

**REAL PROPERTY APPRAISER BOARD
LIQUOR CONTROL HEARING ROOM
NEBRASKA STATE OFFICE BUILDING, 5TH FLOOR
301 CENTENNIAL MALL SOUTH, LINCOLN, NE
December 20, 2007**

OPENING

Chair Sheila Newell called to order the December 20, 2007, meeting of the Nebraska Real Property Appraiser Board at 9:04 a.m., in the Liquor Control Hearing Room of the Nebraska State Office Building, 5th Floor, 301 Centennial Mall South, Lincoln, Nebraska.

NOTICE OF MEETING

Chair Newell announced notice of the meeting was duly given, posted, published and tendered in compliance with the Open Meetings Act, and all Board members received notice simultaneously by e-mail. The agenda was kept current in the Nebraska Real Property Appraiser Board Office and on the Board's website. Materials generally used by the Board for this meeting were available in the public folder for inspection by the public and in accordance with the Open Meetings Act. A copy of the Open Meetings Act was available for the duration of the meeting. For the record, Board Members Sheila Newell, Mathew 'Joe' Wilson, Timothy Kalkowski, James Bain, and R. Gregg Mitchell were present. Director Kitty Policky was also present.

ADOPTION OF THE AGENDA

Chairman Newell reminded those present at 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 Mitchell moved to adopt the Agenda as printed. Board Member Bain seconded. The motion carried with Kalkowski, Mitchell, Wilson, Bain and Newell voting aye.

WELCOME GUESTS

Chair Newell welcomed guests Brad Moore, Diane Moore and Cay Lacey and asked them to please sign the guest log.

APPROVAL OF THE MINUTES FROM NOVEMBER 15, 2007

Chair Newell asked for any additions or corrections to the November 15, 2007 minutes. Board Member Mitchell moved to approve the minutes as presented and Bain seconded the motion. The motion carried with Mitchell, Wilson, Bain, Kalkowski, and Newell voting aye.

CHAIR REPORT

Chair Newell reviewed the highlights of the goals accomplished as a member of the Board and continued with a fond overview of the journey of both setbacks and achievements and thanked members of the Board, the public and the Director for their support during her term.

DIRECTOR'S REPORT

1. Board appointment:

Director Policky introduced Mr. Bradford Moore as the newly appointment member by the Governor to the Appraiser Board. Mr. Moore will take Sheila Newell's position as the Broker representative. All present recognized Mr. Moore with congratulations and support.

2. Application of credential:

Director Policky presented to the Board the criteria for 2008 applicants and guidelines for completing the requirements for the new criteria. Director Policky requested that Board members review the material which will be uploaded to the website for public and applicant information. Citing that other than an applicant for the Registered and Trainee credential, there are no applicants who will qualify during the first several months of 2008 for a new credential.

Board Member Kalkowski addressed the Scope of Practice under the 2008 criteria. Director Policky explained that the Scope of Practice is extracted word for word from the Real Property Appraiser Act and each definition cites the statute. Chairman Newell explained that the Scope of Practice addressed exactly what an appraiser is allowed to do. If the definition does not address a specific type of property then that credential holder cannot perform the appraisal assignment without supervision. Confusion arises from the fact that appraisers were performing appraisals that by statute, they were not permitted to perform. Board Member Bain continued with the discussion addressing the confusion by appraisers trying to figure out what appraisals they can perform. Vice Chair Wilson recommended putting under each Scope of Practice for each credential what an appraiser cannot perform. Board Member Mitchell reiterated the request emphasizing that the format be simple and address clearly what each credential is allowed to do and what each credential is not allowed to do.

Cay Lacey, certified general appraiser, emphasized the need to make appraisers aware of the consequences of performing appraisals outside the Scope of Practice.

Chair Newell asked that the subject of the Scope of Practice to include assignments an appraiser cannot accept be placed on the January agenda under Unfinished Business for discussion.

3. AMP compliance:

This office was notified by Dr. Larry Fabrey that AMP was denied their exam equivalency submission but notified this office that they had made application to administer the AQB approved examinations for the federally recognized credentials. That application process is complete and AMP is approved to administer the new examination and emphasized that the applicants who participate in the new examination process would not receive results for probably three to six months after completing the examinations. Director Policky informed the Board that the request to AMP to retain the Registered examination has been confirmed. For 2007 applicants who submitted their education and requested the appropriate exam by the end of this year, AMP had stated that there were no examination dates available to applicants at the time in Nebraska. An applicant could continue to contact the testing site for available times as they may open or perhaps travel to a neighboring state such as Iowa, South Dakota or Wyoming to sit for the exam.

