

**REAL PROPERTY APPRAISER BOARD
LOWER LEVEL, ROOM “F”
NEBRASKA STATE OFFICE BUILDING
301 CENTENNIAL MALL SOUTH, LINCOLN, NE**

21 January 2010

OPENING

Chairman Gregg Mitchell called to order the January 21, 2010 meeting of the Nebraska Real Property Appraiser Board at 9:04 a.m., in Lower Level, Room “F” 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, Matthew ‘Joe’ Wilson, Philip Barkley, David Hartman, and R. Gregg Mitchell were present. Director Kitty Policky was also present.

INSTALLATION OF NEWLY APPOINTED MEMBER

Chairman Mitchell introduced Deputy Secretary of State Judy Jobman who was present to administer the oath of office to Philip Barkley, a certified residential appraiser, appointed by Governor Heineman to serve as the representative to the 3rd District on the Board. Mr. Barkley 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. Barkley and Deputy Jobman signed the official documents, sealing the appointment. Following administration of the oath, Chairman Mitchell presented to Mr. Barkley 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 2010 OFFICERS

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

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, Barkley, Hartman, and Mitchell voting aye

WELCOME GUESTS

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

OPEN SESSION /APPROVAL OF THE MINUTES FROM DECEMBER 17, 2009

Chair Mitchell asked for any additions or corrections to the December 17, 2009 minutes. With no further discussion Board Member Wilson moved to adopt the minutes as presented. Board Member Hartman seconded the motion. The motion carried with Wilson, Barkley, Hartman, Moore, and Mitchell voting aye.

CHAIRMAN'S REPORT

Chairman Mitchell thanked the Board for their vote of confidence and the opportunity in electing him to serve another year. Much of the Chairman's report would be part of the items on the agenda.

DIRECTOR'S REPORT

A January 12, 2010 memorandum from Governor Heineman indicates a salary freeze for code agency directors and top management personnel will become effective July 1, 2010 for a period of one year. Vice Chairman Moore stated the Board wanted to address personnel matters prior to July 1, 2010 and requested the item be added to a future agenda.

Director Policky continued reporting the number of appraisers for January 2010 stands as follows: 108 Registered/Conversion; 102 Licensed; 204 Certified Residential; and 373 Certified General for a total of 787 appraisers. The accounting includes the totals for January 2009 with a total of 811 appraisers. The renewal process, although almost completed, is ongoing until June 30, 2010. The certified appraisers are increasing as the Registered and License appraiser totals decrease. The fluctuation with the certified appraiser totals are most generally in the reciprocal numbers. It is the goal of the Board and this office to encourage an upgrade to a certified credential.

Director Policky closed the report by thanking the Board for their service and assistance.

RECEIPTS AND EXPENDITURES REPORT – DECEMBER 2009

The receipts and expenditures for December were reviewed by the Director by line item with the Board. A total of \$20,516.78 in expenditures and \$45,514.67 in receivables is reported. No considerations were made for expenditures other than monthly obligations but receivables are significant as we are in the process of renewals for 2010. A copy of the Budget Status Report, the General Ledger Report and Receipt Journal for December is attached and considered part of these minutes.

Vice Chairman Moore moved to accept and file the December 2009 Receipts and Expenditures report for audit. Board Member Wilson seconded the motion. With no further discussion, Chairman Mitchell called for the vote. The motion carried with Barkley, Hartman, Moore, Wilson, and Mitchell voting aye.

UNFINISHED BUSINESS

1. Change Travel Policy per/mile reimbursement

The State Accounting Division has sent notice that the rate per mile reimbursement will be set at 50 cents per mile for 2010. The Board has adopted the DAS Travel Policy and will need to adopt the change in the reimbursement rate. Vice Chairman Moore moved to accept the new rate of 50 cents per mile amending the Travel Policy. Board Member Wilson seconded the motion. With no further discussion the motion carried with Hartman, Moore, Wilson, Barkley, and Mitchell voting aye.

2. 10-11 USPAP Compliant Report / Danny Stoeber

Mr. Stoeber was scheduled to appear before the Board today to present the revisions to the current USPAP Compliant Standard 3 Review Report form. Due to illness, Mr. Stoeber was unable to attend the meeting. The item will be placed on the February meeting agenda.

3. Review Training Schedule

Mr. Stoeber was scheduled to discuss training for reviewers to reflect the 10-11 USPAP changes. Mr. Stoeber was unable to attend the meeting due to illness. The item will be placed on the February meeting agenda.

