

**REAL PROPERTY APPRAISER BOARD  
LOWER LEVEL, ROOM "B"  
NEBRASKA STATE OFFICE BUILDING  
301 CENTENNIAL MALL SOUTH, LINCOLN, NE  
January 22, 2009**

**OPENING**

Chairman Joe Wilson called to order the January 22, 2009, meeting of the Nebraska Real Property Appraiser Board at 9:02 a.m., in Lower Level, Room "B" of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

**NOTICE OF MEETING**

Chairman 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 Bradford Moore, Gregg Mitchell, James Bain, and Mathew 'Joe' Wilson, were present. Director Kitty Policky was also present.

**ADOPTION OF THE AGENDA**

Chairman 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. The motion carried with Moore, Mitchell, Bain, and Wilson voting aye.

**INSTALLATION OF NEWLY APPOINTED MEMBER**

Chairman Wilson introduced Secretary of State Chief Deputy Legal Counsel, Ron Moravec who was present to administer the oath of office to David L. Hartman of Omaha, appointed by Governor Heineman to serve as the financial institutions representative on the Board. Mr. Hartman pledged faithfully and impartially to perform the duties of the office of Real Property Appraiser Board, according to the law and to the best of his ability, and to support the Constitution of the United States and the Constitution of the State of Nebraska against all enemies, foreign and domestic. Mr. Hartman and Deputy Moravec signed the official documents, sealing the appointment. Following administration of the oath, Chairman Wilson presented to Mr. Hartman the lapel pin, official emblem of the Real Property Appraiser Board membership. Seated as the newest member, the meeting continued with all positions represented and present.

**ELECTION OF 2009 OFFICERS**

Board Member Moore moved to nominate Vice Chair Mitchell as Chairman. Board Member Bain seconded the motion. Motion passed unanimously with Moore, Hartman, Wilson, and Bain voting aye. Mitchell abstained. Board Member Wilson moved to nominate Board Member Moore as Vice Chairman. Board Member Bain seconded the motion. Motion passed unanimously with Hartman, Wilson, Bain, and Mitchell voting aye. Moore abstained.

Vice Chair Moore proposed a motion that the Nebraska Real Property Appraiser Board thank past Chairman Joe Wilson for his excellent leadership and dedication for service as past chairman of the

Board. Bain second the motion. The motion passed unanimously with Bain, Moore, Hartman, and Mitchell voting aye. Newly appointed Chairman Mitchell added that the last year was a year that required tremendous dedication and time with the number of sequential applicants and the implementation of the new criteria and the number of enforcement cases processed and the Board most effectively progressed in that Joe provided great direction and leadership and for that we extend our sincere thanks.

### **APPROVAL OF THE MINUTES FROM DECEMBER 18, 2008**

Chair Mitchell asked for any additions or corrections to the December 18, 2008 minutes. Vice Chair Moore moved to adopt the minutes as presented and Board Member Bain seconded the motion. The motion carried with Wilson, Bain, Moore, Hartman, and Mitchell voting aye.

### **WELCOME GUESTS**

Chair Wilson welcomed the guests to the meeting and asked that they please sign the guest log.

### **CHAIR REPORT**

Chair Mitchell requested that former Chair Wilson proceed with the report he prepared. Wilson presented to the Board the letter he prepared to Mr. Vincent Leisey, President of the Nebraska Realtors Association addressing an incorrect statement made to readers concerning the question of doing a CMA or BPO for a lender. The article in the Nebraska Realtors Association publication *News & Notes*, stated “A licensee need not inquire as to the use of an opinion or analysis.” As Wilson pointed out, the statement appears to be a violation of the Realtor Code of Ethics and Standards of Practice of the Nebraska Association of Realtors, effective January 1, 2008 under Article 11, Standard of Practice 11-1, “When Realtors prepare opinions of real property value or price, other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, such as opinions shall include the following: 1. identification of the property; 2. date prepared; 3. defined value or price; and 4. limiting conditions, including statements of purpose(s) and intended user(s).”

