

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

September 18, 2013 Meeting Minutes

A. OPENING

Chairman Philip Barkley called to order the September 18, 2013 meeting of the Nebraska Real Property Appraiser Board at 9:01 a.m., in conference room "B" located on the lower level of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

B. NOTICE OF MEETING

Chairman Barkley 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 email. Publication of official notice of the meeting appeared in the September 16, 2013 edition of the *Lincoln Journal Star*, a legal newspaper of general circulation in this state, as required by the Open Meetings Act. 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 Philip Barkley, Tom Kubert, Marc Woodle, Eldon Terrell, and Chris Langemeier were present. Also present were Director, Tyler Kohtz, Compliance and Licensing Specialist, Joya Weir, and Staff Assistant, Gail Parris.

ADOPTION OF THE AGENDA

Chairman Barkley 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. Board Member Kubert moved to adopt the agenda as printed. Board Member Langemeier seconded the motion. With no further discussion, the motion carried with Woodle, Terrell, Langemeier, Kubert and Barkley voting aye.

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

Board Member Kubert moved that the Board go into executive session for the purpose of reviewing applicants for credentialing, applicants for appraisal management company registration, investigations, and other sensitive matters. A closed session is clearly necessary to prevent needless injury to the reputation of those involved. The time on the meeting clock was 9:03 a.m. Board Member Woodle seconded the motion. The motion carried with Terrell, Langemeier, Woodle, Kubert and Barkley voting aye.

Break from 10:27 a.m. to 11:00 a.m.

Joseph Calvanico appeared before the Board via telephone.

Board Member Kubert moved to come out of executive session at 11:44 a.m. Board Member Langemeier seconded the motion. The motion carried with Woodle, Terrell, Langemeier, Kubert and Barkley voting aye.

Break from 11:44 a.m. to 12:00 p.m.

F. WELCOME AND CHAIR'S REMARKS

Chairman Barkley welcomed guests to the meeting. Diane Moore was the only public member in attendance. The Chairman thanked the staff and board members for their work during the past month.

G. BOARD MEETING MINUTES

1. APPROVAL OF AUGUST 22, 2013 MEETING MINUTES

Chairman Barkley asked for any additions or corrections to the August 22, 2013 minutes. Director Kohtz brought attention to two corrections. On Page 4, "13-09" under Section M, Subsection 2, should read "13-11." In the third paragraph on Page 5, "13-10" under Section M, Subsection 6, should read "13-12." Board Member Kubert also asked that "voting aye" be added to the end of the last action in Section E. With no further discussion Board Member Kubert moved to adopt the minutes as amended. Board Member Woodle seconded the motion. The motion carried with Langemeier, Terrell, Woodle, Kubert and Barkley voting aye.

H. DIRECTOR'S REPORT

Director Kohtz presented eleven charts outlining the number of appraisers and AMCs as of September 18, 2013. The Director summarized each chart and reported the number of appraisers as follows: 84 total Licensed, 77 resident and 7 reciprocal; 215 total Certified Residential, 176 resident and 39 reciprocal; 380 total Certified General, 255 resident and 125 reciprocal; and 11 Registered for a total of 690 appraisers. The total number of appraisers is up 1 from August 2013, and up 2 compared to September 2012.

The Director also addressed the number of temporary permits issued. There were 11 permits issued in August 2013. 11 permits were also issued in July 2013 and in August 2012 comparatively. As of August 31, 2013, 108 temporary permits have been issued for the calendar year. Director Kohtz indicated that the number of temporary permits issued continues to hold steady during 2013. Finally, Director Kohtz reported 104 AMCs registered, and 2 new AMC applications have been submitted since the last meeting.

I. FINANCIAL REPORT – SEPTEMBER 2013

The receipts and expenditures for August were reviewed by the Director by line item with the Board. Director Kohtz provided details related to some specific August expenses, and brought attention to expenditures for "Other Contractual Services" and "Legal Services." The Director informed the Board that July was a busy month for enforcements, which is just showing up on the Budget Status Report. Director Kohtz also indicated that he anticipates these expenditures will be much lower during the next few months, but that they will be monitored closely. For the Real Property Appraiser Program, which includes both the appraiser fund and the AMC fund, a total of \$34,014.25 in expenditures and \$9,879.16 in revenues were reported. As of the end of August, expenses amount to 14.04 percent of the budgeted expenditures for the fiscal year; 16.99 percent of the fiscal year has passed. Considerations were made for expenditures for monthly obligations. Finally, Director Kohtz presented three charts outlining the Agency twelve month expenses and revenues, historic cash balance, and twelve month cash balance.

