

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

**20 January 2011**

**OPENING**

Chairman Gregg Mitchell called to order the January 20, 2011 meeting of the Nebraska Real Property Appraiser Board at 9:01 a.m., in Room “Y” located on the Main Level 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. Publication of official notice of the meeting appeared in the January 17, 2011 edition of the *Lincoln Journal Star*, a legal newspaper of general circulation in this State, as required by the public meeting law. 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, Philip Barkley, David Hartman, and R. Gregg Mitchell 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 Barkley seconded the motion. With no further discussion, the motion carried with Moore, Barkley, Hartman, and Mitchell voting aye.

**OATH OF OFFICE ADMINISTERED**

Chairman Mitchell introduced Deputy Secretary of State Judy Jobman who was present to administer the oath of office to Thomas Kubert, a certified general appraiser, appointed by Governor Heineman to serve as the representative to the 1<sup>st</sup> District on the Board. Mr. Kubert pledged to bear true faith and allegiance and to impartially 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. Kubert and Deputy Jobman signed the official documents, sealing the appointment in the presence of members and family. Following the administration of the oath, Chairman Mitchell presented to Mr. Kubert 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 2011 OFFICERS**

Chairman Mitchell thanked members for the privilege to serve as Chairman of the Board for the last two years but declined another term citing the qualifications of all members. With that said, Chairman Mitchell requested nominations for the position of Chairman. Board Member Barkley moved to nominate Bradford Moore as Chairman. Board Member Hartman seconded the motion. The motion passed unanimously with Barkley, Kubert, Hartman, and Mitchell, voting aye. Moore abstained. Board Member Moore moved to nominate Board Member Barkley as Vice Chairman.

Board Member Hartman seconded the motion. The motion passed unanimously with Kubert, Hartman, Moore, and Mitchell voting aye. Barkley abstained.

### **WELCOME GUESTS**

Chairman Moore welcomed the guests to the meeting and asked that they please sign the guest log.

### **APPROVAL OF THE MINUTES FROM DECEMBER 16, 2010**

Chairman Moore asked for any additions or corrections to the December 16, 2010 minutes. With no further discussion Board Member Mitchell moved to adopt the minutes as presented. Vice Chairman Barkley seconded the motion. The motion carried with Mitchell, Barkley, Kubert, Hartman, and Moore voting aye.

### **CHAIRMAN'S REPORT**

Chairman Moore thanked the Board members for their vote of confidence and the opportunity to serve as chairman. Much of the Chairman's report would be part of the items on the agenda.

### **DIRECTOR'S REPORT**

Director Policky reported the number of appraisers for January 2010 stands as follows: 85 Registered/Conversion; 89 Licensed; 206 Certified Residential; and 353 Certified General for a total of 739 appraisers. The accounting includes the totals for January 2010 reporting 787 appraisers and a report for January 2009 of 811 appraisers. The renewal process, although almost completed, is ongoing until June 30, 2011.

A media release from the Appraisal Subcommittee of the Federal Financial Institutions Examination Council on January 19, 2011, said it had determined that an appraisal complaint hotline as prescribed in the Dodd-Frank Wall Street Journal Reform and Consumer Protection Act was not currently in operation. The ASC member agencies have processes in place to respond to inquiries, but there is no one hotline that fully complies with the Act. Consistent with the Act's mandate, the ASC will study the establishment and operation of a national appraisal complaint hotline.

A final submission to the Board was a chart of the actual revenues and expenditures for FY08, FY09, and FY10 with the appropriation approval for FY11 and the budget request for FY12 and FY13. The chart visually indicates the discrepancy between the actual revenue and expenditures. The chart is baffling as this office has had no increases, other than union employee increases, in salary and has made no significant purchases. All expenditures have been accounted for as the cost of doing business. The largest obligations are to state agencies with the Communications/IT department leading the way. The cost for communication, which includes the website, is more than astounding for an agency the size of the Appraiser Board. Other than monthly obligations, it would be important to remind members of the tremendous costs for enforcement that have been incurred in the last few years. Enforcement is an obligation without a recognized price tag as the Board has every obligation to administer the complaint process. The visual comparison often times has more impact than the simple listing of numbers. A prudent review of expenditures is always first and foremost.

