

REAL PROPERTY APPRAISER BOARD
Conference Room "A", Lower Level
NEBRASKA STATE OFFICE BUILDING
301 CENTENNIAL MALL SOUTH, LINCOLN, NE

May 23, 2013 Meeting Minutes

A. OPENING

Chairman Philip Barkley called to order the May 23, 2013 meeting of the Nebraska Real Property Appraiser Board at 9:00 a.m., in conference room A 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 May 21, 2013 edition of the *Lincoln Journal Star*, 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 Langemeier moved to adopt the Agenda as printed. Board Member Terrell seconded the motion. With no further discussion, the motion carried with Woodle, Langemeier, Kubert, Terrell 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 Woodle seconded the motion. The motion carried with Langemeier, Terrell, Kubert, Woodle and Barkley voting aye.

Break from 10:17 a.m. to 10:26 a.m.

Board Member Kubert moved to come out of executive session at 11:50 a.m. Board Member Langemeier seconded the motion. The motion carried with Terrell, Woodle, Langemeier, Kubert and Barkley voting aye.

Break from 11:50 a.m. to 12:00 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 was the only public member in attendance. The Chairman commented on the office remodel, and indicated that the new layout will create a more efficient working environment for staff. Chairman Barkley also thanked Compliance and Licensing Specialist Weir and Staff Assistant Parris for their hard work while Director Kohtz was away from the office for the past two weeks.

G. APPROVAL OF THE MINUTES FROM APRIL 2013

Chairman Barkley asked for any additions or corrections to the April 18, 2013 minutes. Board Member Kubert indicated that the minutes should reflect that he abstained from voting for applicant CR13003. Director Kohtz stated that the error will be corrected. Board Member Kubert also asked that the language "until the terms of the Consent Agreement are fully completed" be changed to "for one year" in the action for investigation 12-11 under section "D." Director Kohtz indicated that this will also be corrected. Board Member Langemeier moved to adopt the minutes as amended. Board Member Kubert seconded the motion. The motion carried with Terrell, Woodle, Langemeier, Kubert and Barkley voting aye.

H. DIRECTOR'S REPORT

Director Kohtz presented ten charts outlining the number of appraisers and AMCs as of May 23, 2013. The Director summarized each chart and reported the number of appraisers as follows: 83 total Licensed, 76 resident and 7 reciprocal; 211 total Certified Residential, 174 resident and 37 reciprocal; 375 total Certified General, 255 resident and 120 reciprocal; and 11 Registered for a total of 680 appraisers. The total number of appraisers is up 4 from April.

The Director also addressed the number of temporary permits issued. There were 11 permits issued in April compared to 6 permits issued in March. Director Kohtz indicated that the number of temporary permits issued should hold steady during 2013. Finally, Director Kohtz reported 98 AMCs registered, and 2 new AMC applications have been submitted since the last meeting.

Director Kohtz also informed the Board that the State Building Division has offered the Board an opportunity to relocate to the 5th floor of the Executive Building. The Board would be sharing the floor with the Nebraska Real Estate Commission. The Director and Board Members Barkley and Kubert toured the space and met with Jason Day with Buildings regarding the location. Director Kohtz indicated that he was pleased with the amount of space and the potential. State Building Division will be doing some remodeling on the floor, but anticipates that the Board will be able to move into the new location as early as November or December of this year.

I. FINANCIAL REPORT – MAY 2013

The receipts and expenditures for April were reviewed by the Director by line item with the Board. For the Real Property Appraiser Program, which includes both the appraiser fund and the AMC fund, a total of \$23,703.37 in expenditures and \$11,657.87 in receivables were reported. As of the end of April, expenses amount to 62 percent of the budgeted expenditures for the fiscal year; 83 percent of the fiscal year has passed. 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.

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

Database Enhancement Project – AMC Interface: No discussion

Purchase Card: No discussion

Director Kohtz brought attention to the need for an agency camera. Typically, board members or board staff is expected to provide a camera when needed. In the future the Board intends to begin a quarterly newsletter and a Facebook page, and pictures will be a focus of both. In addition, a camera will be a useful investigative tool when needed. Chairman Barkley asked the Director to bring an example and projected costs of a camera to the June meeting.