Wilson emphasized that Item #4 addresses the erroneous statement in the article and noted that it is clear that a Realtor needs to ask the use/purpose of the value estimate and include that use in the value report. Failure to disclose the client’s stated use for the value may lead to an unlawful act in cases in which the valuation purpose is used for lending. The letter will be sent to the following list: Jon Bruning, Attorney General, State of Nebraska; Nebraska Department of Banking & Insurance; Nebraska State Bar Association; Nebraska Bankers Association; and Nebraska Mortgage Association.

Vice Chair Moore moved to accept the letter as edited and forward to the individuals recognized as receivers. Board Member Wilson seconded. The motion carried with Bain, Moore, Hartman, Wilson and Mitchell voting aye.

Board Member Wilson proceeded with the past Chair report by turning the Board’s attention to resurrecting the educational tour across Nebraska referenced as “Ed Tour.” Wilson expressed an interest because of the contact by appraisers who have participated in the past. The educational tour permits appraisers to participate in a classroom setting with current issues facing the appraisal profession and the program gave the Appraiser Board members a better grasp of concerns and the manner in which the appraiser community needs definition and assistance.

Although the Appraiser Board office has maintained records of receivables and payables on all educational tour sessions and can report that the offering has been very successful in attendance, the Appraiser Board discussed perhaps offering two four hour sessions at strategic locations.

Vice Chair Moore and Board Member Wilson will collaborate to bring to the February meeting of the Appraiser Board ideas for an upcoming educational tour. Appraiser Board Chair Mitchell requested the subject be added to the February agenda.

Newly appointed Chairman Mitchell offered his thanks for the vote of confidence and the opportunity to serve as the chairman.

## **DIRECTOR'S REPORT**

### **1. Appraisal renewal status / appraiser Count:**

The number of appraisers who have renewed as of December 18<sup>th</sup> stands as follows: 119 Registered/ Conversion; 124 Licensed; 196 Certified Residential; and 372 Certified General for a total of 811 appraisers. The total differs to date is about 100 appraisers who have not renewed with the majority being appraisers who hold credentials by reciprocity and the Registered/ Conversion appraisers. Although the law allows three renewals beginning with 2009, perhaps with the new Scope of Practice, as determined by federal guidelines, has left the Register/ Conversion credentials with a feeling that their investment could not be recaptured and that the opportunity for acquiring sufficient experience hours was too limited.

Director Policky suggested to the Board that a letter could be sent to those individuals who have not renewed in consideration of their many years of service to the profession, they deserved a letter of thanks and a request for consideration to renew their credential as the new guidelines for a credential will certainly require the knowledge of experienced certified appraisers. Although appraisers those who fall in the Registered/Conversion category must, after all these years, have the required experience, the adopted upgrade guidelines should give them a good start on upgrading to at least the license credential. It is imperative that they understand that in three years they will not have a credential and the upgrade guidelines will at least acknowledge an appraiser with a current credential, giving education credit accordingly and assisting in the requirements to upgrade.

### **2. Approval of instructor fees and costs for Review Training**

Director Policky requested the Board extend the same contract as it has to previous Standard 3 Update instructors for an amount of \$400.00 each for the session plus the expenses for hosting the class. Board Member Bain moved to approve payment to the Standard 3 Update instructors at the contract price of \$400.00 each plus the cost for hosting the update class. Board Member Hartman seconded the motion. The motion carried with Hartman, Wilson, Bain and Mitchell voting aye and Moore abstaining.

### **3. Upgrade information electronically forwarded to appraisers**

The informational materials produced to reflect the adopted guidelines on October 22, 2009, as recommended by the Appraiser Qualifications Board to upgrade a valid credential, along with a copy of the residential and nonresidential log formats were electronically delivered to all appraisers with an explanation of the requirements to meet the upgrade guidelines. The attention of the Board has turned to the upgrade requirements for the license credential to achieve a certified credential as information from FHA will permit the license appraiser to remain on the

FHA roster only until October 1, 2009. After such date, all FHA appraisers must be certified. Director Policky related the positive feedback from the appraiser community for the electronic communications as they are most helpful and equips the appraiser with the necessary information required to meet such things as education requirements, upgrade requirements, application requirements, etc. The availability of information has been extremely helpful to the appraiser community.