NEW BUSINESS:

1. Approval of Special Assistant Attorney General 2010 appointments for William Blake and Jarrod Crouse

Notice was received from the Office of the Attorney General that the request for the appointment of William Blake and Jarrod Crouse as Special Assistant Attorney General was approved. Board Chair Mitchell requested a motion to accept the appointments. Board Member Hartman moved and Board Member Wilson seconded. With no further discussion the motion carried with Moore, Wilson, Barkley, Hartman, and Mitchell voting aye.

2. Approval for Association of Appraiser Regulatory Officials annual fee.

The annual membership fee to AARO 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. With no further discussion the motion was carried with Wilson, Barkley, Hartman, Moore, and Mitchell voting aye.

3. Citizenship Attestation Statement / Revisions to Nebraska Resident Application Form

With the adoption by the Nebraska Legislature of LB403 and the implementation of the SAVE program requiring agencies, boards, and commissions to include in their application process a form requiring applicants to declare their status within the state, an attestation statement has been added to the resident application form. With a brief break, Director Policky distributed to members a copy of LB403 for inspection pointing out that the denial for an applicant who does not have a recognized status is under state statute and not the statutes of the Real Property Appraiser Board. Section 4 of LB403 requires “verification of lawful presence in the United States pursuant to Section 1 of this act requires that the applicant for public benefits attest in a format prescribed by the Department of Administrative Services that . . .” Section 2: “For the purposes of sections 1 to 6 of this act, public benefits means any grant, loan, professional license, commercial license, . . .” Such definitions require the Nebraska Real Property Appraiser Board to verify the status of all new applicants for a credential. The state has implemented the use of the e-verify system. The attestation statement is not an option for a credential applicant. If an applicant does not qualify for either option, they will not be eligible to apply for a credential under the adopted obligations of LB403, effective October 1, 2009.

Board Member Wilson proposed a motion to adopt the required citizen attestation statement as required by LB403 to be included with the revised Nebraska residential application form. Board Member Hartman seconded the motion. With no further discussion the motion carried with Barkley, Hartman, Moore, Wilson, and Mitchell voting aye.

4. LB931

Turning to Legislative Bill 931, Chairman Mitchell asked Kristen Anderson of the Nebraska Realtors Association to give an overview of how the realtors viewed the bill introduced to change the Real Property Appraiser Act. Anderson reported that the official position would not be issued until after Legislative Days on Wednesday, February 3rd and an Executive Meeting of the Realtors planned for Saturday.

There is point of contention centered on a letter sent to President Leisey citing the Real Estate Code of Ethics. Chairman Mitchell explained that the concern by the Appraiser Board was not real estate licensees doing BPOs or CMAs but real estate licensees doing appraisals for lending purposes. At present there are no standards in the Real Estate Licensing Act to develop or report a BPO or a CMA. There are at present no standards for oversight or enforcement. There appeared to be no willingness to develop guidelines. The Appraiser Board has forwarded complaints in regard to BPO and CMA valuation products and absolutely no action was taken and it was expressed that no action would be taken that if there was to be disciplinary or enforcement action we would need to submit the complaint to the Attorney General's office or the county attorney in the respective district. Nebraska Rev. Stat. §76-2221(2) addresses the fact that enforcement would come from the Nebraska Real Estate Licensing Act and not the Real Property Appraiser Act.

Anderson explained that the realtors felt the letter was misleading and led to concerns. In essence the real crux centered on the statement that a licensee need not inquire as to the use of an opinion or analysis. Realtors want the Board to acknowledge the intended user is dictated by the parameters set in Neb. Rev. Stat. §76-2221(2). Anderson mentioned that perhaps there had been no means of filing a complaint in the past but the Real Estate Commission was under new leadership and with a new director comes the opportunity to discuss the problems and issues and work together to avoid further contention.

Intent allows the credentialed individual to follow the law and protects against unintended users. Appraisals and valuations are designed for specific clients and unintended users are not authorized to use if not stated as an intended user. The real estate licensee are following guidelines in the intent and spirit and stating the intended users. They are protecting themselves, especially from legal ramifications. Anderson mentioned the electronic forms were rigid and don't allow modification which creates problems inserting the disclaimer as required.

Statutory standpoint under §76-2221, the statement of use or inquiry of use is not in our statutes at this time. The letter dated January 22nd was serving as an opinion of the Board. The Appraiser Board is willing to work with the Nebraska Realtors Association to establish guidelines for BPOs and CMAs for consideration by the Real Estate Commission. The letter was simply to make realtors aware that they should not be doing valuations these for lenders. BPO or CMA valuations are illegal for lending purposes.

