

**REAL PROPERTY APPRAISER BOARD
DEPARTMENT OF EDUCATION BOARD ROOM, 6TH FLOOR
NEBRASKA STATE OFFICE BUILDING
301 CENTENNIAL MALL SOUTH, LINCOLN, NE
Thursday, March 20, 2008**

OPENING

Chairman Joe Wilson called to order the March 20, 2008, meeting of the Nebraska Real Property Appraiser Board at 9:063 a.m., in the Department of Education Board Room, 6th Floor of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

NOTICE OF MEETING

Vice Chair Wilson announced the notice of the meeting was duly given, posted, published and tendered in compliance with the Open Meetings Act, and all Board members received notice simultaneously by e-mail. 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, Mathew 'Joe' Wilson, Timothy Kalkowski, James Bain, Gregg Mitchell, and Bradford Moore were present. Director Kitty Policky was also present.

ADOPTION OF THE AGENDA

Chair Wilson 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. Vice Chair Mitchell moved to adopt the Agenda as printed. Board Member Moore seconded. The motion carried with Kalkowski, Bain, Mitchell, Moore, and Wilson voting aye. Motion carried.

WELCOME GUESTS

Wilson welcomed the guests to the meeting and asked them to please sign the guest log. Present was Diane Moore from the Moore Group, Cay Lacey from Great Plains Appraisal, and past member of the Board, Danny Stoeber from Fremont.

APPROVAL OF THE MINUTES FROM FEBRUARY 21, 2008

Chair Wilson asked for any additions or corrections to the February 21, 2008 minutes. With no corrections or additions, Chair Wilson called for a vote to approve the minutes. Vice Chair Mitchell moved to adopt the minutes as presented and Bain seconded the motion. The motion carried with Bain, Mitchell, Moore, Kalkowski and Wilson voting aye.

CHAIR REPORT

Chairman Wilson brought to the attention of the Board the article in the 2008 Winter Newsletter of the Kansas Real Estate Appraisal Board, "*My New Client – The FBI*" for discussion. Chair Wilson asked Director Policky to request permission from the Kansas Real Estate Appraisal Board to reprint the article in an upcoming newsletter for the Nebraska appraisers. The value of the lessons learned by an appraiser who was committed to the business is a valuable lesson to all who practice appraisal when addressing fraud.

Chairman Wilson asked to bring before the Board the issue of appraisers who retire or simply do not renew a credential in lieu of disciplinary and enforcement action. The Board needs to address the issue of appraisers who have made such a decision and prevent such appraisers from entering the profession at a future time. History has proven that once administrative individuals involved with such cases are no longer available, such appraisers reapply for a credential knowing that their history may not be known to the current members of the Board or employees. Chair Wilson requested that the issue be added to the April agenda with ideas on how to prohibit future application.

DIRECTOR'S REPORT

Nebraska Real Estate Commission newsletter

"Charging for a Broker Price Opinion or Certified Market Analysis" – Director Policky presented copies of the front page of the Nebraska Real Estate Commission newsletter that discusses the ongoing problem with the Broker Price Opinion. Board Member Bain had brought the issue before this Board at the January meeting with comments concerning the use of such a tool by the local bank and the illegal use of the opinion by financial entities. The article brings to the attention of the brokers and salespersons that under Neb. Rev. Stat. §81-885.24 (8), it is a violation of the Nebraska Real Estate License Act to accept ". . . any form of compensation or consideration . . . from anyone other than . . . "your" . . . employing broker without the consent . . ." of the employing broker. A separate fee from a BPO/CMA would be a form of "compensation or consideration." Director Policky continued by reminding Board members of the Attorney General's opinion and that beginning August 28, 1999, Neb. Rev. Stat. §76-2221 (2) has allowed real estate licensees to charge separately for a Broker Price Opinion (BPO) or a Comparative Market Analysis (CAM). The statute reads as follows: "A person licensed under the Nebraska Real Estate License Act who, in the ordinary course of his or business, gives a broker's price opinion or comparative market analysis, except that such opinion or analysis shall not be referred to as an appraisal. No compensation, fee, or other consideration shall be charged for such opinion or analysis other than a real estate commission or brokerage fee charged or paid for brokerage services rendered in connection with the sale of the real estate involved unless the opinion or analysis is in writing and carries the following disclosure in bold fourteen-point type: This opinion or analysis is not an appraisal. It is intended only for the benefit of the addressee for the purpose of assisting buyers and sellers or prospective buyers or sellers in deciding the listing, offering, or sale price of the real property and not for any other purpose, including, but not limited to, lending purposes. This opinion or analysis is not governed by the Real Property Appraiser Act, but is subject to enforcement through the Nebraska Real Estate License Act."