Director Policky mentioned two bills introduced in the Legislature at this time, LB11 introduced for the Real Estate Commission to adjust designated fees and LB30, also introduced for the Real Estate Commission, to change the Nebraska Real Estate License Act to permit imposition with disciplinary actions, a civil fine on a license for each violation alleged in a complaint for which the commission has made a finding of guilt not to exceed \$2,500.00. The Real Property Appraiser Board has an interest in following the bill for considerations under the Real Property Appraiser Act. The subject of LB30 will be returned to the agenda for February.

To close the Director's Report, Chairman Mitchell asked if there were perhaps adjustments or alternative approaches that we have become aware of since completing the renewal process. The Director responded by referring to Chapter 2 of the Rules & Regulations, "Every credential holder in the State of Nebraska shall keep the Board informed of his or her principal place of doing business and shall notify the Board in writing within ten (10) days of any change of such address, or telephone number. Noncompliance of this section shall result in the credential holder remitting an administrative processing fee of \$50 as part of his or her subsequent credential renewal." Although the pocket cards are very expensive, the time and costs required to track appraisers is an even more serious concern. The office is here to assist and does not charge to make address changes but when we have to process two and three pocket cards just to get an appraiser renewed, the office needs to charge the cost by statute to offset the costs to process, duplicate issuing and tracking. The pocket cards must be returned for a duplicate issue as they are the property of the Nebraska Real Property Appraiser Board and are accountable for the auditing process as each card is worth a designated sum of money.

Director Policky closed the report by saying that the renewal process was successful with few exceptions and thanked the Board for their concerns.

Board took a break at 10:00 a.m.

Board meeting reconvened at 10:08 a.m.

## **UNFINISHED BUSINESS**

### **1. Review Training Update / Bradford Moore**

Vice Chairman Moore, assisting Danny Stoeber, a certified USPAP instructor and instructors for the Standard 3 Review Update seminar reported that they were prepared for the presentation the following day for about 24 review appraisers emphasizing that it is imperative that appraisers who perform the contractual service of review for demonstration reports and investigations be prepared and familiar with current changes and expectations as a contractor. Although Nebraska is fortunate to have several certified USPAP instructors, the basis for all review assignments is the compliance, or lack thereof, to the *Uniform Standards of Professional Appraisal Practice*. The session will introduce the new Board approved Standard 3 Review form and will attempt to

create consistency and accountability for the review process required for demonstration report submission and the investigation process.

Chair Mitchell asked Stoeber if there are any consideration in the review process that would address a complaint filed making accusations of submitting appraisals that were not developed by the applicant. Board Member Wilson commented that all reports submitted to the Board are accepted believing the work to be performed by the applicant and proving it was not performed by the applicant would be difficult but assured members of the Board that applicants who may have submitted such reports will surely be back to the Appraiser Board as an enforcement case. Both Stoeber and Moore answered by perhaps increasing the number of reports requested, decreasing the time an applicant has to submit the reports and requesting reports that were most current on the log. There is no way to prevent fraud but the Board can take every action to prevent the opportunity.

Vice Chair Moore and Danny Stoeber closed with great expectations for the review session.

Chair Mitchell requested that the topic of demonstration report requirements be added to the February agenda for further discussion.

## **2. Electronic delivery/reformatting of reports:**

The subject of the electronic delivery / reformatting of reports was returned to the agenda for the January and February meetings. Chair Mitchell reiterated the reasons for returning to the subject stem from the Fanny Mae delivery of reports primarily on REO work alleging that once the report is submitted in format through the appraisal port, the report is broken down and assembled by selection, signatures are removed, data is manipulated and the final report does not resemble the report originally submitted by the appraiser. Board Member Moore explained the serious consequences of the electronic delivery of reports and the reformatting of reports that are electronically submitted. Many appraisers use the electronic portals and most appraisers are unaware of the changes made to their appraisals. But, whether the report is electronic or paper does not seem to prevent a client from changing the report. Board Member Moore went on to explain the serious consequences of changing a report and stressed that this subject will be a concern for the coming year and asked if there should be a committee or task force to address AMCs and electronic reports for Nebraska and make recommendations to the Board for possible implementation of statutes or regulations or if we should perhaps continue to observe the procedures of states such as Virginia for possible direction. It is unfortunate that the report delivered is not always the report the appraiser developed but an altered version and the issue of changing a report will continue but as Board Member Hartman pointed out, that if the appraiser proves this is not the report delivered to the client, the appraiser should not be liable for enforcement actions.

