

**REAL PROPERTY APPRAISER BOARD
LOWER LEVEL, ROOM 6Y
NEBRASKA STATE OFFICE BUILDING
301 CENTENNIAL MALL SOUTH, LINCOLN, NE
February 19, 2009**

OPENING

Chairman Gregg Mitchell called to order the February 19, 2009, meeting of the Nebraska Real Property Appraiser Board at 9:00 a.m., in Room 6Y of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

NOTICE OF MEETING

Chairman Mitchell 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, Mathew 'Joe' Wilson, David Hartman, and James Bain were present. Director Kitty Policky was also present.

ADOPTION OF THE AGENDA

Chairman Mitchell 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 Moore moved to adopt the Agenda as printed. Board Member Wilson seconded the motion. With no further discussion, the motion carried with Moore, Wilson, Hartman, Bain, and Mitchell voting aye.

WELCOME GUESTS

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

APPROVAL OF THE MINUTES FROM JANUARY 22, 2009

Chair Mitchell asked for any additions or corrections to the January 22, 2009 minutes. Vice Chair Moore moved to adopt the minutes as presented and Board Member Bain seconded the motion. With no further discussion the motion carried with Wilson, Hartman, Bain, Moore, and Mitchell voting aye.

CHAIR REPORT

Chairman Mitchell had no items.

DIRECTOR'S REPORT

1. Monthly appraiser accounting:

The number of appraisers who have renewed as of February 18th stands as follows: 119 Registered/ Conversion; 124 Licensed; 196 Certified Residential; and 375 Certified General for a total of 815 appraisers. One new Registered credential can be added to the total as well as one new License credential. The total differs to date is about 97 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 for the Registered/Conversion

appraisers beginning in 2009, perhaps with the new Scope of Practice, as determined by federal guidelines, has left the Registered/Conversion credentials with a feeling that their education investment could not be recaptured and that the opportunity for acquiring sufficient experience hours was too limited.

2. Budget for the 2009 Standard 3 Review Seminar

Director Policky distributed an accounting of expenses for the 2009 Standard 3 Review Seminar, held in Lincoln on January 23rd. The total cost for the seminar offering stands at \$1,047.71. While the cost to each who attended was set at \$55.00 with approval for four hours of education credit the income for 24 appraisers @ \$55.00 each totaled \$1,320.00. The final accounting indicates the Appraiser Board broke about even making a final income of \$272.29. The Standard 3 Review Training is a service for individuals who fulfill contractual investigative and enforcement reviews as independent contractors to the Appraiser Board.

3. USPAP Q&A

The February Q&A has been distributed by the Appraisal Foundation and an electronic notice will be sent to appraisers informing them that the USPAP Q&A for February is available on the Appraiser Board website.

4. Rules & Regulations Committee

Director Policky requested the Appraiser Board consider the appointment of Sheila Newell, past Board member and Chairman; Diane Moore, certified residential appraiser and education provider; and Cay Lacey, certified general appraiser and certified USPAP instructor to serve on the Rules and Regulations Committee to make the appropriate changes to Title 298, Nebraska Rules and Regulations to reflect the adopted appraiser update guidelines as well as any other oversights that may be required. Although there is no new legislation for this year, the changes should be made to the rules and regulations as a formality.

Chairman Mitchell requested any discussion or questions concerning the appointment of a Rules and Regulations Committee. With no further discussion, Vice Chair Moore moved to approve the appointment the Rules and Regulations Committee as recommended by the Director. Board Member Hartman seconded the motion. The motion carried with Hartman, Bain, Moore, Wilson, and Mitchell voting aye.

A topic Director Policky addressed was the move by the Kansas Appraiser Board to electronically forward the Q&A about the new Home Valuation Code of Conduct from Freddie Mac and asked if the Board would be interested in forwarding such information to the Nebraska appraisers. The Board proceeded to encourage the Appraiser Board office to forward any such information that may be available to assist the appraisers with the new Home Valuation Code of Conduct. The Freddie Mac and Fannie Mae Q&A will be electronically distributed as well as the Home Valuation Code of Conduct.