Board Member Moore tried to address the confusion surrounding the BPO issue by explaining that it has been a recurring problem. If a salesperson/broker provides an evaluation service to an institution it is not a BPO because a BPO by definition is for a non-lending purpose. Lenders sometimes don't always understand and salesperson/brokers think they're providing BPOs to lenders when by definition it is not a BPO because it is for a lending purpose so in reality what's happening is that they're practicing appraisal without a credential. The confusion comes about in the fact that a salesperson/broker can provide a BPO by carrying the 14-point disclaimer and charge but they can never do one, with or without a disclaimer or with or without compensation for a lending institution and it is prohibited to practice without an appraiser credential. The institutions are using brokers and salespersons for inexpensive appraisals when in fact it is illegal for lending institutions to use such services. Even though the use of such services may not be illegal from lending regulation, it is a violation of statute for the individual to in fact practice

without a proper credential. As the November 2000 advisory opinion from the Attorney General's office stated upon review, and in agreement with the Real Estate Commission that the submitted BPO was in fact not a BPO but meets the requirements of an appraisal in that it was a valuation service without a credential. The financial institution is often unaware of the regulation but the individual must be aware of the violation of practicing without a credential.

Board Member Kalkowski, the financial representative, commented that although use of a third party not associated with the transaction is required it is difficult for a small bank where loan officers are associated with the transaction. Concern for the cost of appraisals for loans under the \$250,000 was an issue and because alternatives are available, the alternative may be the only means by which a bank can compete in the lending business.

Enforcement Update Website

The edited listing of all appraiser enforcement cases that have been closed was reviewed. The format of the information was established by this Board at the February 2007 meeting. The listing had been sent to Legal Counsel William Blake's office for editing and to assure that the reporting format meets the established criteria.

RECEIPTS AND EXPENDITURES REPORT – FEBRUARY 2008

The receipts and expenditures for February were reviewed by the Director by line item with the Board. A copy of the Budget Status Report is considered part of these minutes and is attached. The contractual services account is still over budget but the situation will receive relief with the additional cash fund appropriation. Board Member Kalkowski was optimistic because even though the influx of the requested funds would relieve the stress on the contractual services obligations, the overall budget looked good.

Vice Chair Mitchell moved to accept and file the February 2008 Receipts and Expenditures report for audit. Board Member Bain seconded. The motion carried with Mitchell, Moore, Kalkowski, Bain, and Wilson voting aye.

UNFINISHED BUSINESS

1. Status LB1011/Amendments/Advanced

Director Policky reported that LB1011 has advanced and the progress could be viewed on the Nebraska Legislature website by searching LB1011.

2. Attorney General contract

Director Policky distributed to each Board member a letter from Legal Counsel William Blake stating the clarification of the contractual services letter. Natalee Hart, the designated representative from the Attorney General's office for the Board, explained that the Board may settle disciplinary matters and may enter into agreements and orders without the need to seek approval by the Attorney General's office as long as matters are still before the Board. Matters appealed from the Board's decision under the Administrative Procedures Act, would be court proceedings and would not be settled by the Board but by the Attorney General's office.