Anderson emphasized that the appraiser's standpoint needs to be articulated well on Wednesday at Legislative Days as well as to the Senators.

Chairman Mitchell discussed information from the Federal Reserve Board which stated commercial BPOs do not qualify as a valuation for loans originated under their jurisdiction could very well put the bankers in a place to violate banking rules.

Chairman Mitchell offered to write a letter addressed to Kristen clarifying that the part of the letter relating to the code of ethics is not part of the appraiser statutes but is simply a reference to the realtor's code of ethics. Although the Appraiser Board feels these are good practices, they are not mandated by the Real Property Appraiser Act. BPOs and CMAs are used for many purposes but valuations for loan origination purposes continues to be illegal in Nebraska and members should be cautionary in their practice to ensure they are not violating state statutes. Addressing the issues will permit moving on for LB931.

Board members extended their appreciation to Kristen for participating in the meeting as most appraisers are realtors and the input is valuable in facing the issues ahead of the appraisal profession.

Board Member Wilson proposed a motion to request Chair Mitchell issue a written clarification of the letter sent to President Leisey. Board Member Barkley seconded the motion. With no further discussion the motion carried with Hartman, Moore, Wilson, Barkley, and Mitchell voting aye.

Board took a break at 10:41 a.m.

Board meeting reconvened at 10:59 a.m.

5. LB818

The proposed legislative bill is a proposed change to 76-2221(2) by the banking and financial interests to allow the real estate licensees to perform valuations for lending and refinance purposes. Both Kristen Anderson and Board members commented on the element of surprise in that the realtors or the appraisers had not been contacted and the proposed changes had not been discussed in regard to the Real Property Appraiser Act. The bill was introduced by Senators Kate Sullivan and Dennis Utter. Individuals holding a real estate license or an appraiser credential can perform valuations by simply following the guidelines. In the ordinary course of business, valuation products can be used to assist in the listing or selling of real estate but cannot be used for financial and lending purposes.

Vice Chairman Moore addressed the negative impact of the proposed legislation adding the intent was not in the spirit of criticism but simply an analysis of the product and the use for Nebraska. Vice Chairman Brad Moore presented a letter format to members of the Board in response to LB818. With minor changes, the Board discussed sending the letter to the members of the Banking, Commerce and Insurance Committee as well as the Attorney General Jon Bruning, Director of the Real Estate Commission, Director of the Nebraska Department of Banking & Finance and the Chairperson of the Nebraska Real Estate Commission stating the strong opposition of the Real Property Appraiser Board to the proposed amendments to the Nebraska Real Property Appraiser Act as introduced in Legislative Bill 818.

Although LB818 states in "(ii) is engaged in, contracted for, or regulated by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of Currency, Office of Thrift Supervision, National Credit Union Administration, or successors of any of those agencies . . ." assuming the federal *de minimus* as the threshold but LB818 is reality makes no reference to any threshold and in fact would also apply to business loans under one million. The lack of information appears to be an attempt to allow valuations in lending for any amount. The protections that have been in place for the last 20 years would now allow lending to proceed without accountability and oversight.

Board Member Hartman did emphasize that lenders have used the valuations such as BPOs by stating that they agree with the valuation and signing off on the valuation by the lender as long as it is under the \$250,000.00 amount. Such transactions in residential loans could not be resold but small commercial loans could be sold as well as second mortgages. Hartman reminded members that regulatory agencies are closely scrutinizing lending procedures and accountability.

Vice Chair Moore moved to accept the proposed letter with minor changes. Board Member Wilson proposed an amendment to add the aforementioned to the list to receive a copy of the letter as well as sending an electronic copy to the appraiser community emphasizing the importance of their participation.

Board Member Hartman seconded the motion. With no further discussion the motion carried with Moore, Wilson, Barkley, Hartman, and Mitchell voting aye.

6. Richard Keith, USDA Rural Development.

Mr. Keith appeared before the Board on behalf of the USDA Rural Development as Mr. Keith had accepted a part-time position with USDA Rural Development. The position requires establishing procedures and consistency. In the limited time at the new position, he has performed a lot of appraisal review of single family. The review process has revealed a lack of consistency and reporting requirements. Mr. Keith expressed his interest in creating topics and procedures to cover guidelines for best practices; procedures for report development to establish consistency; and a list of common errors in residential appraisal. His goal was to try to provide a forum for communication. Mr. Keith is presenting to the Board an opportunity to review his communication to render consistency to the appraiser community. Considering budget constraints, an electronic distribution of the information is the most feasible. Mr. Keith discussed the need to distribute the information by requesting a listing of appraiser information.