The last item is the letter from Melanie J. Whittamore-Mantzios introducing herself and her qualifications. Director Policky requested approval to forward Melanie's qualifications to the Attorney General's office for appointment as a Special Assistant Attorney General as an alternate for cases concerning a conflict of interest. Vice Chairman Moore proposed submitting Melanie's qualifications to the Attorney General's office for appointment as a Special Assistant Attorney General for cases concerning a conflict of interest. Board Member Wilson seconded the

motion. With no further discussion the motion carried with Bain, Moore, Wilson, Hartman, and Mitchell voting aye.

Director Policky closed the report by thanking the Board for their efforts and concerns.

RECEIPTS AND EXPENDITURES REPORT – JANUARY 2009

The receipts and expenditures for January 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 IT expense has gone from a few hundred to thousands with little to show for the costs and there seems to be no alternative to seek a more qualified and less costly alternative. The Director will make appropriate changes to the Budget Status Report for the February meeting.

Vice Chair Moore moved to accept and file the January 2009 Receipts and Expenditures report for audit. Board Member Bain seconded the motion. The motion carried with Moore, Wilson, Hartman, Bain, and Mitchell voting aye.

UNFINISHED BUSINESS

1. Ed Tour / Bradford Moore & Joe Wilson

Vice Chairman Moore explained to the guests in attendance the plans for resurrecting Ed Tour. With limited information available at this time, Moore requested that the item be returned to the March agenda.

2. LB30 / Change provisions of the Nebraska Real Estate License Act

The Legislative Document indicates that LB30 was presented to the Governor on February 6th and approved by the Governor on February 12th. LB30 would amend various sections of the Nebraska Real Estate License Act to provide that the Nebraska Real Estate Commission shall have the authority to impose civil fines on licensees for each violation up to two thousand five hundred dollars per complaint. Currently, under the act, the Commission may only suspend or revoke licenses, censure licensees, and enter into consent decrees. The bill would allow the Commission to impose civil fines on licensees alone or in combination with such disciplinary actions. The bill also clarifies provisions, updates internal references, and adds customary language regarding investment of cash funds, disposition of fines, and procedures for recovery of unpaid fines.

LB30 is simply of interest to the Appraiser Board in making considerations for such disciplinary actions as civil fines. The Board has no future plans to make changes but was simply interested in the application of the process of imposing fines and how the process will proceed for the Real Estate Commission. Director Policky did remind members of the Board that all funds collected from fines and penalties are not kept by the entity but are distributed to the school in the county in which the activity takes place. The administration of the system is a cost to the agency but the collected monies from fines levied are collect and paid to the school system.

LB30 simply gives the Commission a tool for enforcement and disciplinary action if they decide to administer the changes to the law.

John Bredemeyer, past board member and chair, cautioned about the distribution of fines and disciplinary enforcement by reminding everyone there is a difference between a speeding ticket and a murder. But as Director Policky pointed out, the Appraisal Subcommittee fails to see the difference between the appraiser who perhaps does not make allowances for comparables and the appraiser who deliberately produces a fraudulent report. Both enforcement actions would virtually lead to an action reportable to the Subcommittee and an action that would remain on an appraiser's record for the remainder of time. The Appraisal Subcommittee must address the application of disciplinary actions and differentiate between the individual who runs a stop sign and the individual who commits murder.

Bredemeyer cautioned that an application of disciplinary action must be done in a discretionary manner and the Board must keep in mind the consequences of the profession for a minor USPAP violation in comparison to a fraudulent report.

Sheila Newell, past board member and chair, explained how the Board tried to be consistent with enforcement concerning USPAP violations and that perhaps the ability to fine an appraiser might have a positive outcome but fining, even on an across the board basis, would be a hardship to one appraiser and not to another. How do you become consistent in the administration of the ability to fine? It is really more important to remain consistent with enforcement than to seek alternatives to administration of enforcement.

Chair Mitchell reminded those in attendance that suspension and revocation is a far greater penalty than any civil fine could evoke. Perhaps forming a committee to work on legislative changes to reflect the new USPAP for next year might lead to additional changes in the statutes. Vice Chair Moore suggested that the same committee approved to work on the changes to the rules and regulations could begin changes on the statutes at the same time. Chair Mitchell agreed that the authorization exists and the committee will report to the Board for the final approval. Chair Mitchell requested that statute considerations be returned to the agenda for March and that we proceed to the next agenda item.

