

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

July 18, 2013 Meeting Minutes

A. OPENING

Chairman Philip Barkley called to order the July 18, 2013 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 Barkley 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 July 17, 2013 edition of the *Omaha World Herald*, a legal newspaper of general circulation in this State, as required by the Open Meetings Act. 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 Philip Barkley, Tom Kubert, Marc Woodle, Eldon Terrell and Chris Langemeier were present. Also present were Director, Tyler Kohtz, Compliance and Licensing Specialist, Joya Weir, and Staff Assistant, Gail Parris.

ADOPTION OF THE AGENDA

Chairman Barkley 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 Langemeier seconded the motion. With no further discussion, the motion carried with Terrell, Woodle, Kubert, Langemeier and Barkley voting aye.

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

Board Member Kubert 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 9:02 a.m. Board Member Terrell seconded the motion. The motion carried with Langemeier, Woodle, Kubert, Terrell and Barkley voting aye.

Break from 10:41 a.m. to 10:50 a.m.

Jay Wortmann and Byron Lea appeared before the Board.

Board Member Kubert moved to come out of executive session at 11:55 a.m. Board Member Woodle seconded the motion. The motion carried with Langemeier, Terrell, Woodle, Kubert and Barkley voting aye.

Break from 11:55 a.m. to 12:03 p.m.

F. WELCOME AND CHAIR'S REMARKS

Chairman Barkley welcomed the guests to the meeting and asked that they please sign the guest log. Diane Moore, Kristi Klamet and Neal Fenochietti were the only public members in attendance. The Chairman recognized the staff for their work during the past month, and made special mention of the effort put in to preparation for the ASC Audit.

Board Member Kubert made a motion to amend the agenda to consider Agenda Item M1, Appraisal Subcommittee Audit Report, prior to the Approval of the Minutes from June 2013. Board Member Langemeier seconded the motion. The motion carried with Terrell, Woodle, Kubert, Langemeier and Barkley voting aye.

M. NEW BUSINESS

1. APPRAISAL SUBCOMMITTEE AUDIT REPORT: Kristi Klamet and Neal Fenochietti, policy managers with the Appraisal Subcommittee, appeared before the Board to give a presentation on the recent audit completed by them. Mr. Fenochietti thanked the staff for their assistance during the process, and noted the positive changes implemented by the current staff. Policy Manager Fenochietti began by explaining what the Appraisal Subcommittee is and its purpose. One of the duties of the Appraisal Subcommittee is to ensure that states are compliant with Title XI of FIRREA. During the previous two days, the policy managers have been reviewing the Board's files related to the first seven Appraisal Subcommittee Policy Statements, which includes statutes, regulations, policies and procedures, temporary practice, national registry, application process, reciprocity, education, and enforcement. Mr. Fenochietti explained the initial findings related to each Policy Statement for the preliminary report. Discussion took place between the policy managers and the board members regarding the findings.

Chairman Barkley thanked Ms. Klamet and Mr. Fenochietti for their time, and asked what is the schedule for the preliminary and final report. Mr. Fenochietti indicated that he expects that the preliminary report will be presented to the Board in two or three months. The Board will then have sixty days to respond. The final report will be presented to the Board two or three months after the Board submits its response to the preliminary report. Chairman Barkley also asked when the Board could expect enforcement of the AMC provisions found in the Dodd-Frank Act. Policy Maker Fenochietti responded that there is currently no time frame. He also mentioned that when the Appraisal Subcommittee begins monitoring states for compliance related to the AMC provisions, the AMC and appraiser programs will likely be audited at the same time.

G. BOARD MEETING MINUTES

1. APPROVAL OF JUNE 12, 2013 MEETING MINUTES

Chairman Barkley asked for any additions or corrections to the June 12, 2013 minutes. With no further discussion Board Member Kubert moved to adopt the minutes as presented. Board Member Langemeier seconded the motion. The motion carried with Terrell, Woodle, Kubert, Langemeier and Barkley voting aye.

2. APPROVAL OF JUNE 20, 2013 MEETING MINUTES

Chairman Barkley asked for any additions or corrections to the June 20, 2013 minutes. Board Member Kubert asked for clarification of a couple items, but no changes were requested. With no further discussion Board Member Kubert moved to adopt the minutes as presented. Board Member Langemeier seconded the motion. The motion carried with Woodle, Terrell, Langemeier, Kubert and Barkley voting aye.