Vice Chairman Moore thanked Mr. Keith for the opportunity to participate in educating the appraiser to create consistency in the development and reporting process by emphasizing the efforts by Mr. Keith is trying to develop and communicate knowledge and guidelines to create consistency for appraisers who produce assignments for the USDA Rural Development such as what technically has to exist to pass a review.

Mr. Keith also discussed the desire to have available to individuals as well as appraisers who not only reside in Nebraska but those who reside in other states to access the appraiser listing by name. The option gives the user another avenue for searching as it is not always known what county an appraiser may reside. Mr. Keith also mentioned that perhaps establishing markers on our map would also assist in searching for an appraiser. Who knows where Omaha, or Lincoln, or Scottsbluff are located? Markers would greatly assist in utilizing the information.

Chairman Mitchell did point out to Mr. Keith that the Board adopted a policy not to disseminate an electronic listing of appraisers. We even removed the credential number as a result of fraud cases indicating only the credential they hold. Adding an additional alpha listing would result in dealing with one of the most expensive IT departments in Nebraska and unfortunately, we are required to use the state IT department. Citing the additional budget cuts the process may not be affordable at this time but the Board would certainly keep the suggestions in mind as they also believe an alternative search engine would be an asset to locate appraisal services.

Director Policky offered to forward the information electronically to the appraisers if the procedures were approved by the Board.

Chairman Mitchell requested a motion to assist the USDA appraisal department in electronically distributing information provided by the USDA in the form of guidelines and procedures for producing appraisals that meet the requirements of the USDA as well as the Uniform Standards. Board Member Wilson so moved. Vice Chairman Moore seconded. With no further discussion the motion carried with Wilson, Barkley, Hartman, Moore, and Mitchell voting aye.

GENERAL PUBLIC COMMENTS

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

Board took a break at 12:05 p.m.

Board meeting reconvened at 12:21 p.m.

EDUCATION

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

Continuing Education New & Instructor Requests:

1. Appraisal Institute, Chicago, IL:

- A. “General Appraiser Sales Comparison Approach” / 27 hours / C0009-I
Instructor: Kenneth Foltz
- B. “Business Practice & Ethics 420” (Approved/new instructor request)
Instructor: Charles L. Cather (C2306)
- C. “Residential Design: The Making of a Good Home” (Approved/new inst. request)
Instructor: Richard Heyn (C2829)
- D. “Residential Design: The Making of a Good Home” (Approved/new inst. request)
Instructor: Cheryl Kunzler (C2829)

2. Van Education Center, Boulder, CO:

- A. “Yield Capitalization (Discounting)” / ONLINE / 4 hours / C21007-I
Instructor: Burton Lee

4. Career WebSchool, dba Cengage Learning, Atlanta, GA:

- A. “Residential Report Writing & Case Studies” / ONLINE / 14 hours / C2883-I
Instructor: Dr. A.M. Black
- B. “Residential Market Analysis & Highest & Best Use” / ONLINE / 14 hours / C2882-I
Instructor: Dr. A.M. Black
- C. “Residential Site Valuation & Cost Approach” / ONLINE / 14 hours / C0005-I
Instructor: Dr. A.M. Black

5. Franklin Educational Institute, Knoxville, IA:

- A. “The 3 F’s: Facts, Figures & Formulas” / 7 hours / C21024
Instructors: Diane Jacob, Richard DeHeer, Bobby Crisp, Marc Taylor & Ameila Brown
- B. “Appraisal Report Writing / 7 hours / C21025
Instructors: Diane Jacob, Richard DeHeer, Bobby Crisp, Marc Taylor & Ameila Brown

- C. “National USPAP Update” / 7 hours / C21001
Instructors: Diane Jacob, Bobby Crisp, Ameila Brown
- D. “Real Estate Red Flags” / 4 hours / C21026
Instructor: Diane Jacob, Richard DeHeer, Bobby Crisp, Marc Taylor & Ameila Brown

Continuing Education Renewal:

1. Appraisal Institute, Chicago, IL:

- A. “General Appraiser Site Valuation & Cost Approach” / 28 hours / C2722
Instructors: Harry Holzhauser & Maureen Mastroieni

2. McKissock, LP, Warren, PA:

- A. “The Cost Approach / ONLINE” / 7 hours / C2716-I
Instructor: Alan F. Simmons

Vice Chairman Moore seconded the motion. With no further discussion, Chairman Mitchell called for the vote. The motion carried with Barkley, Moore, Wilson, Hartman, and Mitchell voting aye.