Board Member Kubert moved to accept and file the August 2013 Budget Status reports for receipts and expenditures for audit. Board Member Langemeier seconded the motion. The motion carried with Woodle, Terrell, Langemeier, Kubert and Barkley voting aye.

Director Kohtz requested approval for a one week rental of a state issued cell phone for Compliance and Licensing Specialist Weir to use while traveling. The cost for this request is \$25.00. Board Member Langemeier made a motion to approve the one week rental of a state issued cell phone for \$25.00. The motion was seconded by Terrell, and carried with Woodle, Kubert, Terrell, Langemeier and Barkley voting aye.

J. GENERAL PUBLIC COMMENTS

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

K. EDUCATION

Board Member Kubert moved to approve the following continuing education courses as listed and send advisory letters to organization:

1. New Continuing Education Requests

A. R.F. Morrissey & Associates:

- 1. National USPAP Update/ 7 hours/ C21301**
- 2. Residential Report Writing Update/7 hours/ C2902**

Seconded by Terrell. Chairman Barkley called for the vote. The motion carried with Langemeier, Woodle, Terrell, Kubert and Barkley voting aye.

Board Member Kubert moved to approve the following instructor as listed:

2. Instructor Requests

A. R.F. Morrissey & Associates:

- 1. Roger Morrissey- National USPAP Update and Residential Report Writing Update/ C21301 and C2902**

Seconded by Woodle. With no further discussion, Chairman Barkley called for the vote. The motion carried with Woodle, Terrell, Langemeier, Kubert and Barkley voting aye.

L. UNFINISHED BUSINESS

1. COUNTY APPRAISER CONTRACTS UPDATE: The Board reviewed a report completed by Compliance and Licensing Specialist Weir concerning the Tax Equalization and Review Commission exhibits for the 2013 Statewide Equalization Proceedings. The Board noticed that many of the same non-credentialed individuals may be providing appraisal services to counties that were identified in 2012. The Board requested that Compliance and Licensing Specialist Weir send a letter to each county that lists a non-credentialed individual as providing appraisal services on the 2013 Tax Equalization and Review Commission exhibits for the 2013 Statewide Equalization Proceedings, and to each identified individual, requesting more details regarding the appraisal services provided by the individual to the county.

2. NEW CREDENTIAL UPDATE: No update.

M. NEW BUSINESS

1. APPRAISAL BUZZ ARTICLE – MAN VS. MACHINE: Director Kohtz presented an Appraisal Buzz article to the Board for review. The article pertained to the effects of AVMs on the appraiser profession. The Director found some of the points made in the article interesting.