J. GENERAL PUBLIC COMMENTS

Chairman Barkley asked for any public comments. Diane Moore appeared before the Board to discuss education. Ms. Moore began by stating that more people are enrolling in courses, which is a good sign for the industry. Chairman Barkley expressed his satisfaction with this report. Ms. Moore then wanted to address the definition of instructor as written in proposed Board Policy 13-03. Ms. Moore feels that the proposed definition takes control away from the instructor. She offered her own drafted definition for the Board to review. Chairman Barkley thanked Ms. Moore for her time, and informed her that the Board will take her comments and drafted definition into consideration.

K. EDUCATION

Board Member Kubert moved to approve the following new qualifying education course as listed:

1. AQB/CAP Core Curriculum Requests

A. American Society of Farm Managers and Rural Appraisers, Inc.

- 1. General Market Analysis and Highest and Best Use/30 hours/CG004**

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

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

2. New Continuing Education Requests

A. Appraisal Institute, Chicago IL:

- 1. Income Approach for Residential Appraisers/ 7 hours / C21317**

B. McKissock, LP Warren, PA:

- 1. Modern Building Concepts / 6 hours/ C21316-I**

C. American Society of Farm Managers and Rural Appraisers, Inc.:

- 1. Minerals Appraisal Seminar/8 hours/C21319**
- 2. Rural Case Studies/ 8 hours/ C21318**
- 3. Regression Analysis/ 8 hours/ C21320**

3. Continuing Education Renewal Requests

A. Appraisal Institute, Chicago, IL:

- 1. Online Real Estate Appraisal Operations/4 hours/ C2834-I**
- 2. Online Residential Site Valuation and Cost Approach/14 hours/C2838-I**
- 3. Online Residential Report Writing and Case Studies/14 hours/C2754-I**

B. American Society of Farm Managers and Rural Appraisers, Inc:

- 1. Requirements of UASFLA—The Yellow Book/22 hours/C2808**

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

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

1. Instructor Requests

A. Appraisal Institute, Chicago, IL:

1. Sandra K. Adomatis- Online Real Estate Appraisal Operations and Online Residential Report Writing and Case Studies /**C2834-I and C2754-I**
2. Arlen Mills- Online Residential Site Valuation and Cost Approach/**C2838-I**
3. Richard DuBay- Income Approach for Residential Appraisers/**C21317**

B. McKissock, LP, Warren, PA:

1. Dan Bradley- Modern Green Building Concepts/ **C21316-I**
2. Robert McClelland- Disciplinary Cases: What Not To Do and Land and Site Valuation/**C21248-I and C21249-I**

C. ASFMRA:

1. Richard Gilmore – Requirements of UASFLA—The Yellow Book /**C2808**
2. John Widdoss- Requirements of UASFLA—The Yellow Book and Minerals Appraisal Seminar/**C2808 and C21319**
3. Gregory Snyder- General Market Analysis and Highest and Best Use/**CG004**
4. Stephen Stephens- Regression Analysis Uses in Appraisal/**C21320**
5. LeeAnn Moss-Rural Case Studies 1/**C21318**

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

L. UNFINISHED BUSINESS

1. COUNTY APPRAISER CONTRACTS UPDATE: No update.

2. NEW CREDENTIAL UPDATE: No update.

M. NEW BUSINESS

1. CEASE AND DESIST AUTHORITY: No discussion.

2. FBI FINGERPRINT AUDIT: Director Kohtz presented the FBI Fingerprint Audit Report to the Board for review, and indicated that the report reflects the summary provided during the April meeting. The only “out of compliance” item found in the report was located on page 4 of the report. The after-hours cleaning crew has unescorted access to the office with access to the fingerprint files. Director Kohtz indicated that staff will begin locking up the AMC files.