H. DIRECTOR'S REPORT

Director Kohtz presented ten charts outlining the number of appraisers and AMCs as of July 18, 2013. The Director summarized each chart and reported the number of appraisers as follows: 83 total Licensed, 76 resident and 7 reciprocal; 214 total Certified Residential, 177 resident and 37 reciprocal; 378 total Certified General, 256 resident and 122 reciprocal; and 11 Registered for a total of 686 appraisers. The total number of appraisers is up 3 from June.

The Director also addressed the number of temporary permits issued. There were 12 permits issued in June compared to 17 permits issued in May. Director Kohtz indicated that the number of temporary permits issued continues to hold steady during 2013. Finally, Director Kohtz reported 101 AMCs registered, and 2 new AMC applications have been submitted since the last meeting.

I. FINANCIAL REPORT – JULY 2013

Director Kohtz summarized the expenditures and revenues for the fiscal year end, which ended with \$281,730.53 in expenditures and \$377,675.13 in receivables. As of the end of June, expenses amount to 81 percent of the budgeted expenditures for the fiscal year.

The receipts and expenditures for June were also reviewed by the Director by line item with the Board. Director Kohtz provided details related to some specific June expenses. For the Real Property Appraiser Program, which includes both the appraiser fund and the AMC fund, a total of \$30,533.64 in expenditures and \$11,834.29 in revenues were reported. Considerations were made for expenditures for monthly obligations. Director Kohtz presented three charts outlining the Agency twelve month expenses and revenues, historic cash balance, and twelve month cash balance.

Board Member Kubert moved to accept and file the June 2013 Budget Status reports for receipts and expenditures for audit. Board Member Woodle seconded the motion. The motion carried with Terrell, Langemeier, Kubert, Woodle and Barkley voting aye.

Director Kohtz presented a cost estimate and plan for the development of the Board Member Portal. The Board Member Portal is an application for board members to access the Board's database and board meeting files through a website login. Board Member Kubert moved to approve \$7,000.00 for the development and implementation of the Board Member Portal. The motion was seconded by Board Member Terrell, and carried with Woodle, Langemeier, Terrell, Kubert and Barkley voting aye.

J. GENERAL PUBLIC COMMENTS

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

K. EDUCATION

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

1. New Continuing Education Requests

A. International Right of Way Association:

1. The Valuation of Partial Acquisitions/ 32 hours/ **C21332**

B. The Moore Group, Inc.:

1. Residential Appraisal Review/7 hours/**C21333**

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

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

2. Instructor Requests

A. International Right of Way Association:

1. David Layne- The Valuation of Partial Acquisitions/ **C21332**
2. Joel Walker- The Valuation of Partial Acquisitions/ **C21332**

B. The Moore Group, Inc.:

1. Diane Moore- Residential Appraisal Review/**C21333**
2. Bradford Moore- Residential Appraisal Review/**C21333**

Seconded by Woodle. With no further discussion, Chairman Barkley called for the vote. The motion carried with Langemeier, Terrell, Kubert, Woodle and Barkley voting aye.

L. UNFINISHED BUSINESS

1. **COUNTY APPRAISER CONTRACTS UPDATE:** Board Member Kubert indicated that the Tax Equalization and Review Commission exhibits for the 2013 Statewide Equalization Proceedings have been published, and requested that staff once again review the documents for contracts for appraisal services. Director Kohtz responded that Compliance and Licensing Specialist Weir will review the documents and present the findings to the Board when completed.
2. **NEW CREDENTIAL UPDATE:** No update.