4. Attorney General's appointment:

Director Policky reported that the Attorney General's still had not made an appointment to represent the Board in conflict of interest cases for disciplinary action.

RECEIPTS AND EXPENDITURES REPORT – NOVEMBER

The receipts and expenditures for November were reviewed by the Director by line item with Board discussion. Director Policky began by reporting that she received notice from the DAS Budget Office representative Gary Bush that our request for an increase in appropriation was approved at the meeting of the committee representing the Governor's office for the amount of \$51,500.

Board Member Kalkowski asked for clarification of the monies collected and dispersed without use of the general fund or appropriation procedures. Policky emphasized the response from legal counsel William Blake stating there was no alternative to the collection of fees and deposit to the State Treasurer's office to the General Fund. All funds collect, by statute, must be deposited to the State Treasurer's office and no alternative was available to collect and pay contract reviewers. Kalkowski continued by commenting on the amount collected by each applicant was significantly lower than the cost to process. Policky cited that the application process could not possibly be covered completely by application fees as an application fee would exceed the \$1,500 amount and subject to reviews. Again, Kalkowski referred to the disparity and how to ease the differences. Policky referred to the fact that this situation would probably not take place again in the history of this Board but that the drastic changes imposed by the Federal Subcommittee had taken administration of credentials to a whole new level. Citing the past application process as having been successful and in balance, Policky stated that the process would again turn to a normal procedure of application and that monies collected and dispersed to balance. To keep the balance in check, the means of changing the resubmission fee could be altered but that resubmission fees were addressed in the rules and regulations and changes would be submitted just as soon as the changes to the statutes had been completed.

Board Member Mitchell moved to accept and file the November 2007 Receipts and Expenditures report for audit. Vice Chair Wilson seconded. The motion carried with Wilson, Bain, Kalkowski, Mitchell, and Newell voting aye.

UNFINISHED BUSINESS

Rules and Regulations amendments

Chair Newell stated the Board needs to consider all changes that need to be made to the rules and regulations as it is time to set into motion the procedures for changes and requests for legislation for statute changes.

NEW BUSINESS

1. 2008-09 Standard 3 Review Form adoption:

Chair Newell with the assistance of Cay Lacey, a certified AQB USPAP instructor, amended the 2006 Standard 3 Review form to emphasize the report and not the appraiser by taking out all reference to the appraiser in the review form. The changes emphasize reviewing the report and not the appraiser. The control sheet utilized by the Board will be inserted to track which report is being reviewed. The page is strictly for use by the Board. Moved by Vice Chairman Wilson and seconded by Board Member Bain to adopt the 2008-09 Standard 3 Review Form as presented. The motion carried with Bain, Kalkowski, Mitchell, Wilson and Newell voting aye.

2. Adoption 2008-09 USPAP

2008-09 USPAP effective from January 1, 2008 to December 31, 2009 was formally adopted. Vice Chairman Wilson moved to adopt the *2008-2009 Uniform Standards of Professional Appraisal Practice*. Board Member Bain seconded the motion. Motion carried with Kalkowski, Mitchell, Wilson, Bain and Newell voting aye.

3. Appraiser Act changes:

Chair Newell reported changes to be made to the Nebraska Real Property Appraiser Act. Changes such as reference to prior criteria; page 1, Section 76-2207 references to the License credential as qualifying as a supervisor; page 2, 76-2213.01 USPAP amended to reference the current edition changing 2006 to 2008; took out all references stating “prior to January 1, 2008” and inserting the word “effective”; added to 76-2229 “no person other than a trainee real property appraiser shall assume the title . . .”; page 22, removed for non-resident reference to location; temporary fees were more clearly stated to emphasize the \$100 application fee and \$50 pocket card fee, the total amount cannot exceed \$150; and all references to 2006 USPAP to 2008 USPAP are some of the changes to be addressed. The bill writers will change to meet legal requirements and maintain consistency. The final product will of course be the results of the changes made by the bill writers.

Chair Newell requested comments concerning the structure of the fees submitted for application. Director Policky emphasized that a processing fee or an additional review fee for work product would be a fairer means of collecting for the different types of reviews. Board Member Mitchell discussed the alternative means of collecting for the review costs and the alternatives to ease the burden. Director Policky references the collection variables available in the Rules and Regulations and suggested the Appraiser Act should not address such costs.