3. ASC RESPONSE REGARDING RECIPROCAL CREDENTIALING: Director Kohtz asked a series of questions to the ASC regarding reciprocity requirements that the Board has developed during the past few months. The Director summarized the responses received, and indicated that according to the ASC, the state of residence is not relevant when a credential is issued in accordance with AQB criteria and Title XI. In other words, it does not matter if the appraiser holds an active credential in his or her resident state, or if the appraiser holds another credential at all after a reciprocal credential is awarded. The reciprocal process is nothing more than another means to become credentialed. Director Kohtz also reported that an appraiser’s current residency does not affect his or her credential. The appraiser should be required to meet the same requirements as those in place when the credential was awarded. If an appraiser credentialed through reciprocity moves to Nebraska, he or she should still not have to meet continuing education because those

credentialed through reciprocity do not have to meet continuing education requirements in Nebraska.

The Director brought attention to conflicts between the ASC's views and the Nebraska Real Property Appraiser Act. Director Kohtz followed by saying that the ASC's position is too relaxed to effectively evaluate those wishing to become credentialed in Nebraska through reciprocity. The Director indicated that he is working through the Act and the ASC Policy Statements to reach a balance between compliance with the ASC Policies, and ensuring that reciprocal applicants meet the Board's standards for issuance of a credential in Nebraska. One change recommended by the Director is to require that all Nebraska reciprocal credential holders meet the continuing education requirements of this state. A brief discussion took place regarding the merits of this change.

4. **2013 STRATEGIC PLANNING:** A discussion took place regarding the 2013 Strategic Planning Meeting. Due to scheduling conflicts, the 2013 Strategic Planning Meeting will be moved to June 12, 2013.
5. **BOARD MEMBER WIFI ACCESS:** Before the April meeting, Board Member Terrell inquired about WiFi access in the state office building. The CIO will grant temporary access in the state office building, but permanent access can be granted as well at a cost. Director Kohtz asked the Board if there was any interest in permanent WiFi access for each board member. The board members weighed the pros and cons, and decided that permanent access for board members is not needed at the present time. Temporary access will be requested each month for Board Member Terrell, and if he sees benefits in having permanent access, he will notify the Director.
6. **BROKERS PRICE OPINION LEGISLATION:** No discussion.
7. **2015 LAW REWRITE COMMITTEE:** Director Kohtz indicated that he hopes to have the first draft of the 2015 law rewrite ready for Board review in July. The Director reported that during strategic planning last year the Board discussed putting a committee together to review and provide input for the law rewrite. Director Kohtz asked for the Board's input regarding this committee. Chairman Barkley asked that this item be put on the agenda for discussion at the 2013 strategic planning meeting.
8. **CERTIFICATION OF STANDARD 3 REVIEW FORMS:** A discussion took place regarding the certification found in the Standard 3 Review Forms. Chairman Barkley indicated that the certification in the older forms are dated, while the newer forms follow the USPAP certification example. Director Kohtz stated that the certification for the older forms will be updated. Compliance and Licensing Specialist Weir has been charged with this task.
9. **ASC JULY AUDIT PREPARATION:** Director Kohtz informed the Board that he has received an extensive request for information from the ASC that staff will begin working on next week. Chairman Barkley asked that this item be kept on the agenda for next month's meeting.
10. **RECIPROCITY AND CONTINUING EDUCATION:** No discussion.
11. **PERFORMANCE REVIEW:** No discussion.

N. LEGISLATIVE REPORT

Director Kohtz provided an update to the Board concerning the legislative bills the agency has been tracking; there has been no action on the majority of the bills. Final reading for LB97 took place on May 21, 2013, and a new amendment was added to LB348. The Director reported that the language included in the amendment was of no interest to the Board.

O. BOARD POLICIES AND PROCEDURES

1. BOARD POLICIES

- a. **NEW BOARD POLICIES:** The Board discussed proposed Board Policies 13-03, 13-04, 13-05, 13-06, and 13-07. Due to the information provided by Diane Moore during the general public comments, the Board decided to re-evaluate the definition of instructor, Board Policy 13-03, and review it again at the meeting in June. A discussion took place regarding 13-04 and 13-05. The only change requested is that “Act” is shown in 13-04 as “Nebraska Real Property Appraiser Act,” and “Act” is shown in 13-05 as “Nebraska Appraisal Management Company Registration Act.” Director Kohtz informed the Board that these changes will be made. A brief discussion took place regarding Board Policies 13-06 and 13-07. Due to previous Board conversations, these policies are not applicable.

