

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

April 16, 2015 Meeting Minutes

A. OPENING

Chairman Thomas Kubert called to order the April 16, 2015 meeting of the Nebraska Real Property Appraiser Board at 9:03 a.m., in conference room “F” located on the lower level of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

B. NOTICE OF MEETING

Chairman Kubert 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 April 13, 2015 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 Thomas Kubert, Marc Woodle, Christopher Langemeier, Larry Saxton, and Sandra Gutwein were present. Also present were Director, Tyler Kohtz, and Compliance and Education Specialist, Anthony Dreesen, and Business and Licensing Specialist, Jayme Kienholz-Howsden.

ADOPTION OF THE AGENDA

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

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

Board Member Woodle 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 9:05 a.m. Board Member Langemeier seconded the motion. The motion carried with Saxton, Gutwein, Woodle, Langemeier, and Kubert voting aye.

Break from 10:10 a.m. to 10:29 a.m.

Board Member Woodle moved to come out of executive session at 11:23 a.m. Board Member Langemeier seconded the motion. The motion carried with Langemeier, Gutwein, Woodle, Saxton, and Kubert voting aye.

Break from 11:23 a.m. to 11:32 a.m.

Lunch served to board members and staff at 12:00 p.m.

G. WELCOME AND CHAIR'S REMARKS

Chairman Kubert welcomed everyone in attendance. Diane Moore was the only member of the public in attendance.

H. BOARD MEETING MINUTES

1. APPROVAL OF MARCH 19, 2015 MEETING MINUTES

Chairman Kubert asked for any additions or corrections to the March 19, 2015 minutes. With no further discussion the Chairman called for a vote. Board Member Langemeier moved to adopt the March 19, 2015 meeting minutes as presented. Board Member Saxton seconded the motion. The motion carried with Woodle, Gutwein, Saxton, Langemeier, and Kubert voting aye.

I. DIRECTOR'S REPORT

Director Kohtz presented twelve charts outlining the number of appraisers and AMCs as of April 16, 2015. The Director summarized each chart and reported the number of appraisers as follows: 68 total Licensed, 64 resident and 4 reciprocal; 218 total Certified Residential, 180 resident and 38 reciprocal; 381 total Certified General, 243 resident and 138 reciprocal; and 0 Registered for a total of 667 appraisers. The total number of appraisers is up 5 from March, and down 12 from April 2014. The Director also informed the Board that there are 56 Trainees, which is even compared to March, and up 12 from April 2014.

In addition, the Director addressed the number of temporary permits issued. There were 19 permits issued in March compared to 24 permits issued in February. As of March 31, 2015, 50 temporary permits have been issued for the calendar year. Finally, Director Kohtz reported 107 AMCs registered. The Director continued by informing the Board that the drop from 111 registered AMCs last month is attributed to a few companies failing to renew their registration, and two companies completing a merger leaving one company registered as an AMC.

J. FINANCIAL REPORT AND CONSIDERATIONS– APRIL 2015

1. APPROVAL OF MARCH RECEIPTS AND EXPENDITURES

The receipts and expenditures for March were reviewed by the Director by line item with the Board. Director Kohtz provided details related to some specific March expenses. For the Real Property Appraiser Program, which includes both the appraiser fund and the AMC fund, a total of \$25,591.04 in expenditures and \$15,208.53 in revenues were reported. As of the end of March, expenses amount to 70.33 percent of the budgeted expenditures for the fiscal year; 75.07 percent of the fiscal year has passed. Finally, Director Kohtz presented three charts outlining the Agency twelve month expenses and revenues, historic cash balance, and twelve month cash balance.

Board Member Saxton moved to accept and file the March 2015 budget reports for audit.

Board Member Woodle seconded the motion. The motion carried with Gutwein, Saxton, Langemeier, Woodle, and Kubert voting aye.

2. 2015-17 BIENNIAL BUDGET REQUEST UPDATE: No update.

K. GENERAL PUBLIC COMMENTS

Chairman Kubert asked for any public comments. With no comments, the Chairman proceeded to NRPAB Investigative Procedure Changes.

L. NRPAB INVESTIGATIVE PROCEDURES CHANGES: A discussion took place concerning the recommended changes to the Board’s investigative procedures. Board Member Kubert and Director Kohtz outlined the recommended changes, which incorporated the discussion points from the March meeting. Board Member Saxton again expressed concern with the procedures as written; specifically, Board Member Saxton believes that this procedure will result in an appraiser being an advocate for the Board, and the procedures will not address the quality of review. Director Kohtz informed the Board that the quality of review will be much better because the subject matter expert will have a better understanding of the expectations due to regular communication with the staff. Director Kohtz also indicated that every appraiser that is called into a hearing room as a witness is an advocate to a certain extent; there is nothing that can be done about that. The Director also informed the Board that any subject matter expert that enters into a contract with the Board will have civil and criminal immunity, so if retaliatory disciplinary action is a concern, it shouldn’t be. Special Assistant Attorney General Blake was asked to join the conversation. Board Member Saxton asked Mr. Blake if he supports the procedures. Mr. Blake responded, “I do support the procedures as written, they are not perfect, but this is a very good start.” Mr. Blake was asked if he had any concerns about advocacy. Mr. Blake indicated that there is always a concern about advocacy on both sides.

