Writing and Cases Studies course, and requesting that Respondent provide two true copies of appraisal report and workfile selected by the Board for review.
11-04 / Close; Respondent has met all terms specified in the Consent Agreement
11-12 / Request two true copies of appraisal report and workfile
11-13 / Close
11-21 / Hold
11-22 / Hold
11-26 / Consent Agreement signed by Board Chair
12-03 / Hold
12-06 / Hold
12-11 / Hold
12-12 / Hold
12-14 / Hold
12-15 / Hold
12-16 / Hold
12-18 / Close
12-20 / Offer informal meeting
12-21 / Offer informal meeting
12-22 / Dismiss without Prejudice; send advisory letter informing Respondent of requirements for using specific report formats.
12-23 / Dismiss without Prejudice; send advisory letter informing Respondent of requirement as an appraiser to adhere to the Real Property Appraiser Act when acting in another professional capacity.
12-24 / Hold
12-25 / Dismiss without Prejudice
12-26 / Send appraisal report and workfile for Standard 3 compliance review
12-27 / Request two true copies of appraisal report and workfile
12-28 / Send letter notifying Respondent of grievance and request response

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

E. CONSIDERATION OF OTHER EXECUTIVE SESSION ITEMS

The Board discussed current credential holders that were awarded credentials with a restricted scope of work by past boards. The Board agreed to continue discussion at the November board meeting.

The Board discussed Neb. Rev. Stat. § 49-1499.07 pertaining to nepotism, and acknowledged that a violation of this Statute may have occurred in the past. All members of the Board and board staff have been made aware of what nepotism is, and also what to consider when hiring future employees.

The Board discussed information received from organization concerning inquiry I12-1. The Director will schedule a meeting with Bill Blake, Special Counsel for the Board, to discuss the Board's options.

The Board discussed the response received concerning inquiry I12-6.

An appraisal discovered by a board member during routine business was discussed by the Board. The appraisal appears to be non-compliant with the USPAP Standards. In addition, it appears that the appraiser has failed to exercise reasonable diligence, and may have demonstrated negligence or incompetence, in developing the appraisal. The Board agreed to open a new investigation, 12-29, for alleged violation of Neb. Rev. Stat. § 76- 2237 and § 76-2238 (13), (14), (16).

An appraisal discovered by a board member during routine business was discussed by the Board. The appraisal appears to be non-compliant with the USPAP Standards, and prepared by a non-credentialed individual. The Board assigned identification number I12-9 to the matter.

The Board reviewed the information pertaining to inquiry I12-2. The Board has not received a response or an application for registration as an AMC from organization.

The Board reviewed the information pertaining to inquiry I12-7. The Board has not received a response or an application for registration as an AMC from organization.

The Board reviewed the information pertaining to inquiry I12-8. The Board has not received a response or an application for registration as an AMC from organization.

The Board reviewed information pertaining to an organization that may be in violation of the Appraisal Management Company Registration Act. The organization is acting as a middle man between appraisers and AMCs. The Board agreed that more information regarding the services provided by the organization is needed to evaluate this matter. This organization was assigned identification number I12-10.

The Board agreed to extend the deadline to December 31, 2012 for a Certified Residential Appraiser whose "in lieu of" education was found to be deficient during the Appraisal Subcommittee's 2011 audit. A response was received from the appraiser indicating that the deadline may not be met as extended by the Board.

Vice Chair Barkley moved to take the following actions for the above mentioned matters:

- 12-29 / Request two true copies of appraisal report and workfile**
- I12-2 / Send cease and desist letter**
- I12-6 / Send cease and desist letter**
- I12-7 / Send cease and desist letter**
- I12-8 / Send cease and desist letter**
- I12-9 / Send letter of inquiry requesting written response regarding appraisal obtained by the Board.**
- I12-10 / Send letter inquiring about the services provided by organization**
- CR211039 / Send letter informing appraiser that the deadline stands as originally specified by the Board.**

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

P. NEXT MEETING DATE – NOVEMBER 15, 2012, REAL PROPERTY APPRAISER BOARD OFFICE, LOWER LEVEL, NSOB

Q. ADJOURNMENT

Board Member Barkley moved to adjourn the meeting. Board Member Kubert seconded the motion. Motion carried with Terrell, Woodle, Kubert, Barkley and Moore voting aye.

At 4:14 p.m. Chairman Moore adjourned the October 26, 2012 meeting of the Real Property Appraiser Board. The next meeting is scheduled for November 15, 2012 at the Real Property Appraiser Board Office located on the Lower level of the NSOB.

Respectfully submitted,

Tyler N. Kohtz
Director

These minutes were available for public inspection on November 8, 2012, in compliance with Nebraska Statute §84-1413(5).