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

- 13-03 / Hold**
- 13-04 / Approved as amended**
- 13-05 / Approved as amended**
- 13-06 / Denied**
- 13-07 / Denied**

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

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

2. APPLICANT BOARD REVIEW FORMS

- a. **RESIDENTIAL APPLICATION:** The Board reviewed the finalized version.
- b. **RECIPROCAL APPLICANT:** The Board reviewed the finalized version.

O. OTHER BUSINESS

1. CONFERENCES/EDUCATION

- a. **JOYA 15-HOUR USPAP:** Director Kohtz requested approval for Compliance and Licensing Specialist Weir to attend the 15-Hour USPAP course held by The Moore Group on June 10th and 11th of 2013.

Board Member Kubert moved to approve Compliance and Licensing Specialist Weir for registration in the 15-Hour USPAP course held by The Moore Group on June 10th through 11th. The motion was seconded by Langemeier. The motion carried with Terrell, Woodle, Kubert, Langemeier and Barkley voting aye.

2. APPRAISAL FOUNDATION

- a. **2013 COLLECTION AND VERIFICATION OF SALES DATA DISCUSSION DRAFT:** No discussion took place.

Board Member Kubert 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 1:25 p.m. Board Member Langemeier seconded the motion. The motion carried with Woodle, Terrell, Langemeier, Kubert and Barkley voting aye.

Board Member Kubert moved to come out of executive session at 2:25 p.m. Board Member Langemeier 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 Woodle moved to take the following actions for credentialing applicants as listed:

CG13010 / Approved to sit for exam and select three appraisal reports for review
CR13003 / Invite to advisory meeting

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

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

T13001 / Approved as Trainee Real Property Appraiser
T13002 / Approved as Trainee Real Property Appraiser
CG13009R / Approved for credentialing as Certified General appraiser

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

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

CR13006 / Invite to advisory meeting
CR400 / Invite to advisory meeting
CG647 / Hold
CR401 / Invite to advisory meeting
L607 / Hold; 1000 hours of experience approved. Applicant to complete additional 1000 hours of experience after May 23, 2013, and submit log for selection of three appraisal reports to be sent for review at applicant's expense.
L605 / Hold
CG631 / Invite to advisory meeting

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

3. REGISTRATION AS APPRAISAL MANAGEMENT COMPANY:

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

NE2013008 / Approved
NE2013009 / Approved
NE2013011 / Approved

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

D. CONSIDERATION OF DISCIPLINARY ACTIONS/ ENFORCEMENT MATTERS:

Board Member Woodle moved to take the following enforcement actions as listed:

12-24 / Offer Consent Agreement requiring Respondent to complete a 15-Hour USPAP course, a General Appraiser Income course of not less than 15 hours, and pay \$750.00 for costs associated with investigation within 60 days of execution of agreement. Respondent was also ordered to submit a quarterly log for one year beginning three months after the execution of the agreement, and will be responsible for any costs associated with any appraisal reports selected from the logs and sent for Standard 3 review.

12-29 / Offer Consent Agreement requiring Respondent to complete a 15-Hour USPAP course, a General Appraiser Income course of not less than 15 hours, and pay \$750.00 for costs associated with investigation within 60 days of execution of agreement. Respondent was also ordered to submit a quarterly log for one year beginning three months after the execution of the agreement, and shall be responsible for any costs associated with any appraisal reports selected from the logs and sent for Standard 3 review.