Board Member Mitchell further discussed the possibility of a two-year staggered renewal cycle instead of the yearly renewal cycle which is presently in place. Each December a substantial portion of the month is spent sending the new pocket card to the many banks and financial institutions. Mitchell recommended this two year cycle to ease the burden of office support staff and the appraiser. Chair Newell reminded the members that for new credential holders their education cycle begins prior or subsequent to 185 days or more of the credentialing year. USPAP is due once in a two-year cycle. Board Member Mitchell cited the prospects of renewing on a staggered schedule and requested consideration for future renewal procedures. Citing time as an element, Mitchell requested we table the discussion until the new criteria and more immediate considerations have been implemented. Chair Newell continued with a last change to the statutes in 76-2244 addressing the principle place of business to eliminate “a non-resident does not maintain a local business address”.

Board took a break at 10:25 a.m.

Board meeting reconvened at 10:40 a.m.

Chair Newell continued with the discussion of changes to the statutes. The next change addresses 76-2221 Act; exemptions (1) & (8), to specifically indicate the status as an exemption versus the status of an exempt employee as described using their credential. The Board has determined that when you use your credential as an exempt employee you fall under USPAP and the Appraiser Act. If you are employed as an exemption and not using your

credential, you remain exempt and do not come under USPAP or the Appraiser Act but anytime you sign using a credentialing number, you now fall under USPAP and the Appraiser Act. By fulfilling the role of an exemption, a prominent disclaimer must be made visible stating: “This opinion of value may not meet minimum USPAP standards and is not governed by the Real Property Appraiser Act,” “The change is necessary to define the role of an exemption.

Chair Newell asked if the changes could be forwarded to Senator Langemeier and forwarded to the bill drafters to be ready for the upcoming Legislative session. Vice Chair Wilson moved to accept the changes to the Act. Board Member Mitchell seconded the motion. Motion carried with Mitchell, Wilson, Bain, Kalkowski and Newell voting aye.

4. Steve Shultz/candidate:

Steve Shultz presented handouts to the Board and asked for immediate clarification from the Board on his third issue and that is a request to have his completed pre-requisite course of *Basic Appraisal* that had been completed by correspondence accepted for his pending application. The first issue is clarification on how/when a private citizen (a non-credentialed appraiser) in the State of Nebraska is restricted by state law in performing valuation research and/or services. The second issue is feedback and input regarding the merits and potential strategies to get UNO Appraisal Courses Approved by the NRPAB. Mr. Shultz asked that the Board only answer the third issue today.

Chair Newell asked for clarification from Mr. Shultz on the first issue. Mr. Shultz requested the Board accept the correspondence course to fulfill the pre-requisite requirement for the License credential and mentioned that the course had been denied by the current Director. Chair Newell stated that a decision would be made under Applicants.

Chair Newell brought to Mr. Schultz’s attention the website of the guidelines at www.appraisalfoundation.org. The 2008 AQB criteria for education must follow the matrix to be approved. All pre-requisite education must be completed in a classroom setting. The notice is in bold type and prominently displayed on the education listing on the website. Newell thanked Mr. Schultz for his attendance.

5. Experience Policy for Case Studies:

Chair Newell references from the Appraisal Foundation’s book “The Real Property Appraiser Qualification Criteria” citing that individuals have stated they could do a case study without supervision for experience credit. Under Generic Experience Criteria (D.): “There may not be a client in order for an appraisal to qualify for experience, but experience gained for work without a client cannot exceed 50% of the total experience requirement. Case Studies or practicum courses that are approved by the AQB Course Approval Program can satisfy the non-client experience requirement. A case study or practicum course must include the generally applicable methods of appraisal practice for the credential category. Content includes, but is not limited to: requiring the student to produce credible appraisals that utilize an actual subject property; performing actual market research, containing actual sales analysis; and applying and reporting the applicable appraisal approaches in conformity with USPAP. Assignments must require actual problem solving skills for a variety of property types for the credential category. Credit shall be gained for the actual classroom hours of instruction, and hours of documented research and analysis as awarded from the course

approval process.” An applicant had questions referring to hypothetical cases without her supervisor reviewing the report. Chair Newell cited the problem to encounter with hypothetical cases. Although the issue had been previously addressed, she cited the need to set policy addressing the fact that all reports completed under a hypothetical condition and case studies must be completed with a supervisor. Chair Newell suggests that case studies must be in a classroom setting. Although case studies can be accepted, the credit will be given only when the individual has a supervisor to review the experience and sign for the experience credit. Case studies are accepted in a classroom setting for credit.