- 2. APPRAISAL SUBCOMMITTEE AUDIT PRELIMINARY FINDINGS AND NRPAB RESPONSE:** Director Kohtz presented the ASC Staff Compliance Review Preliminary Findings document to the Board for review, and outlined each finding by the ASC. The Director informed the Board that there was nothing contained in the report that was unexpected. The Board also reviewed the letter drafted by Director Kohtz in response to the ASC's findings. Board Member Kubert made a motion to approve and send the letter in response to the ASC's findings as written. The motion was seconded by Langemeier, and carried with Woodle, Terrell, Kubert, Langemeier and Barkley voting aye.
- 3. AUTHORITY TO CHANGE CONTINUING EDUCATION REQUIREMENTS REPORT:** The Board reviewed a report completed by Director Kohtz concerning the Board's ability to change continuing education requirements of credential holders due to extenuating circumstances. The Director summarized the report, and indicated that the Real Property Appraiser Act specifies general continuing education requirements, but Title 298 of the Rules and Regulations further defines the continuing education requirements and outlines specific requirements. Absent from the Act is authority for the Board to consider extenuating circumstances when determining continuing education requirements. For example, the Real Property Appraiser Act does not specify that continuing education must be completed in a classroom, but Title 298 indicates that continuing education completed online is not to exceed 14 hours per continuing education period. Without the ability to consider extenuating circumstances when determining continuing education requirements, the Board cannot change this requirement for a credential holder.
- 4. LETTER OF GOOD STANDING FEE:** Director Kohtz brought attention to the Board's authority to charge up to a \$10.00 fee for a certificate of good standing in accordance with Title 298. The Director indicated that this fee has not been utilized in the past, but didn't know if the Board was aware of this authority. The Board discussed the positives and negatives of a fee for a certificate of good standing, and agreed that no such fee is needed at the present time. However, the Board was also interested in the financial impact that requiring or not requiring the fee has on the Board's operations, and requested that the number of certificates issued be tracked by staff through December 31, 2013.
- 5. MEMO FROM THE BOARD – NOTICE OF LEGISLATIVE BILLS AND COMMENTS REQUEST:** Director Kohtz requested approval to draft a Memo From the Board to be sent to Nebraska credentialed appraisers informing them of the Board's legislative bills and requesting comments on the drafted changes to the Real Property Appraiser Act and Appraisal Management Company Registration Act. Board Member Kubert made a motion to approve a Memo From the Board addressing the Board's legislative bills and requesting comments. The motion was seconded by Woodle, and carried with Langemeier, Terrell, Woodle, Kubert and Barkley voting aye.
- 6. MEMO FROM THE BOARD – OPEN FINANCIAL INSTITUTIONS REPRESENTATIVE POSITION ON BOARD:** Director Kohtz presented a draft Memo From the Board concerning the financial institutions representative position that will be open after Board Member Terrell's term expires. With no further discussion, Board Member Kubert made a motion to approve the Memo From the Board as presented. Seconded by Terrell. The motion carried with Langemeier, Woodle, Terrell, Kubert and Barkley voting aye.

7. **STATE SERVICE CONTRACTS REQUIREMENTS:** During the August meeting a question came up concerning contract requirements for Standard 3 appraisal reviews. Director Kohtz indicated that he will research the requirements and present the findings to the Board at its September meeting. Director Kohtz has contacted Brenda Pape, State Procurement Manager, but has not heard a response back to date. The Director will follow up with Ms. Pape before the October meeting.
8. **TRAINEE REAL PROPERTY APPRAISER CREDENTIALING FEE:** At the August meeting, the Board approved Board Policy 13-12, requiring credentialing as a real property appraiser for any appraisal experience obtained on or after January 1, 2014. While preparing for this policy change, Director Kohtz found that the Board has the authority to charge a credentialing fee in accordance with Title 298. At the present time, trainee real property appraiser applicants are being charged a \$150.00 application fee only. Director Kohtz indicated that he was unsure if the Board was aware of this authority. The Board discussed the application fee and credentialing fee for the trainee real property appraiser, and agreed that revenue is not the purpose for requiring that those obtaining appraisal experience be credentialed. Furthermore, the additional fees would be a burden on those not currently credentialed working to become licensed, certified residential or certified general real property appraisers. The members of the Board indicated that the current fee structure for trainee real property appraisers is appropriate. No action was taken.
9. **AMC ASSIGNMENT ACCEPTANCE:** Chairman Barkley received an email from an appraiser in Illinois regarding AMC legislation. The Chairman was interested in the comment “the law states I should not accept an order unless the AMC has a valid license” made by the appraiser. Chairman Barkley wanted to bring the thought to the Board’s attention for consideration of similar language in the Real Property Appraiser Act or Appraisal Management Company Registration Act rewrite. The Board discussed appraiser responsibilities regarding AMC assignments and the impact of such legislation. No action was taken.
10. **AARO MEMBERSHIP:** Director Kohtz informed the Board that the 2013 AARO dues have not been paid to date. AARO sent the invoice to an incorrect email address, so it was not received by board staff. The Director asked if the Board would like to renew its AARO membership. Board Member Kubert made the motion to renew the Board’s AARO membership for 2013 and pay the required dues. The motion was seconded by Terrell, and carried with Langemeier, Woodle, Terrell, Kubert and Barkley voting aye.