3. Proposed Rules and Regulations

The Board reviewed proposed changes to the Rules and Regulations. Each change or addition was discussed in length. A copy of the changes are attached and considered part of these minutes. The majority of the changes are format changes in reference to a credential. Director

Policky pointed out that the past Chair Sheila Newell read the edited rules and regulations for accuracy and content.

Chair Wilson asked about the requirement of using the AI form for demonstration report purposes. Vice Chairman Mitchell stressed the purpose of incorporating the use of the AI form was for efficiency and demonstration value and not lending purposes. Use of the AI form would better demonstrate to the reviewer the knowledge and ability of a candidate in relationship to the credential for which they are applying. Director Policky reiterated the recommendation that this Board can strongly encourage the use of the AI form on the application form for a credential but the requirement should not be written into the rules and regulations.

4. Overview Presentation 2008 Spring Agri-business Conference

Chairman Joe Wilson and Board Member Brad Moore will be participants in the Spring Agri-business Conference for the Nebraska Bankers that will be held in Kearney, April 2-3, 2008, at the Kearney Holiday Inn. The presentation will be made April 2 from 1-2 p.m. addressing the role and scope of practice of each credential and how to effectively select an appraiser for an assignment. The invitation to participate will give individuals who require the service of an appraiser to complete loan and financial transactions the opportunity to address questions and concerns that written definitions can't fully explain.

Board Member Bradford Moore did an overview of the handout for the Board. The presentation included such items as instructions on how to make use of the Federal Registry and the Real Property Appraiser Board websites for information and the comments on the decision in regard to Freddy Mac and Fannie Mae.

Board Member Kalkowski complimented Moore on the content of the presentation and reminded Brad how timely this information is for financial institutions.

Board took a break at 10:07 a.m.

Board meeting reconvened at 10:28 a.m.

NEW BUSINESS

1. Lisa Rush/Certified General applicant

Certified General candidate Lisa Rush appeared before the Board requesting that the Board submit reviews of her appraisals in place of the assistance as she felt she may be better able to make adjustment due to the timeframe she is facing. She reviewed the chronological events to convey to the Board the limited amount of time she had left. Chairman Wilson suggested that she continue to work closely with Sheila Newell and a copy of the reviews would be forwarded.

2. Demonstration Report Attribution

The demonstration reports are not giving sufficient attribution for a reviewer to determine whose work is being reviewed. The supervisor is not giving an assessment of what the appraiser is doing and what the supervisor is doing. Professional assistance could reflect the description of the work. But even the Scope of Work is not detailing the contributions of each appraiser and many times even the certification makes no statement. Technically the supervisor needs to provide a description of the contributions. The point is almost moot simply because if we ask the

supervisor for attribution we certainly know what the answer will be. USPAP considers that each contributed 100% if both signatures appear. The Board will assume that each contributed 100% to the report. In the event a co-appraiser or supervisory appraiser signature appears, the demonstration appraisal must define who did what work within the report.

Cay Lacey from Great Plains Appraisal asked that if a signature from a supervisor or co-signer appears on the demonstration report and the demonstration report proves not meet the minimum requirements of USPAP and proves to require that disciplinary action be brought against the applicant appraiser, is that enforcement action also brought against the supervisor or co-signer? Chairman Wilson assured Cay Lacey that such procedure is followed and has been demonstrated. If an enforcement case file is opened as the result of a demonstration report, the supervisor or co-signer is also part of the enforcement case. Disciplinary proceedings will be brought against both supervisor and trainee.

3. Lynne Heiden and the Fannie Mae Agreement

Lynne Heiden, a certified general appraiser and education provider in Nebraska, appeared before the Board recommending that the Board inform the appraiser community of the recent Federal legislation that is addressing the lender and mortgage broker crisis. The House bill has been developed but the proposed Senate bill needs feedback. The Senate bill is putting all the pressure on the appraiser and contains such requirements as being bonded determined by an aggregate value and if a review of the property foreclosed upon and the value is greater than 10% off, the appraiser will be paying restitution.