M. NEW BUSINESS

2. **APPRAISAL FOUNDATION INVESTIGATOR I TRAINING REPORT:** Board Member Kubert and Compliance and Licensing Specialist Weir attended Investigator I training in Denver, Colorado from June 27th through June 29th. The two provided the Board a summary of their experience and topics covered. Both felt that the training was enlightening, and that it was also interesting to see how other states address similar matters the Board faces. Board Member Kubert and Compliance and Licensing Specialist Weir brought attention to a few of the topics covered at the training, including investigation practices and procedures, Standard 3 reviews, confidentially, monitoring of education courses, trainee and experience requirements, and board member orientation. Chairman Barkley thanked Board Member Kubert and Compliance and Licensing Specialist Weir for attending the training, and for their presentation.
3. **NRPAB/STATE OF NEBRASKA LEASE AGREEMENT:** Director Kohtz presented the State Facility Lease Agreement, effective July 1, 2013 through June 30, 2015, to the Board for review. Chairman Barkley asked Director Kohtz if the agency's relocation in December is considered in this agreement. Director Kohtz responded that he requested that language acknowledging the agency's relocation be included in the addendum, but was told that the State Building Division is aware of the relocation plan and no additional language is needed; the Board would just sign a new Facility Lease Agreement prior to relocation. Board Member Kubert made a motion to approve the Facility Lease Agreement between the Nebraska Real Property Appraiser Board and the State of Nebraska as presented. The motion was seconded by Board Member Terrell, and carried with Langemeier, Woodle, Terrell, Kubert and Barkley voting aye.

- 4. REQUEST FOR AMC REPRESENTATION ON 2015 LAW REWRITE COMMITTEE:** Don Kelly with the Real Estate Valuation Advocacy Association requested that he be considered for the 2015 Law Rewrite Committee as an AMC representative. Chairman Barkley asked Director Kohtz what effect would the 2015 law rewrite have on appraisal management companies. The Director responded that none of the draft language in the Real Property Appraiser Act would affect appraisal management companies, and no draft language has been developed for the Appraisal Management Company Registration Act. Director Kohtz went on to say that he intends to draft language for changes to the Appraisal Management Company Registration Act related to the complaint procedures to mirror the Real Property Appraiser Act.

Right now, the two acts have different procedures for complaints, which could lead to confusion in the future. Finally, the Director mentioned that if the Appraisal Management Company Registration Act is opened up, he would also like to make some minor changes in other areas. The Director then asked the Board if the Appraisal Management Company Act should be opened up next year, or if the Board should wait for a year to focus on the changes to the Real Property Appraiser Act. Chairman Barkley asked that Director Kohtz draft language for the potential changes to the Appraisal Management Company Registration Act, and the Board will review it next month when it reviews the draft language for the Real Property Appraiser Act. The Director indicated that he will prepare the draft changes to the Appraisal Management Company Registration Act and provide a copy to each board member prior to the August board meeting. Chairman Barkley directed Compliance and Licensing Specialist Weir to respond to Mr. Kelly, and tell him that the Board will make a decision at the August meeting. The Compliance and Licensing Specialist acknowledged her charge.

M. LEGISLATIVE REPORT

No report.

N. BOARD POLICIES AND PROCEDURES

1. BOARD POLICIES

- a. NEW BOARD POLICIES:** The Board reviewed held Board Policy 13-03, and new proposed Board Policies 13-07, 13-08, and 13-09.

The Board is still waiting on information from Diane Moore concerning proposed Board Policy 13-03; therefore, no discussion took place.

Proposed Board Policy 13-07 pertains to allocation of expenses between the AMC Fund and the Real Property Appraiser Fund. After discussion, the Board did not feel that such a policy is needed.

Discussion took place regarding the proposed Board Policy 13-08, which defines “true copy” of an appraisal report. Compliance and Licensing Specialist Weir brought attention to the disorganization of some workfiles received electronically when requested by the Board. The Board agreed that this policy should be amended to address workfiles as well. Director Kohtz was asked to change the policy name to “Definition of True Copy of Appraisal Report and Workfile,” and to assist Compliance and Licensing Specialist Weir, add “organization and presentation” to the end of the policy. The Director indicated that these changes will be made.

Proposed Board Policy 13-09 was reviewed by the Board, but no discussion took place.