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

### **RECEIPTS AND EXPENDITURES REPORT – DECEMBER 2010**

The receipts and expenditures for December were reviewed by the Director by line item with the Board. A total of \$19,635.04 in expenditures and \$111,121.14 in receivables is reported. The final

accounting for receivables reflects a balance of \$103,841.64 as the \$7,279.50 accounted for under operating transfers out. The operating transfers out represents a cash fund to general fund from Agency 53 for 12/15/2010 in an amount of \$7,279.50 and will be withdrawn again June 15, 2011 in the same amount of 7,279.50. This is part of LB959e of the 2009 Special Session. No considerations were made for expenditures other than monthly obligations but receivables are significant as we are in the process of renewals for 2011.

The Budget Status Report to January 12, 2011 is also included. The December accounting indicates payroll is \$300.00 short in per diem payments for two meetings. A journal entry was made to correct the amount of per diem expenditures to the correct \$1,000.00 total.

A copy of the Budget Status Report, the General Ledger Report and Receipt Journal for December as well as a Budget Status Report to January 12, 2011 is attached and considered part of these minutes.

Vice Chairman Barkley moved to accept and file the December 2010 Receipts and Expenditures report for audit. Board Member Mitchell seconded the motion. With no further discussion, Chairman Moore called for the vote. The motion carried with Barkley, Kubert, Hartman, Mitchell, Moore, and Moore voting aye.

## **UNFINISHED BUSINESS**

### **1. AMC Task Force**

Board Members David Hartman and Joe Wilson as well as Task Force participants Mitch Ulrich, Cay Lacey, Henry Kammandel, and Banking lobbyist Bob Hallstrom held a teleconference on January 4, 2011 to consider proposed Appraisal Management Company legislation as provided by Mr. Hallstrom on December 21, 2010. The draft of LB410 was discussed by the Task Force members. The teleconference generated 26 comments/issues with the bill but further discussion and compromise reduced the number to eight solid concerns. The discussion concluded, the Task Force voted on eight amendments to the bill as presented. The proposed amendments from the Task Force are as follows:

1. Expand the AMC oversight to include all appraisal assignments not just those related to primary residences. Vote carried.
2. Request "removal" of the request to add an additional seat to the current Board. Vote carried.
3. Require an AMC to hold a payment surety bond of not less than \$25,000. Vote carried.
4. Amend present legislation from a two-year registration to a one-year registration and change the maximum annual fee to \$2500.00 with the Board to determine the actual fee. Vote carried.
5. Insertion of Dodd-Frank language (sec. 1124) in Section 7, page 10 of the bill in reference to AMC registration requirements. Vote carried.
6. Amend Section 10, page 11 to include all appraisal reviews (not just Standard 3) must be done by a person with the appropriate credentials for the state in which the property is located but still providing an exemption for quality control exams. Vote carried.
7. Amend Section 16, page 14 to \$25,000 which is the specified limits in Dodd-Frank. Current bill caps at \$5,000. Vote carried.
8. Amend Section 20, pages 16 & 17 so that the section ends on line 3 of page 17 directly after the phrase, "refer the matter to the board."

Mr. Hallstrom was present at the meeting of the Board to discuss the LB410 and the eight issues and to reach a compromise to move forward and felt the proposed AMC legislation was necessary to meet the federal requirements and emphasized that although the Appraisal Subcommittee guidelines have not been published, the legislation should capture the vast majority of issues for regulation of the AMCs.

In addition to the eight issues, Mr. Hallstrom and the Board discussed additional revisions to address such issues as a surety bond requirement in the amount of \$25,000; an adjustment to the fee structure for application, registration, and renewal; maximum fines; required credentialing for the purpose of conducting Standard 3 reviews; mandatory reporting for a material failure to comply; appraiser disclosure of fees; and timely payment of appraiser fees.

Mr. Hallstrom conveyed to the Board that his intentions were to capulate everything discussed. A Banking Association meeting was scheduled in the next week and he would return to his resources representing the AMC community to produce an amendment to LB410 to address the issues in a timely manner.

Board took a break at 9:47 a.m.

Board meeting reconvened at 10.00 a.m.

With no further discussion, Board Member Mitchell proposed a motion that the Board is agreeable in limiting the scope of the bill to consumer owned primary residences provided appropriate amendments are made to the bill to reflect the amendments discussed at the January 20<sup>th</sup> Board meeting. The motion reads as follows: Direct Mr. Hartman to convey to Mr. Hallstrom that we are agreeable to limitation on scope of practice to consumer owned primary residences provided that we see appropriate amendments are made to the bill that are in line with those that were brought forth by the Task Force.

Board Member Hartman seconded the motion.