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

Vice Chair Kubert moved to take the following enforcement actions:

11-03 / Hold

11-12 / Hold

11-21 / Dismissed without prejudice; send advisory letter

11-22 / Dismissed without prejudice

11-26 / Hold

12-06 / Hold

12-11 / Hold

12-14 / Dismissed without prejudice; send advisory letter

12-20 / Hold

12-21 / Hold

12-27 / Hold

12-30 / File formal charges for the alleged violation of Neb. Rev. Stat. § 76-3203 (4)

12-31 / Hold

12-32 / Hold

12-33 / File formal charges for the alleged violation of Neb. Rev. Stat. § 76-3215 (1)

13-01 / Hold

13-03 / Offer Consent Agreement requiring that Respondent voluntarily downgrades credential from Certified Residential to Licensed. Include language stating that this Consent Agreement is not considered to be disciplinary action against the Respondent and will not be reported to the ASC as such.

13-04 / Hold

13-05 / File formal charges for the alleged violation of Neb. Rev. Stat. § 76-3215 (1)

- 13-06 / Offer Consent Agreement requiring Respondent to complete a 15-Hour USPAP course, a 15-Hour Advanced Residential Applications and Case Studies course, a 15-Hour Residential Report Writing and Case Studies course, and pay \$750.00 for costs associated with investigation. Respondent's credential shall be suspended for 90 days, or until all education is complete, whichever date is later. Respondent shall also submit a quarterly log for one year beginning three months after the execution of the Consent Agreement, and shall be responsible for any costs associated with any appraisal reports selected from the logs and sent for Standard 3 review. Standard 3 reviews will be conducted on at least two appraisal reports selected from each log.**
- 13-07 / Offer informal meeting**
- 13-08 / Offer informal meeting**
- 13-09 / Offer Consent Agreement requiring Respondent to complete a 15-Hour USPAP course, a 15-Hour Advanced Residential Applications and Case Studies course, a 15-Hour Residential Report Writing and Case Studies course, and pay \$750.00 for costs associated with investigation. Respondent's credential shall be suspended for 90 days, or until all education is complete, whichever date is later. Respondent shall also submit a quarterly log for one year beginning three months after the execution of the Consent Agreement, and shall be responsible for any costs associated with any appraisal reports selected from the logs and sent for Standard 3 review. Standard 3 reviews will be conducted on at least two appraisal reports selected from each log.**
- 13-10 / Offer informal meeting**
- 13-11 / Send appraisal report and workfile for Standard 3 review**
- 13-12 / Send appraisal report and workfile for Standard 3 review**
- 13-13 / Send appraisal report and workfile for Standard 3 review**
- 13-14 / Open new grievance and offer informal meeting**
- 13-15 / Open new grievance and offer informal meeting**
- 13-16 / Open new grievance and request true copy of appraisal report and workfile. Send appraisal report and workfile for Standard 3 review.**

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

E. CONSIDERATION OF OTHER EXECUTIVE SESSION ITEMS

A grievance, assigned inquiry number I13-3 by board staff, filed against a non-credential holder was discussed by the Board. No violations of the Real Property Appraiser Act were found; and therefore, the Board agreed that no investigation is needed.

The Board discussed individuals and organizations identified as providing appraisal services to Nebraska counties without first obtaining proper credentialing by the Board.

The Board discussed appraiser responses and reactions to a presentation recently given by a Nebraska credentialed appraiser.

The Board discussed the response received from organization concerning inquiry I12-12.

The Board discussed the response received from organization concerning inquiry I13-2.

The Board discussed personnel matters.

The Board discussed sensitive procedures concerning specific Nebraska credentialed appraisers.

The Board discussed the processes and procedures for 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**
- I13-3 / Close**
- Item 4 / Hold**
- Item 5 / Hold**
- Item 6 / Hold**
- Item 7 / Hold**
- Item 8 / Hold**
- Item 9 / Hold**
- I12-12 / Close; Send advisory letter**
- I13-2 / Close**
- Item 12 / Authorize Director Kohtz to pursue outside counsel and enter into a contract for legal services concerning pending legal matters**

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

P. NEXT MEETING DATE – JUNE 12, 2013, LOWER LEVEL “A” NSOB

Q. ADJOURNMENT

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

At 2:42 p.m. Chairman Barkley adjourned the May 23, 2013 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Tyler N. Kohtz
Director

These minutes were available for public inspection on June 7, 2013, in compliance with Nebraska Statute §84-1413(5).