Chairman Wilson proposed mobilizing the appraisers in the State of Nebraska to send information and responding. Vice Chairman Mitchell moved that the Board forward the links and summaries to the house bill and senate bill to the credentialed members of the appraisal community in the State of Nebraska with a note advising these bills are under consideration in Congress and the Senate and if constituents would like to comment or present opinions to their respective senator or congressman. Board Member Bain seconded the proposal. Proposal carried with Mitchell, Moore, Kalkowski, Bain and Wilson voting aye.

Board Member Kalkowski proposed a letter be developed is sent to the Senators and Congressmen from the Board stating our concerns with the current legislation. Board Member Bain seconded. Discussion determined that Vice Chair Mitchell will develop the letter stating the concerns of Nebraska. Motion carried with Moore, Kalkowski, Bain, Mitchell and Wilson voting aye. Board Member Kalkowski further moved to forward a copy of the letter to the Senators and Congressmen to the Nebraska Bankers Association and the Nebraska Mortgage Association. Vice Chair Mitchell second the motion. Motion carried with Bain, Mitchell, Moore, Kalkowski and Wilson voting aye.

In addition to the proposed legislation, appraisers need to take an interest in the Fannie Mae/Freddy Mac/Como decision and advise appraisers that comments will be accepted until April 30th. Board Member Kalkowski pointed out that much of what is being requested already exists and the Board is able to react if they are aware of issues or concerns or administration of change. Heiden expressed the concern that enforcement of the law could generate 50-60-70 cases a month and the workload would become overwhelming. The process is making it mandatory that if there is any indication of fraud or the value is pushed or a report not meeting banking

guidelines, the report has to be reported to the state regulatory agency and the appraiser investigated. How is this going to be implemented?

Vice Chair Mitchell discussed the proposed changes for enforcement issues will require a much higher budget appropriation for processing enforcement and legal items such as attorney fees. The consequence of such action will severely hamper the operating funds of appraiser boards at the same rate the increase of applicants under the old criteria depleted the allocation for contractual services.

Board Member Kalkowski moved to forward a copy of the letter to the Senators and Congressmen to the Nebraska Bankers Association and the Nebraska Mortgage Association. Vice Chair Mitchell second the motion. Motion carried with Bain, Mitchell, Moore, Kalkowski and Wilson voting aye.

Board Member Bradford Moore addressed the Board in stating that Danny Stoeber had requested time to make comments concerning an enforcement matter. Mr. Stoeber had another commitment and would be have to leave soon. Moore requested that the Board go into close session briefly that Mr. Stoeber might report on an enforcement case. Vice Chair Mitchell moved to go into executive session for the purpose of considering enforcement action. A closed session is clearly necessary to prevent injury to the reputation of the individual or individuals relating to alleged violation of performance in real property appraisal practice. Board Member Kalkowski seconded the motion. The motion carried with Mitchell, Moore, Kalkowski, Bain and Wilson voting aye. The time was 11:45 a.m.

Vice Chair Mitchell moved to come out of executive session at 11:53 a.m. Board Member Bain seconded. The motion carried with Moore, Kalkowski, Bain, Mitchell and Wilson voting aye.

GENERAL PUBLIC COMMENTS

Chair Wilson asked for any public comments. With none, the Chair proceeded to education.

EDUCATION

Vice Chair Mitchell moved to approve the following continuing education seminars for both new and renewal and respective instructors as listed:

Appraisal Institute:

On-Line / *GIA: The Building Case Study* / 21 hours – C2833-I

Instructor: Christopher Minor

On-line / *Real Estate Appraisal Operations* / 4 hours – C2834-I

Instructor: Sandra K. Adomatis

On-Line / *Reviewing Residential Appraisals and Using Fannie Mae Form 2000* / 7 hours – C2835-I

Instructor: Mark Rattermann

Residential Design: The Making of a Good Home – 7 hours / C2829

Instructor: Dawn Molitor-Gennrich

Nebraska Chapter of the Appraisal Institute:

Spotlight on USPAP – 2 hours / C2850

Instructor: Cay Lacey

Resource Property Group:
2008 Commercial Real Estate Workshop – 8 hours / C2820
Instructors: Listing available upon request.