3. Virginia resolution.

The Virginia Real Estate Appraiser Board held a special meeting on appraisal delivery web-portals and the changes or altering of reports that appraisers prepare. On May 22, 2008, the VREAB met to discuss among several things, a petition submitted by George Dodd, SRA. The petition was written to prevent online sites, or web-portals from changing or otherwise altering reports. Web-portals include such companies as: AppraisalPort, RELS, and other AI ready required companies. The petition also sought to limit the illegal PDF stripping down, and programs that erroneously copy information from reports such as Lighthouse. Board Member Bain addressed the problems of appraisal portals alteration of reports. Whether the report is submitted electronically or on paper, there is absolutely no means to control what changes may be made but know this, should be appraisal be submitted for enforcement action, the original report and workfile are requested and the appraiser should be exonerated of all accusations of misconduct or USPAP violations if the report has been altered from its original submission. But, even considering the alteration of a report, The Appraisal Standards Board (ASB) reported a similar question in its July 2008 publication of USPAP Q&A noting that the Conduct Section of the ETHICS RULE STATES, IN PART: "An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report . . ." and noted that the appraiser has an obligation to ensure that

the report transmitted is not misleading or fraudulent and therefore, the appraiser needs to be familiar with the electronic report created by the software used in the assignment. Producing a report in a responsible manner is essential. USPAP establishes requirements only for appraisers, not clients, intended users, or others. Once an appraisal report has been transmitted to the client, USPAP places no further responsibility on the appraiser for the client's use of the report. For additional information you can visit www.dpor.virginia.gov/dporweb/apr_main.cfm.

NEW BUSINESS

1. Investigator Training Press Release.

Director Policky reported that in speaking with Denise Graves from the Appraisal Subcommittee, only the plans for Arizona are in place at this time.

Vice Chair Moore asked what part of the three scholarships per state would be covered. Since no information has been forthcoming from the Subcommittee concerning the Chicago training session, it would be prudent to wait until the announcement to know what costs would be covered and what costs would be the responsibility of the Board. It will be imperative for the Board to establish guidelines for investigators and those most qualified to fill the role may not be appraisers but investigators from other fields.

Director Policky mentioned to the Board that it is not the responsibility of the Board to train an investigator and that such action may be perceived as an impediment to due process and emphasized the importance of the Board to gain the knowledge required to improve the investigatory and enforcement process. The investigator training is available for appraisers interested in investing in a future market. The topic will be discussed at length when we have information as to when the Chicago training is scheduled.

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

Board meeting reconvened at 10:16 a.m.

2. RAC White Paper.

Chair Mitchell commented that the concern and reason for considering the RAC White Paper in response to developments in industry practices as well as USPAP concerning a relocation appraisal as defined by Worldwide ERC. While Worldwide ERC is the recognized leader and policy maker of the relocation industry, the established ERC Guidelines also evolved to meet the needs of the industry. Two primary areas of concerns for appraisers will be meeting USPAP compliance and client directions to the appraiser. Chair Mitchell has agreed to write a summary to introduce the RAC White Paper and distribute the information electronically to the appraiser community.

Vice Chair Moore proposed a motion to distribute the RAC White Paper with the executive summary electronically to the appraiser community and place a copy on the website. Board Member Hartman seconded the motion. The motion carried with Wilson, Hartman, Bain, Moore, and Mitchell voting aye.

3. Appraisal Foundation, AARO Partner on Appraiser Investigator Training.

The information on the investigator training class includes AARO and is the same as the information contained in #1. Investigator Training Press Release.

4. Demonstration report requirements.

Request to return the demonstration report requirement to the agenda from the February meeting. Board Member Wilson simply reiterated that under the 2008 criteria and Board will be selecting the required reports from the log submission. The consideration for requesting an additional demonstration report would only occur if the applicant should fail the report submission part of the application process. If the reports should exhibit a consistency in weaknesses or a problem performing certain aspects of report development, the Board would have the option of asking that an applicant submit a demonstration report as requested.

Chair Mitchell felt submission on the AI report form would prevent some of the most common errors in development and although the Board can request an additional report, John Bredemeyer was hesitant in requiring a specific form for submission. Perhaps giving the applicant the choice of several forms would be the best alternative.

Although the Board is obligated to meet federal guidelines for demonstration report submission, there is no law or rule preventing the Board from asking for an additional demonstration report or for that matter, using the format for report submission as a consequence of disciplinary actions.