Board Member Kubert moved to take the following actions on the proposed Board Policies as listed:

13-03 / Hold

13-07 / Denied

13-08 / Approved as amended

13-09 / Approved

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

- b. CURRENT BOARD POLICIES:** Discussion took place regarding Board Policy 12-05, Time Limitation on Grievances Filed with the Board. During the Appraisal Subcommittee's audit, the policy managers mentioned that enforcement of this policy is a concern if the subject of a grievance was not contacted to determine if there were any judicial proceedings related to the appraisal report in question. The Board agreed that this policy should be rewritten to address the policy managers' concerns, but in the meantime the policy should be retired. Board Member Kubert moved to retire Board Policy 12-05. The motion was seconded by Terrell, and carried with Langemeier, Woodle, Terrell, Kubert and Barkley.
- c. N.A.C. TITLE 298, CHAPTER 8, SECTION 002:** During the Appraisal Subcommittee's audit, the policy managers brought attention to Nebraska's requirement that an applicant for a reciprocal credential must hold his or her resident credential for no less than two years preceding application to the Board. According to the policy managers, as of July 1, 2013, this requirement is not compliant with the language found in Title XI of FIRREA. Director Kohtz brought attention to the Board's authority to enact such a regulation since it was not included in the statutory language. The Director went on to say that the legislature has the authority to create and enact laws, and the agency has authority to enforce statutes and develop rules and procedures to enforce statutes. The two year requirement language found in 298 NAC Chapter 8, Section 002 may be unconstitutional because it may have resulted from a delegation of law making authority to the agency. The Board agreed that a board policy should be created to address this matter.

Board Member Kubert moved to approve Board Policy 13-10, suspending the enforcement of the two year credentialing requirement for reciprocal applicants until the Board has the opportunity to revise this 298 NAC Chapter 8, Section 002. Seconded by Langemeier. The motion carried with Terrell, Woodle, Langemeier, Kubert and Barkley.

Board Member Kubert also moved to retire current Board Policy 12-09 regarding the two year credentialing requirement for reciprocal applicants. Seconded by Langemeier, and carried with Woodle, Terrell, Kubert, Langemeier and Barkley.

Finally, Board Member Kubert moved to authorize staff to make any necessary changes to the website, applications, and other documents to reflect the enactment of Board Policy 13-10. The motion was seconded by Langemeier, and carried with Woodle, Terrell, Langemeier, Kubert and Barkley.

2. **NEW REAL PROPERTY APPRAISER WALL CERTIFICATE:** The Board reviewed a new real property appraiser wall certificate developed by staff. Director Kohtz informed the Board that the current preprinted wall certificates are outdated and supply is running low. The new format presented to the Board would increase efficiency producing certificates because once the templates are created, the process would take very little time to complete. All the credentialing certificates would use the same blank certificate paper. The Director was asked to include the credential number on the new certificate. Director Kohtz responded that this will be completed. Board Member Kubert moved to approve the new real property appraiser wall certificate as amended. Board Member Langemeier seconded the motion. The motion carried with Terrell, Woodle, Kubert, Langemeier and Barkley voting aye.

P. OTHER BUSINESS

1. CONFERENCES/EDUCATION

- a. **FALL AARO CONFERENCE (OCTOBER 19-22):** Director Kohtz asked for interest in attending the Fall AARO Conference. Board Members Barkley and Kubert indicated that they would like to attend the Fall conference. Director Kohtz asked the Board if it would like Compliance and Licensing Specialist Weir to attend the conference. The board members were in agreement that the Compliance and Licensing Specialist should attend the Fall conference. Board Member Terrell made a motion to approve board members Barkley and Kubert, along with staff members Kohtz and Weir for attendance at the Fall AARO Conference. Seconded by Woodle, and carried with Kubert, Terrell, Woodle, Langemeier and Barkley.

2. APPRAISAL FOUNDATION

- a. **APPRAISER QUALIFICATIONS BOARD Q&A – JUNE 2013:** No discussion took place.
- b. **IDENTIFYING COMPARABLE PROPERTIES – SECOND EXPOSURE DRAFT:** No discussion took place.

Break from 2:48 p.m. to 3:03 p.m.

Board Member Kubert moved that the Board go back into executive session for the purpose of discussing investigations and personnel matters. The time on the meeting clock was 3:04 p.m. Board Member Woodle seconded the motion. The motion carried with Terrell, Langemeier, Kubert, Woodle and Barkley voting aye.

Break from 4:10 p.m. to 4:19 p.m.

Board Member Kubert moved to come out of executive session at 4:20 p.m. Board Member Terrell seconded the motion. The motion carried with Langemeier, Woodle, Terrell, Kubert and Barkley voting aye.