University of Nebraska Inst. Agri. & Natural Resources:
Water Quality in the Great Plains – 14 hours / C2805 (7 hours per session)
Instructors: Listing available upon request.

Nebraska Dept. Revenue/Property Assessment Division:
IAAO 650 Cadastral Mapping – 15 hours – C9715
Instructors: Billy Sims

McKissock, L.P.:
On-Line / Residential Report Writing / 7 hours – C2849-I
Instructor: Kenneth Guilfoyle

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

APPLICANTS & ENFORCEMENT

Vice Chair Mitchell moved that the Board go into executive session for the purpose of reviewing applicants for credentialing and consideration of written complaints and disciplinary action. A closed session is clearly necessary to prevent needless injury to the reputation of the individual or individuals relating to the issues of qualifying applicants and relating to the alleged violations of performance in real property appraisal practice. The time on the meeting clock was 12:57. Bain seconded the motion. The motion carried with Bain, Mitchell, Moore, Kalkowski and Wilson voting aye.

Vice Chair Mitchell moved to come out of executive session at 3:10 p.m. Board Member Kalkowski seconded the motion. The motion carried with Bain, Kalkowski, Mitchell, Moore and Wilson voting aye.

Vice Chair Mitchell moved to ratify registered applicant R850.

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

L549 – Approve application but verification report cannot be selected until log submitted.

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

CR154 – Deny and request three new reports and \$250.00 review fee.

CR201 – Approve applicant and select verification report(s).

CR220 – Deny and request residential > 20 yrs. and < 20 yrs. and \$250 fee.

CR345 – Forward comments for protest to applicant. Submit three new reports.

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

CG406 – Approve and select verification report(s).

CG442 – Approve and select verification report(s). Forward comments.
CG440 – Approve and select verification report(s).

Vice Chair Mitchell moved to take the following actions for the submission of verification reports:

L540 – Approve and hold until submission of remaining experience log.
L544 – Hold and request new report.
CR142 – Approve for credential.
CR155 – Hold and forward reports to Couch for review under Standard 6.
CR182 – Approve for credential.
CR202 – Approve for credential.
CR213 – Approve for credential.
CR337 – Approve for credential.

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

Vice Chair Mitchell moved to take the following enforcement actions:

06-22 – Consent Agreement
07-08 – Hold
07-09 – Hold – Negotiated Settlement.
07-14 – Hold for response from legal counsel.
07-22 - Hold
07-24 – Invite informal conference.
08-02 – Close
08-03 – Send report and workfile for review.
08-04 – Send report and workfile for review.
08-06 – Invite informal conference.

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

Board Member Moore moved to take the following enforcement action:

08-07 – Request true copy appraisal report and workfile.

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

Board Member Mitchell moved to take the following enforcement action:

02-28 – Close – Appraiser submitted notification of retirement effective 3/15/2008.
07-22 – Hold – Extension filed for Answer.
07-25 – Close – Appraiser submitted notification of retirement effective 3/15/2008.
08-01 – Close – Appraiser submitted notification of retirement effective 3/15/2008.

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

Tentative meeting dates were approved as follows:

April 17, 2008
May 15, 2008
June 19, 2008
July 17, 2008
August 21, 2008

ADJOURNMENT

At 4:15 Chair Wilson adjourned the March 20, 2008, meeting of the Real Property Appraiser Board.

Respectfully submitted,

Kitty Policky, Director

These minutes were available for public inspection on April 3, 2008, in compliance with Nebraska Statute §84-1413(5).