5. Requesting Report Writing as elective for Registered credential.

Director Policky discussed with the Board the recommendations that have always been made to any interested individual who seeks a Registered credential in recommending that residential report writing be one of the electives to meet the qualifications for application. With the implementation of the 2008 criteria, residential report writing is being crowded out with *Appraisal Principles* and *Appraisal Procedures* accounting for 60 hours and the *National USPAP* requirement accounting for 15 hours. The final 15 hours can be completed by any of the residential core curriculum classes but it is imperative that a candidate be able to construct an appraisal report which would make residential report writing imperative at this point. Director Policky requested a policy from the Board that would make *Residential Report Writing and Case Studies* a requirement for the final 15 hours to apply for the Registered credential.

Vice Chair Moore presented a motion to require *Residential Report Writing and Case Studies* to fulfill the 15 hour elective for the Registered credential. The policy will be adopted into the rules and regulations by the approved committee to make updates. Board Member Wilson seconded the motion. The motion carried with Hartman, Bain, Moore, Wilson, and Mitchell voting aye.

6. John Bredemeyer report on post secondary education and BPO issue.

How do we solve the controversy involving post secondary education approval from one state to another? The AQB is in process of going through education to approve the requirements. Bredemeyer sent a message to AQB Chairman Gary Taylor with a request to work with Nebraska and the university to review the matrix and submit to the AQB for approval. Bredemeyer had not received a response from Chair Taylor to the proposed solution to approving the undergraduate university program by the scheduled meeting but would keep the Board posted as to the response from Chairman Taylor. With the assistance of John Cherica and the Board's approval, Bredemeyer will move ahead with the education requirements of the undergraduate program. Board members thanked Bredemeyer and Cherica for the interest in their profession.

and the time dedicated to assist in expanding the undergraduate programs to further the investment of education for those interested in the profession.

Second item was the BPO issue, which has mushroomed outside the borders of Nebraska. First addressing the concerns in Nebraska, Bredemeyer presented to the Board information given to the Real Estate Commission Board Chairman John Gale and Realtor's Association President John Leisey. Bredemeyer tried to explain that although it may be an appraiser law, the realtors are obligated for enforcement. In the end, Bredemeyer suggested setting up a meeting to express the controversy as it stands. Bredemeyer offered to facilitate a meeting to make sure that the issues were understood by all involved citing education as the first step to understanding what is acceptable for a broker and salesperson concerning the BPO issue. Bredemeyer would follow up with making arrangements for the meeting and keep Board members informed.

Chair Mitchell pointed out that the real issue was the use of a BPO for relocation, Freddie Mac and Fannie Mae, where they are using a BPO for foreclosure operation. And although it is legal to use a BPO for a listing or sale, it is not acceptable by statute to perform a BPO for a fee. The wide spread practice appears to make the BPO acceptable when Nebraska is one of 23 states that by statutes makes the practice unacceptable for lending.

The last alternative to this issue will be filing a case with the Attorney General's office for criminal prosecution. The current economic conditions are an example of the irresponsible procedures that have been in place for financing and loans. Just because it has been done, doesn't make it legal. The act of rendering a value outside the ordinary course of business for a broker or salesperson is an appraisal. You can't have it both ways. A BPO is issued in the ordinary course of business for listing and sales as the law reads or you risk criminal proceedings by violations of statutes.

Vice Chair Moore proposed a motion to send a letter to the fed and the FDIC, explaining our concern about the BPO issue resulting in non-credentialed appraiser practices and reduced appraisal requirements in the State of Nebraska. Board Member Hartman seconded the motion. The motion carried with Bain, Moore, Wilson, Hartman, and Moore voting aye.

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, requested continuing education changes and renewal of continuing education seminars and respective instructors as listed:

Continuing Education New:

1. Mid-West Appraisers Association, Kearney:

A. *"Nebraska Residential Report Writing Update"* – 7 hours – C2902

Instructors: Lynne Heiden

2. National Highway Institute, Florida:

A. *"Appraisal Review for Federal-Aid Highway Program"* – 6 hours – C2922

Instructor: Robert Kleinburd

3. Resource Property Group, Inc., dba Slusky RE Group:

- A. “2009 Commercial Real Estate Workshop;” – 8 hours – C2920

Instructors: Listing available.