The discussion concluded with Board Member Wilson recommending that at this point in time it may be more prudent to observe what direction is most advisable concerning the issues surrounding the altering of reports and electronic portals for definitive future action and to treat each case which may arise from alterations of reports on an individual case at this point.

Chair Mitchell requested that the Virginia resolution be returned to the February agenda.

### **3. Home Valuation Code of Conduct**

Chair Mitchell noted that receiving a copy of the HVCC is an informative tool but expects the subject to be a hot topic. The rules were put into place by OCC and OTS about three years ago and appraisal businesses started to see the changes at the same time. The change was most visible in the nationally chartered banks and some state charters where the separation of appraisal ordering and production has been underway for some time. The HVCC takes effect May 1, 2009.

### **RECEIPTS AND EXPENDITURES REPORT – DECEMBER 2008**

The receipts and expenditures for December were reviewed by the Director by line item with the Board. A copy of the Budget Status Report is attached and considered part of these minutes. There were no significant expense items other than the same large data processing expense incurred by an IT department that doesn't understand what it means when told you cannot exceed a budgeted amount as the funds do not exist. The income accounts for the annual renewal fees, which reflects a significant monthly increase.

A large expenditure reflected in the office supplies expense payable is simply a debt paid from the incorrect payables account and appropriate adjustments in NIS have been made and will be reflected on the January 2009 budget status report. The sequential application process is completed and the prospects of exceeding the budgeted amount for contract review fees are not probable at this time. The remaining amount for contractual services should suffice until the end of the fiscal year.

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

### **NEW BUSINESS**

#### **1. Approval of Special Assistant Attorney General appoints for: William Blake and Mark Buckwalter.**

Director submitted to each Board member copies of the agreement for approval of services from the Attorney General's office for legal representation for Blake and Buckwalter. Board Member Wilson moved to accept the appointments and Board Member Bain seconded. The motion was carried with Bain, Moore, Hartman, Wilson, and Mitchell voting aye.

#### **2. Approval Association of Appraiser Regulatory Officials annual dues.**

The annual dues of \$350.00 was presented to the Board for approval for payment. Board Member Wilson moved to remit payment in the amount of \$350.00 and Vice Chair Moore seconded the motion. The motion was carried with Moore, Hartman, Wilson, Bain, and Mitchell voting aye.

#### **3. 2009 AARO Spring Conference.**

The announcement of the AARO Spring Conference in New Orleans for April 4-6 with a preliminary agenda and registration was distributed to each member of the Board for consideration. With limited funding, the Board will have to decide what conference they want to attend. The information will be revisited at a future meeting. Chair Mitchell did inform the Board that he is planning on attending.

#### **4. LB328, pages 49, 55, 56, 57.**

Vice Chair Moore state the bill was not really an appraiser bill but does make reference to appraisers. Referring to line 22 on page 56 as follows: (s) Make any payment, threat, or promise,

directly or indirectly, to any person for the purpose of influencing the independent judgment of the person in connection with a residential mortgage loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purpose of influencing the independent judgment of the appraiser with respect to the value of the property.”

The next reference has to do with document retention on Page 49, line 7 . . . “appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of two years after the date the . . .” and an additional reference on Page 55, line 12 in reference of assessment for fees against the borrower other than . . . “escrow services, appraisal services, abstracting services, title . . .”

The Board discussed tracking LB328 and Director Policky reminded the Board members that all bills can be tracked on [www.nebraskalegislature.gov](http://www.nebraskalegislature.gov). Chair Mitchell noted he would write a note to Senator Pahls and contact the Realtors Association to share information.

Board took a break at 11:09 a.m.

Board meeting reconvened at 11:25 a.m.