Board Member Mitchell analyzed the situation as performing a hypothetical is considered practicing without a credential. Yes, an individual can do hypothetical work but the work must be under a supervisory appraiser or they’re practicing outside their credential. To make the concept easy if the assignment falls under their Scope of Practice it is legal, if they perform assignments out of their Scope of Practice, it must be supervised.

Chair Newell emphasized that as of January 1, 2008, any experience outside their Scope of Practice must be supervised.

Board Member Mitchell emphasized the specific Scope of Practice makes developing reports without supervisory assistance, whether it is as a demonstration report or submitted as experience, a violation of the Act.

Vice Chair Wilson moved that to qualify as experience credit, case studies or practicum courses must be completed in a Board approved classroom setting with a Board approved instructor. Board Member Bain seconded the motion. The motion carried with Wilson, Bain, Kalkowski, Mitchell and Newell voting aye.

Board took a break at 11:55 a.m.

Board meeting reconvened at 12:10 p.m.

6. Experience Policy for Mass Appraisal:

The consensus of the Board is that all mass appraisal experience must be USPAP compliant under Standard 1, 2 or Standard 6. Mass appraisal logs have been rejected because of the lack of value as required by the policy set requiring that 25% of the log demonstrate value and not merely data collection or clerical input such as data entry. The Board needs to pursue the quality of the logs submitted and will further review the need to address the mass appraisal experience submissions. Chair Newell read a message from Ben Henson, ASC Director, and letters to other states who accepted mass appraisal experience who have been reviewed by the ASC. Brad Moore read from the AQB brown book that all experience must be USPAP compliant. Chair Newell recommended that a committee be formed to address this sensitive issue. Vice Chair Wilson, Director Policky and Brad Moore will try to meet with several County Assessors to discuss this policy.

7. Application for Trainee Credential/Supervisor

Director Policky presented to the Board the application with suggested changes that had been previously submitted for the Appraiser Trainee/Supervisor submission form. An appraiser trainee will be required to submit the form to earn credit. Although a trainee may have more

than one supervisor, a supervisor may have only three trainees and a supervisor must be a certified appraiser in good standing. Board Member Bain moved to adopt the Trainee Credential/Supervisor registration form as presented. Board Member Mitchell seconded. The motion carried with Bain, Kalkowski, Mitchell, Wilson and Newell voting aye.

GENERAL PUBLIC COMMENTS

There were no public comments.

EDUCATION

Vice Chair Wilson moved to approve the following pre-requisite course and instructor:

The Moore Group – *“Statistics, Modeling & Finance”* – 15 hours – CR/CG009

Instructor: Bradford Moore

Vice Chair Wilson moved to approve the following continuing education seminars and instructors:

Appraisal Institute:

“An Introduction to Valuing Green Buildings” – 7 hours – C2718

Instructor: Timothy Lowe

“Analytics With The Site to do Business” – 7 hours – C2705

Instructor: Richard Borgest II

“Subdivision Valuation: A Comprehensive Guide . . .” – 7 hrs. – C2318

Instructor: Don Emerson, Jr.

American Society of Farm Managers & Rural Appraisers:

“Appraising Rural Residential Properties” – C9508 – 16 hours

Instructor: Application indicates to be determined.

Hold the following seminars until January as the reviews are not complete:

McKissock:

On-Line – *“The Evolution of Finance and the Mortgage Market”* – 4 hours – C2715-I

Instructor: Alan Simmons

On-Line – *“Mortgage Fraud: Protect Yourself”* – 7 hours – C2714-I

Instructor: Daniel Bradley

Board Member Bain seconded the motion. The motion carried with Kalkowski, Mitchell, Bain, Wilson, and Newell voting aye.

Board took a break at 12:50 a.m.

Board meeting reconvened at 1:24 p.m.

Vice Chair Wilson moved that the Board go into executive session for the purpose of reviewing applicants for credentialing and considering complaints for enforcement. 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 or individuals with alleged violations of real property appraisal practice. The time on the meeting clock was 1:25 p.m. Board Member Kalkowski seconded the motion. The motion carried with Wilson, Kalkowski, Mitchell, Bain, and Newell voting aye. Chair Newell restated the sole purpose for the

executive session was to consider qualification of applicants and complaints for enforcement. The time was 1:25 p.m.