4. Lancaster County Assessor/Register of Deeds, Lincoln:

- A. “IAAO 311 – Residential Modeling Concepts” – 30 hours – C9841

Instructor: Barry Couch

5. Nebraska Realtors Association, Lincoln:

- A. “Talking Green” – 3 hours – C2923

Instructor: Barry L. Stranz

6. American Society of Farm Managers & Rural Appraisers, Denver, CO:

- A. “Uniform Agricultural Appraisal Report” – 15 hours – C2949 and report credit

Instructor: Mark Elder

Continuing Education / Instructor Approval Only

1. Department of Revenue / Property Assessment Division, Lincoln:

- “IAAO 650 Cadastral Mapping” – 15 hours – C9715

Instructor: Dennis R. Albers

Continuing Education Renewal:

1. Appraisal Institute, Chicago, IL:

- A. “Condominiums, Co-Ops & PUDs” – 7 hours – C2643

Instructor: Alan F. Simmons

- B. “Residential Sales Comparison & Income Approach” – 28 hours – C0006

Instructor: Mark Ratterman

- C. “ONLINE / Appraisal of Nursing Homes” – 9 hours – C9836-I

Instructor: James Tellatin

- D. “ONLINE / Valuation of Detrimental Conditions in RE” – 7 hours – C9935-I

Instructor: Randall Bell

2. Worldwide ERC, Arlington, Virginia:

- ONLINE / The Relocation Appraisal Training Program” – 6 hours – C2647-I

Instructor: Jay Delich

Continuing Education AQB/CAP change:

3. Appraisal Institute, Chicago, IL:

Request change approved hours for C2855 from 20 hours to 21 hours.

Appraising Historic Preservation Easements.

Submitted AQB/CAP approval credit for continuing education adjustment.

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

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

1. The Moore Group, Lincoln, NE:

- A. “Home Valuation Code of Conduct” – 4 hours – C2907

Instructors: Bradford Moore & Diane Moore

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

Vice Chair Moore moved to deny the following seminar and respective instructor.

5. Nebraska Realtors Association, Lincoln:

B. *"Changing Spaces: 51 Wildly Creative Remodeling Ideas"* – 3 hours – C2924
Instructor: Barry L. Stranz

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

Chairman Mitchell thanked those in attendance for their input and interest.

Board took a break at 11:30 a.m.

Board meeting reconvened at 11:43 a.m.

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 11:43. Board Member Bain seconded the motion. The motion carried with Bain, Moore, Wilson, Hartman, and Mitchell voting aye.

Vice Chair Moore moved to come out of executive session at 12:35 p.m. Board Member Wilson seconded the motion. The motion carried with Moore, Wilson, Hartman, Bain and Mitchell voting aye.

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

ST101: Approved. Continuing Education due date February 19, 2011.

Vice Chair Moore moved to take the following action for the applicants for reciprocity:

L583 – Approve and send Scope of Practice with approval.

CR349 – Approve.

CG585 – Approve.

CG586 – Approve.

Board Member Wilson 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 – Request extend deadline education until March 16, 2009.

08-21 – Hold. Prepare Cease & Desist for Respondent.

08-22 – Hold. Prepare Cease & Desist for Respondent.

- 08-24 – Dismiss. Report meets minimum USPAP standards, Nebraska statute and rule.
- 09-01 – Dismiss.
- 09-02 – Hold. Certified mail card returned indicating appraiser at another location.
Prepared and posted certified again. Not received by meeting.
Included billing for \$50.00 for violating rules and regulations, Chapter 2, 002.
- 09-03 – Request true copy of appraisal and workfile. Respondent requested another extension of two weeks making due date March 5, 2009.
- 09-04 – Request true copy of report and workfile.

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

Vice Chair Moore proposed to take the following enforcement action:

- 08-23 – Invite informal conference.
- 09-02 – Request true copy of appraisal and workfile.
- 09-05 – Send Advisory Letter to Respondent.

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

Tentative meeting dates were approved as follows:

- April 16, 2009
- May 21, 2009
- June 18, 2009
- July 16, 2009

ADJOURNMENT

Vice Chair Moore moved to adjourn the February 19, 2009 meeting. Board Member Wilson seconded the motion. Motion carried unanimously.

At 12:40 p.m. Chair Mitchell adjourned the February 19, 2009 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Kitty Policky, Director

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