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

3. The Moore Group, Lincoln, NE:

- A. “Foreclosures & Short Sales: Dilemmas and Solutions” / 7 hours / C21021
Instructors: Bradford Moore
Diane Moore
- B. “Nebraska Report Writing Update” / 7 hours / C21002
Instructors: Bradford Moore
Diane Moore

Board Member Hartman seconded the motion. With no further discussion, Chairman Mitchell called for the vote. The motion carried with Wilson, Barkley, Hartman, and Mitchell voting aye. Vice Chairman Moore abstained.

Chairman Mitchell thanked those in attendance for their input and interest and informed those attending the Board would go to closed session.

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 12:00. Board Member Wilson seconded the motion. The motion carried with Barkley, Hartman, Moore, Wilson, and Mitchell voting aye.

Vice Chair Moore moved to come out of executive session at 1:55 p.m. Board Member Wilson seconded the motion. The motion carried with Hartman, Moore, Wilson, Barkley, and Mitchell voting aye.

Vice Chair Moore moved to take the following action for the applicant for the Supervisor / Trainee:
ST208: Approve.

Vice Chair Moore moved to take the following action for the Registered applicant:
R870: Approve to sit for examination and credential upon submission of document indicating successful completion of examination to the Appraiser Board office.

Vice Chair Moore moved to take the following action for the License Residential applicants:
L587: Approve for credential as Nebraska resident.
L588: Approve to sit for examination. Request the three selected reports for review.

Vice Chair Moore moved to take the following action for Certified Residential applicant:
CR371 / Select three (3) appraisal reports for a residential: <20 years; residential >20 years and a 2-4 family for Standard 3 Report. Approve to submit for examination.

Vice Chair Moore moved to take the following action Certified General Reciprocity applicant:
CG598: Deny. Request log for 2008 and 2009 to select work product.

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

Vice Chair Moore moved to take the following enforcement actions:

- 06-22 Hold. Education must be completed by Nov. 30th and report submission completed by Dec. 31st. Failure to meet deadlines / Dec. 31, file Formal Complaint. Appraiser has not renewed credential for 2010.
- 08-04 Hold. Education due by December 31, 2009. Credential suspended until requirements of Consent Agreement are met. Appraiser has not renewed credential for 2010.
- 08-22 Hold. Litigation. Filing by Attorney General's office.
- 09-02 Select report from quarter log submission. Request from respondent failed. Proceed to formal.
- 09-21 Hold. Report sent for Standard 3 Review Report.
- 09-22 Hold. Report sent for Standard 3 Review Report.
- 09-23 Hold. Report sent for Standard 3 Review Report.
- 09-25 Hold. Informal invite, 1/15/2010 2:00 p.m., NSOB.
- 09-26 Assign case number. Request true copy report and workfile in duplicate.
- 09-27 Assign case number. Request true copy report and workfile in duplicate.
- 10-01 Assign case number. Request true copy report and workfile in duplicate.

Board Member Wilson seconded the Motion. With no further discussion the motion carried with Hartman, Moore, Wilson, Barkley, and Mitchell voting aye.

Vice Chair Moore moved to take the following enforcement action:

- 09-07 Formal / Hearing 1/28/10, 9:00 AM
- 09-09 Formal / Hearing 1/28/10, 9:00 AM

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

Vice Chair Moore moved to take the following enforcement action:
09-24 Hold. Report sent for Standard 3 Review Report.

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

Vice Chair Moore moved to take the following enforcement action:
08-11 Hold / Board granted another extension for education until March 1, 2010. Stress to appraiser there will be no further extensions.

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

Tentative meeting dates were approved as follows: March 18, 2010 / 1Y
April 15, 2010 / 1Y
May 20, 2010 / 1Y
June 17, 2010 / 1Y
July 15, 2010 / 1Y

ADJOURNMENT

Vice Chair Moore moved to adjourn the meeting. Board Member Barkley seconded the motion. Motion carried unanimously.

At 2:00 p.m. Chair Mitchell adjourned the January 21, 2010 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Kitty Policky, Director

These minutes were available for public inspection on February 1, 2010, in compliance with Nebraska Statute §84-1413(5).