With no further discussion, Chairman Moore called for a vote. Board Members Mitchell and Hartman voted in favor of the motion and Board Members Barkley and Kubert voted against the motion as well as Chairman Moore. Motion fails.

Chairman Moore asked for a clarification of the motion as the language was not agreeable to all members of the Board.

Board Member Hartman proposed a clarification of the motion to read as follows: The NRPAB directs Mr. Hartman to convey to Mr. Hallstrom that we are in agreement to limit the scope of practice to consumer owned primary residences provided we see appropriate amendments are made to the bill that are in line with those that were brought forth by the Task Force and discussed at the January 20<sup>th</sup> meeting of the Board.

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

## **2. 10-11 USPAP Compliant Report / Danny Stoeber**

Mr. Stoeber was unable to attend the January meeting. Board Member Mitchell proposed a motion to table Mr. Stoeber's report until the February 17<sup>th</sup> meeting to be added under Old Business.

Vice Chairman Barkley seconded the motion. With no further discussion the motion carried with Hartman, Mitchell, Barkley, Kubert, and Moore voting aye.

## **NEW BUSINESS**

### **1. Approval of Special Assistant Attorney General 2011 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. Chairman Moore requested a motion to accept the appointments. Board Member Mitchell moved to approve the appointments and Board Member Barkley seconded. With no further discussion the motion carried with Mitchell, Barkley, Kubert, Hartman, and Moore 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. Vice Chair Barkley moved to remit payment in the amount of \$350.00 and Board Member Mitchell seconded the motion. With no further discussion the motion was carried with Barkley, Hartman, Mitchell, Kubert, and Moore voting aye.

## **GENERAL PUBLIC COMMENTS**

Chair Moore asked for any public comments.

Mr. Keith appeared before the Board on behalf of the USDA Rural Development. Mr. Keith serves in a position with USDA Rural Development. The position requires establishing procedures and consistency but also involves reviewing appraisals for compliance with standards.

Mr. Richard Keith asked to address the Board with a question concerning whether a procedure by the USDA may be in violation of Dodd-Frank by requiring a review appraiser to report violations of USPAP. The reviews involve technical application as well as informal consultation. A policy of the USDA is to try to work with appraiser to correct USPAP deficiencies by technical review and consultation and get a resubmitted report. It is not the intent of the process to be punitive toward appraisers but to correct problems and create a better appraiser. Dodd-Frank seems to be limiting the ability to take constructive actions. Mr. Keith was concerned as a credentialed certified general in Nebraska that perhaps the review actions could be viewed as not complying with the law and he certainly did not want to jeopardize his credential by trying to do the right.

Chairman Moore pointed out in the interim rule the Truth & Lending Act "requires certain persons to report an appraiser to the applicable state appraiser certifying licensing agency if the person has a reasonable basis to believe the appraiser is failing to comply with USPAP." A process of correcting and assistance of someone work product is a learning experience and geared toward educating and teaching the appraiser to develop a USPAP compliant report. Failing to comply would be interpreted as someone who fails to make the corrections or the changes. Such actions would warrant turning someone in.

Mr. Keith was interested in input from the Board on the issue of review and USPAP violations to give the process by the USDA as well as appraisers with the responsibility of oversight some

direction. Reports have indicated a minimum number of violations but Mr. Keith stated that he has performed a Standard 3 review with numerous violations and has had the responsibility of teaching the correct approach to developing a compliant report with changes to the assignment. The issue is with single family residential appraisals addressed by Dodd-Frank.

Board Member Mitchell did ask Mr. Keith for input in policy form and Mr. Keith responded with consideration for returning with a written policy.

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 in trying to develop and communicate knowledge and guidelines to create consistency for appraisers who produce assignments for the USDA Rural Development.

Chairman Moore, a certified USPAP instructor, responded to the assistance by noting that USPAP was modified to recognize that not every error constitutes a violation and not every error is a competency issue. It is imperative to understand the difference between motive and error. Training simply involves errors and the process of teaching.

Board took a break at 11:38 p.m.

Board meeting reconvened at 11:54 p.m.

With no comments, the Chair proceeded to education.

## **EDUCATION**

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

### *Continuing Education New & Instructor Requests:*

#### **1. Appraisal University, Portsmouth, NH:**

- A. "Retail Center Analysis for Financing" / 7 hours ONLINE / C21125-I  
Instructor: Bruce Coin

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

Board Member Mitchell moved to approve the following continuing education seminar and respective instructors as listed as well as a change to the AQB/CAP approved primary provider request and instructor request:

#### **1. The Moore Group, Inc., Lincoln, NE:**

- A. "New Fannie Mae Requirements for Appraisers" / 7 hours / C21107  
Instructors: Bradford Moore  
Diane Moore

### *Core Curriculum Education AQB/CAP approved primary provider request:*

#### **1. The Moore Group, Inc., Lincoln, NE:**

Request change of primary provider for "Residential Sales Comparison & Income Approaches" / L/CR006 from Hondros to Dearborn or Cengage CompuTaught.