### **GENERAL PUBLIC COMMENTS**

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

### **EDUCATION**

Vice Chair Moore moved to approve the following new continuing education seminars, continuing education requested changes for credit and renewal continuing education seminars and respective instructors as listed:

#### *Continuing Education New:*

##### **1. Appraisal Institute, Chicago, IL:**

- A. “*Introduction to Valuation for Financial Reporting*” – 7 hours – C2940  
Instructor: Michael Lohmeier

#### *Continuing Education Renewal:*

##### **1. Randall School of Real Estate, Omaha:**

- A. “*Understanding New Construction*” – 3 hours – C0120  
Instructor: Dean Uhling
- B. “*Property Acquisition and the Need for Environmental Site Assessment*” – 3 hours – C2213  
Instructor: Don Keeton
- C. “*Valuing Small Businesses*” – 3 hours – C0216  
Instructor: James Zipursky
- D. “*Radon and Real Estate*” – 3 hours – C0023  
Instructor: Mark Byrd
- E. “*Lead, Asbestos & Mold*” – 3 hrs. – C2640  
Instructor: Shelley Bengtson

#### *Continuing Education AQB/CAP change:*

##### **1. Appraisal Institute, Chicago, IL:**

Request change approved hours for C2306 from 7 hours to 5 hours.

Request change approved hours for C2306-I from 4 hours to 5 hours.  
Submitted AQB/CAP approval credit for continuing education.

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

Board Member Wilson moved to approve the following continuing education seminars and respective instructors as listed:

**1. Nebraska Real Property Appraiser Board, Lincoln, NE:**

B. “2009 USPAP Review Training Session” – 4 hours – C2903

Instructors: Danny Stoeber  
Bradford Moore

**2. The Moore Group, Lincoln, NE:**

A. “Nebraska Report Writing Update” – 7 hours – C2902

Instructors: Bradford Moore  
Diane Moore

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

**APPLICANTS & ENFORCEMENT**

Vice Chair Moore 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 11:32. Board Member Bain seconded the motion. The motion carried with Wilson, Bain, Moore, Hartman, and Mitchell voting aye.

Vice Chair Moore moved to come out of executive session at 12:23 p.m. Board Member Bain seconded the motion. The motion carried with Bain, Moore, Hartman, Wilson and Mitchell voting aye.

Vice Chair Moore moved to take the following action for the applicant for the Supervisor / Trainee:

ST100: Approved. Continuing Education due date January 22, 2011.

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

Vice Chair Moore moved to take the following enforcement actions:

08-04 – Hold. Received call from Respondent to discuss extension deadline. Agreed.

08-11 – Chair sign Consent Agreement to the following:

1. 15-hour National USPAP
2. 15-hour Residential Report Writing & Case Studies
3. License credential suspended for sixty days beginning January 15, 2009



4. Respondent cannot perform duties or practice in a supervisory or advisory capacity during suspension.
  5. Complete education by 6/30/2009 and submit documents to Board.
- 08-13 – Chair sign Consent Agreement to the following:
1. 15-hour National USPAP
  2. 15-hour Residential Report Writing & Case Studies
  3. 15-hour Residential Market Analysis and Cost Approach
  4. Certified Residential credential will be suspended for 60 days effective when Respondent signs Consent Agreement.
  5. Complete education by 7/31/2009 and submit documents to Board.
- 08-18 – Order to remove reciprocity credential in Nebraska and return wall document and pocket card. Have not received documents to date. No response.  
Credential has been inactivated.
- 08-21 – Prepare Cease & Desist for Respondent.
- 08-22 – Prepare Cease & Desist for Respondent.
- 08-24 – Hold. Review not completed by meeting date.
- 09-01 – Request investigation into fraud.
- 09-03 – Request true copy of appraisal and workfile.

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

Vice Chair Moore proposed to take the following enforcement action:

- 08-23 – Forward true copy of appraisal and workfile for review.
- 09-02 – Request true copy of appraisal and workfile.
- 09-04 – Send Advisory Letter to Respondent.

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

Tentative meeting dates were approved as follows: February 19, 2009  
March 19, 2009

## **ADJOURNMENT**

Vice Chair Moore moved to adjourn the January 22, 2009 meeting. Board Member Wilson seconded the motion. Motion carried unanimously.

At 12:37 p.m. Chair Mitchell adjourned the January 22, 2009 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Kitty Policky, Director

These minutes were available for public inspection on February 2, 2009, in compliance with Nebraska Statute §84-1413(5).