Vice Chair Wilson moved to come out of executive session at 3:36 p.m. Board Member Bain seconded the motion. The motion carried with Mitchell, Wilson, Bain, Kalkowski, and Newell voting aye.

Vice Chair Wilson moved to:

- Approve all sequential applicants for credentialing except CG568.
- Ratify R840 through R849.

Board Member Kalkowski seconded the motion. Motion carried with Wilson, Bain, Kalkowski, Mitchell, and Newell voting aye.

Vice Chair Wilson moved to ratify:

- Approval sequential applicant CG568.

Board Member Kalkowski seconded the motion. Motion carried with Bain, Kalkowski, Wilson, and Newell voting aye. Board Member Mitchell abstained.

Vice Chair Wilson moved to take the following actions for the applicants for the license credential:

- L540 – Approve and select verification report/s.
- L544 – Deny application and resubmit three new reports.
- L558 – Deny application and resubmit three new reports.
- L548 – Hold – Deny experience log as submitted.
- Steve Shultz – Deny correspondence pre-requisite education credit for application

Vice Chair moved to take the following actions for the applicants for the certified residential credential:

- CR155 – Hold – Deny experience log as submitted.
- CR177 – Approve and select verification report/s.
- CR205 – Deny and resubmit new reports.
- CR212 – Deny and resubmit new reports.
- CR219 – Approve and select verification report/s.
- CR221 – Approve and select verification report/s.
- CR229 – Deny and resubmit new reports.
- CR330 – Deny and resubmit 2-4 family report.

Vice Chair moved to take the following action for the applicants for the certified general credential:

- CG417 – Deny application and resubmit new reports.
- CG432 – Approve application and select verification report/s.
- CG433 – Approve application and select verification report/s.
- CG449 – Deny application and resubmit new reports recommending the applicant complete an agriculture course.
- CG455 – Deny application and resubmit new reports.
- CG576 – Approve application and select verification report/s.

Board Member Mitchell seconded the motion. Motion carried with Kalkowski, Mitchell, Wilson, Bain, and Newell voting aye.

Vice Chair Wilson moved to take the following enforcement actions:

- 02-29 Hold until Attorney General's office appoints additional legal counsel.
- 06-16 Authorize Board Chair to sign Consent Agreement.
- 07-02-07-03 Received letter completed mentoring program. Close.
- 07-04 Consent Agreement met. Letter completion submitted by mentor. Close.
- 07-05 & 07-17 – Complete Consent Agreement with USPAP violations.
- 07-08 Requested true copy of reports and workfiles. Not received for Dec. meeting.
- 07-09 Submitted legal counsel for formal hearing. Hearing officer contracted.
- 07-13 Received reviews. Hold until January meeting.
- 07-14 File formal complaint. Forward legal counsel and contact Hearing Officer.
- 07-16 Hold, reports and workfiles.
- 07-18 Hold. Review not received.
- 07-19 Hold, Review not received.
- 07-20 Close.
- 07-21 Hold. Review not received.
- 07-22 Invite for Informal Conference for January 16, 2008.
- 07-23 Hold. Review not received.
- 07-24 File formal complaint.
- 07-25 File formal complaint.
- 07-28 Dismiss as appraiser is deceased as informed by Colorado Board.
- 07-29 Send out report and workfile for review.
- 07-30 Issue Cease and Desist Order.

Board Member Bain seconded the motion. The motion carried Mitchell, Wilson, Bain, Kalkowski, and Newell voting aye.

Vice Chair Wilson moved to hold case #07-27. Review has not been returned.

Board Member Kalkowski seconded the motion. The motion carried Wilson, Bain, Kalkowski, and Newell voting aye. Board Member Mitchell abstained.

Vice Chair Wilson moved to approve the additional expenses for Board Chair Newell and Board Member Bain for demonstration report review on December 19, 2007. Board Member Mitchell seconded. Motion carried with Kalkowski, Mitchell, and Wilson voting aye and Bain and Newell abstain.

There being no further business, Vice Chairman Wilson moved to close the meeting. Motion was seconded by Board Member Bain. Motion carried with Bain, Kalkowski, Mitchell, Wilson, and Newell voting aye.

Next meeting date is scheduled for January 17th, 2008.

The meeting was adjourned at 3:43 p.m.

Respectfully submitted,

Kitty Policky, Director

These minutes were available for public inspection on December 30, 2007, in compliance with Nebraska Statute §84-1413(5).