N. LEGISLATIVE REPORT AND BUSINESS

1. **NEBRASKA REAL PROPERTY APPRAISER ACT DRAFT:** Director Kohtz indicated that all three drafts have been sent to the bill drafter, and the drafts in bill form are expected soon. Director Kohtz also reported that he spoke with Senator McCoy about the drafted legislation. Senator McCoy indicated that it may be difficult to get all three bills through in the short session when there are 318 active bills and 70 priority bills carried over from last session. Senator McCoy also recommended having someone on the Banking, Commerce and Insurance Committee sponsor the bills; it also may be best to focus on the bill with the greatest priority for this session. Director Kohtz asked the Board how it would like to proceed. Board Member Langemeier indicated that having someone on the Banking, Commerce, and Insurance Committee sponsoring the bills may be a good idea, and that the Director should discuss the three drafted bills with the committee’s legal counsel. The Director responded that once the bills are drafted, he will be in contact with the committee’s legal counsel.
2. **NEBRASKA APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT DRAFT:** No update.

O. BOARD POLICIES AND PROCEDURES

1. BOARD POLICIES

a. **NEW BOARD POLICIES:** The Board reviewed held Board Policy 13-03. Director Kohtz informed the Board that he has been working on language for this policy, but is having trouble establishing when a person must submit an instructor application; at what point is a person an instructor or not. Title 298 only states that an instructor must submit an application to the Board for approval, but does not clarify that an instructor is required for any continuing education activities, with the exception of the 7-Hour USPAP Update. The Director asked that the Board for guidance on this subject. The Board agreed that one defined as an instructor must meet the Board's requirements according to Title 298, and only one instructor is needed for a continuing education activity. The instructor is responsible for ensuring that course content is communicated to the audience as presented to the Board for approval. Director Kohtz indicated that he will update the draft board policy and present it to the Board at its October meeting.

b. **CURRENT BOARD POLICIES:** No discussion took place.

2. **COMPLIANCE PROCESSES AND PROCEDURES:** Director Kohtz presented the Compliance Grievance Processes and Procedures to the Board for review. A discussion took place regarding the positives and negatives of such a document. The Board agreed that the grievance procedures should remain unwritten to allow for flexibility when needed. The Board took no action regarding this matter, and no written grievance processes and procedures will be adopted.

3. **LETTER OF GOOD STANDING/LICENSE HISTORY, CORPORATE CERTIFICATE REQUEST FORM:** The Board reviewed the Letter of Good Standing/License History, Corporate Certificates Request Form. Director Kohtz informed the Board that the \$10.00 charge for letter of good standing should be removed. Board Member Kubert made a motion to approve the Letter of Good Standing/License History, Corporate Certificate Request Form as amended. Seconded by Langemeier, and carried with Terrell, Woodle, Kubert, Langemeier and Barkley voting aye.

P. OTHER BUSINESS

1. CONFERENCES/EDUCATION

a. **AARO CONFERENCE ATTENDANCE:** Director Kohtz indicated that he will not be able to attend the fall AARO Conference in Washington this year due to his family moving to a new home.

C. CONSIDERATION OF APPLICANTS

1. CREDENTIALING AS NEBRASKA REAL PROPERTY APPRAISER:

Board Member Kubert moved to take the following actions for credentialing applicants as listed:

CG13016 / Hold; send letter requesting explanation of what percentage of work is exempt and non-USPAP compliant.

CG13017R / Approved

CG13013R / Hold; request that applicant obtain a letter from the State of Illinois indicating that the 1999 disciplinary action has been resolved, and that the State of Illinois has no record of 2000 and 2001 disciplinary actions or that the actions have been resolved. Letter must be received no later than November 8, 2013.

CG13018R / Approved

CR13006 / Hold

CG647 / Hold

L607 / Hold

L605 / Denied
CG631 / Hold
CR13007 / Hold
CR13009 / Hold
CR13012 / Hold

Board Member Woodle seconded the motion. Motion carried with Langemeier, Terrell, Woodle, Kubert and Barkley voting aye.

Board Member Woodle moved to take the following action for the credentialing applicant as listed:

CG13010 / Hold

Board Member Terrell seconded the motion. Motion carried with Langemeier, Woodle, Terrell and Barkley voting aye. Kubert abstained.

Board Member Kubert moved to take the following action for the temporary permit applicant as listed:

Item 1 / Approved

Board Member Woodle seconded the motion. Motion carried with Langemeier, Terrell, Kubert, Woodle and Barkley voting aye.