C. CONSIDERATION OF APPLICANTS

1. CREDENTIALING AS NEBRASKA REAL PROPERTY APPRAISER:

Board Member Kubert moved to take the following actions for new credentialing applicants as listed:

CR13012 / Approved to sit for exam and select three reports for Standard 3 review
CR13011R / Approved
CR13013R / Approved
CG13012R / Approved

The motion was seconded by Langemeier, and carried with Terrell, Woodle, Kubert, Langemeier and Barkley voting aye.

Board Member Kubert moved to take the following actions for active credentialing applicants as listed:

CR13006 / Hold
CG13010 / Hold
CG647 / Hold
L607 / Hold
L605 / Hold
CG631 / Hold; send advisory letter informing applicant that requirements specified in the June letter from the Board stand.

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

3. REGISTRATION AS APPRAISAL MANAGEMENT COMPANY:

Board Member Kubert moved to take the following action for the AMC applicant as listed:

NE2013012 / Hold; send letter to organization requesting clarification of previous appraisal assignments offered in Nebraska.

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

D. CONSIDERATION OF DISCIPLINARY ACTIONS/ ENFORCEMENT MATTERS:

Vice Chair Kubert moved to take the following enforcement actions:

11-12 / Hold
11-26 / Extend education deadline to September 1, 2013.
12-06 / Send appraisal reports and workfiles for Standard 3 review.
12-11 / Hold
12-20 / Select one appraisal report and workfile for Board review.
12-21 / Send letter notifying respondent to take education course of at least 15 hours, and select one appraisal report and workfile for Board review.
12-27 / Hold
12-30 / Hold
12-31 / Hold
12-32 / Dismissed without prejudice; send advisory letter.

12-33 / Hold
13-01 / Dismissed with prejudice.
13-03 / Closed
13-04 / Dismissed with prejudice.
13-05 / Hold
13-06 / File formal charges for the alleged violations of Neb. Rev. Stat. §§ 76-2237 and 76-2238 (13), (14).
13-07 / Hold
13-08 / Dismissed without prejudice; send advisory letter, which includes directed continuing education.
13-09 / File formal charges for the alleged violations of Neb. Rev. Stat. §§ 76-2237 and 76-2238 (4), (10), (13), (14), (16).
13-10 / Send appraisal report and workfile for Standard 3 review.
13-11 / Dismissed without prejudice.
13-13 / Offer informal meeting.
13-14 / Hold
13-15 / Hold
13-16 / Offer informal meeting.
13-17 / Dismissed without prejudice; send advisory letter.
13-18 / Reoffer informal meeting.
13-19 / Reoffer informal meeting.
13-20 / Request true copy of appraisal report and workfile in paper format and send for Standard 3 review. Director authorized to negotiate fee for review.
13-22 / Send appraisal report and workfile for Standard 3 review.

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

Board Member Woodle moved to take the following enforcement actions:

12-24 / Hold; Consent Agreement signed by Board Chair.
12-29 / Hold
13-21 / Send appraisal report and workfile for Standard 3 review.

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

E. CONSIDERATION OF OTHER EXECUTIVE SESSION ITEMS

The Board discussed an organization that appears to be providing appraisal services in the State of Nebraska without any employees first obtaining proper credentialing by the Board. The organization was assigned identification number I13-8.

The Board discussed a solicitation received by a Nebraska credentialed appraiser requesting that a Nebraska appraiser sign off on appraisal reports created by an uncredentialed individual located in another jurisdiction. The solicitation was sent through a third party virtual assistant. The Board chose to not take any action concerning this matter.

The Board discussed personnel matters.

The Board discussed the Director's annual performance review.

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

I12-1 / Hold

I12-5 / Hold

I13-4 / Hold

I13-5 / Hold

I13-6 / Hold

I13-7 / Hold

I13-9 / Send cease and desist letter and notify real estate commission

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

P. NEXT MEETING DATE – AUGUST 22, 2013, LOWER LEVEL “B” NSOB

Q. ADJOURNMENT

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

At 4:30 p.m. Chairman Barkley adjourned the July 18, 2013 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Tyler N. Kohtz
Director

These minutes were available for public inspection on July 29, 2013, in compliance with Nebraska Statute §84-1413 (5).