*Instructor Only:*

**1. The Moore Group, Inc., Lincoln, NE:**

A. “Residential Sales Comparison & Income Approaches” L/CR006

Instructor: Diane Moore

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

Board took a break at 12:56 p.m.

Board meeting reconvened at 1:17 p.m.

*The Nebraska Real Property Appraiser Board will meet in executive session for approval of applicants and enforcement matters.*

**APPLICANTS & ENFORCEMENT**

Vice Chair Barkley 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 1:17. Board Member Mitchell seconded the motion. The motion carried with Barkley, Kubert, Hartman, Mitchell, and Moore voting aye.

Vice Chair Barkley moved to come out of executive session at 2:17 p.m. Board Member Mitchell seconded the motion. The motion carried with Kubert, Hartman, Mitchell, Barkley, and Moore voting aye.

Vice Chair Barkley moved to take the following action for Certified Residential applicant:  
CR380 / Applicant meets statutory obligations of §76-2231.01. Approve to credential upon submission of original document indicating successful completion of examination to the Appraiser Board office.

CR382 / Approve to sit for examination and select appraisal reports for Standard 3 Compliance Report: residential <20 years; residential >20 years; and 2-4 family.

CR383 / Approve to sit for examination and select appraisal reports for Standard 3 Compliance Report: residential <20 years; residential >20 years; and 2-4 family.

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

Vice Chair Barkley moved to take the following enforcement actions:

09-07 Hold. No action taken.

09-09 Hold. No action taken.

09-25 Hold until Case #09-07 & #09-09 are completed.

09-26 Hold. Signed Consent Agreement to 15-hour National USPAP course; 15-hour Residential Report Writing & Case Studies to be completed by

- 11/30/2010. Respondent's credential will be downgraded permanently to Certified Residential immediately. Extension granted 1/31/2011 for education due date. Final extension granted until March 1, 2011. Suspend credential terms of Consent Agreement have not been met by the March 1, 2011 deadline.
- 10-03 Issue Stipulation and Order to inactivate credential for violation of 76-2238(18). Consent Agreement 15-hour National USPAP & General Report Writing & Case Studies by 11.30.2010. Board Chairman sign Order. Credential inactivated until terms of Consent Agreement have been met.
- 10-05B Hold. Consent Agreement 15-hour National USPAP & Residential Report Writing & Case Studies. Due by 11.30.2010. Granted request extension to 1/31/2011. Successfully completed education. Documents submitted. Met terms of CA. Close.
- 10-07A Hold. Consent Agreement 15-hour National USPAP & Residential Report Writing & Case Studies. Due by 12.31.2010. Extension granted 1/31/2011. Successfully completed education. Documents submitted. Met terms of CA. Close.
- 10-07B Hold. Consent Agreement 15-hour National USPAP & Residential Report Writing & Case Studies. Due by 12.31.2010. Extension granted 1/31/2011. Successfully completed education. Documents submitted. Met terms of CA. Close.
- 10-15 Hold. Signed Consent Agreement to 15-hour National USPAP and 15-hour Residential Report Writing & Case Studies. No supervisory or advisory. Education due 4/30/2011.
- 10-19 Hold / Respondent has not submitted fee for State Treasurer costs for processing check for insufficient funds.
- 10-21 Hold. Signed Consent Agreement to 15-hour National USPAP and 15-hour Residential Report Writing & Case Studies. No supervisory or advisory. Education due 4/30/2011.
- 10-27 Respondent submitted evidence as requested by Board. No evidence of violations of USPAP. Close. Chairman sign Order of Dismissal.
- 10-28 Hold. Report received late as appraiser located out of state for winter. Standard 3 Compliance Report does not meet minimum standards. Invite informal 8:00 a.m. Thursday, February 17.
- 10-30 Request true copy of report and workfile. Send for Standard 3 Compliance Report. Report meets minimum USPAP standards. Advisory letter. Close.
- 10-31 Advisory letter. Close.

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

### **ADJOURNMENT**

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

At 2:22 p.m. Chairman Moore adjourned the January 20, 2011 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).