2. REGISTRATION AS APPRAISAL MANAGEMENT COMPANY:

Board Member Kubert moved to take the following action for the AMC applicant as listed:

NE2013020 / Approved
NE2013019 / Approved
NE2013018 / Approved
NE2013017 / Approved
NE2013012 / Approved

Board Member Woodle seconded the motion. Motion carried with Terrell, Kubert, Woodle, Langemeier and Barkley voting aye.

D. CONSIDERATION OF DISCIPLINARY ACTIONS/ ENFORCEMENT MATTERS:

Vice Chair Kubert moved to take the following enforcement actions:

11-12 / Hold
11-26 / Hold
12-06 / Hold
12-11 / Hold
12-20 / Hold
12-21 / Amend Consent Agreement to allow Respondent to complete 15-Hour Residential Report Writing and Case Studies course as requested.
12-27 / Hold
12-31 / Hold
13-06 / Hold

13-07 / Consent Agreement signed by Board Chair.
13-09 / Hold
13-10 / Hold
13-14 / Hold
13-15 / Hold
13-20 / Hold
13-22 / Dismissed without prejudice.

Board Member Langemeier seconded the motion. Motion carried with Woodle, Terrell, Langemeier, Kubert and Barkley voting aye.

Board Member Woodle moved to take the following enforcement actions:

12-24 / Hold
12-29 / Hold
13-16 / Dismissed without prejudice; send advisory letter concerning USPAP Standard 2, Record Keeping Rule, and Ethics Rule.
13-18 / Hold
13-19 / Hold
13-21 / Hold

Board Member Langemeier seconded the motion. Motion carried with Terrell, Langemeier, Woodle and Barkley voting aye. Kubert abstained.

Vice Chair Kubert moved to take the following enforcement actions:

13-13 / Hold
13-23 / Hold
13-24 / Open investigation and invite to informal meeting. Board Member Barkley appointed as Investigating Board Member.
13-25 / Open investigation and invite to informal meeting. Board Member Barkley appointed as Investigating Board Member.
13-26 / Send appraisal report and workfile for Standard 3 review. Board Member Barkley appointed as Investigating Board Member.

Board Member Terrell seconded the motion. Motion carried with Langemeier, Woodle, Terrell and Kubert voting aye. Barkley abstained.

E. CONSIDERATION OF OTHER EXECUTIVE SESSION ITEMS

The Board discussed Inquiry I13-9.

The Board discussed Inquiry I13-10.

Inquiry I13-11 concerning an appraisal report discovered by a board member during routine business was discussed by the Board. The appraisal appears to be non-compliant with the USPAP Standards. In addition, it appears that the appraiser failed to exercise reasonable diligence, and may have demonstrated negligence communicating the appraisal. Finally, the appraisal report appears to be misleading. The Board agreed to open a new investigation 13-26 for alleged violation of Neb. Rev. Stat. § 76- 2237 and N.R.S. § 76-2238 (4), (13), (14).

The Board reviewed an appraisal log submitted by Nebraska credentialed appraiser at the Board's request. No action taken.

A Nebraska credentialed appraiser made a written request for approval to take all continuing education online during the current continuing education period due to extenuating circumstances. The Board discussed this request.

Vice Chair Kubert moved to take the following actions for the above mentioned matters:

- I13-4 / Hold**
- I13-5 / Hold**
- I13-6 / Hold**
- I13-7 / Hold**
- I13-9 / Closed; send advisory letter.**
- I13-10 / Closed**
- I13-11 / Closed; open investigation 13-26.**
- Item 9 / Denied**

Board Member Woodle seconded the motion. Motion carried with Langemeier, Terrell, Woodle, Kubert and Barkley voting aye.

P. NEXT MEETING DATE – October 10, 2013, LOWER LEVEL “F” NSOB

Q. ADJOURNMENT

Board Member Kubert moved to adjourn the meeting. Board Member Langemeier seconded the motion. Motion carried with Terrell, Woodle, Langemeier, Kubert and Barkley voting aye.

At 2:12 p.m. Chairman Barkley adjourned the September 18, 2013 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Tyler N. Kohtz
Director

These minutes were available for public inspection on October 1, 2013, in compliance with Nebraska Statute §84-1413 (5).