Board Member Langemeier questioned the use of “verify” in #1ai and #1bi. He asked if “verify” could be changed to “qualify.” Director Kohtz informed the Board that this change will be made. Board Member Langemeier also expressed concern that this procedure will “bring the hammer.” He continued by saying that it is very important that the Board’s focus is on education and making better appraisers, not on disciplining appraisers. Chairman Kubert asked if something could be added to the procedures to express the Board’s intent that its focus is on making better appraisers through education. Director Kohtz reminded the Board that the Board still determines disciplinary action. Chairman Kubert asked, “What about those cases that are dismissed?” Director Kohtz indicated that the Board still has full authority to make the decision it wishes. Board Member Langemeier brought attention to future boards, and indicated that it would be good to have a standard in writing.

Board Member Kubert brought attention to the sixty day period in #9, and asked when this period begins. Director Kohtz informed the Board that the sixty days would begin on the date that the Board makes the decision. Chairman Kubert asked that this be clarified in #9. Director Kohtz informed the Board that this change will be made. Chairman Kubert expressed to the Board that this is likely not a final product, but it is a good place to begin building from. This accomplishes the main goal of removing the board members from the investigations, and allows each board member to sit in judgement only. Chairman Kubert asked for a vote. Board Member Woodle made a motion to approve the investigative procedures as amended. Board Member Langemeier seconded the motion. The motion carried with Saxton, Woodle, Langemeier, Gutwein, and Kubert voting aye.

M. EDUCATION

Board Member Woodle moved to take the following actions on education and instructor requests as listed:

Continuing Education Renewal Activities and Instructors

1. McKissock, LP
 - a. The Nuts & Bolts of Green Building for Appraisers (C21017-I)/3 Hours - *Approve*
 1. Dan Bradley - *Approve*

Continuing Education Instructors

1. Appraisal Institute – NE Chapter
 - a. Cay Lacey - National USPAP Update (C21401) - *Approve*

New Continuing Education Activities and Instructors

1. The Moore Group
 - a. FHA Guidelines (C21528)/7 Hours - *Approve*
 1. Bradford Moore - *Approve*
 2. Diane Moore - *Approve*

2. McKissock, LP
 - a. Appraisal Review for Commercial Appraisers (C21529-I)/7 Hours - *Approve*
 1. Paul Lorenzen - *Approve*

 - b. The New FHA Handbook 4000.1 (C21530)/7 Hours - *Approve*
 1. Dan Bradley - *Approve*
 2. Tracy Martin - *Approve*
 3. Charles Huntoon - *Approve*
 4. Larry McMillen - *Approve*

3. IRWA
 - a. Easement Valuation (C21531)/8 Hours - *Approve*
 1. David Burgoyne - *Approve*

 - b. Problems in the Valuation of Partial Acquisitions (C21532)/8 Hours - *Approve*
 1. David Burgoyne - *Approve*

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

N. UNFINISHED BUSINESS

1. **NRPAB OFFICE RELOCATION UPDATE:** Director Kohtz presented an estimate from Office Innovation to move and install all existing workstations and furniture at the new location. The estimate also includes building an additional workstation as shown on the plans. Director Kohtz asked for the \$1,133.25 shown on the estimate, along with an additional \$866.75 to cover the additional costs associated with the move. Board Member Langemeier made a motion to approve \$2,000.00 as requested for moving expenses. The motion was seconded by Saxton, and carried with Saxton, Langemeier, Gutwein, Woodle, and Kubert voting aye.

O. NEW BUSINESS

1. **ROGGE REQUEST FOR CLARIFICATION CONCERNING EXAMINATION:** Director Kohtz presented a request for clarification concerning acceptance of a successfully completed certified general appraiser exam for a yet to be submitted certified general real property appraiser application. Director Kohtz informed the Board that the Nebraska Real Property Appraiser Act and Title 298 of the Nebraska Administrative Code are silent concerning the validity period for the successful completion of an exam, and that under certain circumstances he would have to request guidance from the Attorney General's office. However, there are a few provisions that clarify this matter as it pertains to this individual. Director Kohtz cited 298 NAC Chapter 6, Section 001.04, which says, "The application fee shall be valid for one full year from the date application is approved by the Board. The applicant who does not complete the application process by passing the examination and paying the appropriate annual fee within the prescribed time shall be required to file a new application, meeting any new requirements existing at the time of filing the new application." This individual did not complete the application process within one year; therefore, he must complete the entire process again with any new application submitted to the Board. The Board agreed with this assessment. Chairman Kubert also brought attention to the fact that state credentialing requirements may be stricter than the federal requirements, as it is in this case.

2. **NEBRASKA STATE PATROL NATIONAL CRIMINAL HISTORY INFORMATION AUDIT:** Director Kohtz presented the report from the Nebraska State Patrol concerning its audit of the Board's criminal history record information that took place on March 12, 2014 to the Board for review. Director Kohtz outlined the State Patrol's findings, and informed the Board of the steps being taken to rectify any deficiencies found in the report. Specifically, language will be added to Title 298 concerning the process for obtaining a copy of the criminal history record if it was the basis for the denial of an application, and a confidentiality agreement will be included in the new employee handbook being developed.

P. LEGISLATIVE REPORT AND BUSINESS

1. **LEGISLATIVE UPDATE:** Director Kohtz provided an update to the Board regarding legislation introduced during the current session that the Board may have interest in. The following bills were addressed:

LB51 – No update.

LB139 – This bill was signed by Governor Ricketts on April 13, 2015. It will become law in early September 2015.

LB356 – This bill was signed by Governor Ricketts on April 13, 2015. It will become law in early September 2015.

LB375 – No update.

LB606 – No update.

LB646 – No update.

2. **TITLE 298:** Director Kohtz presented the updated draft of Title 298 to the Board for review. The Director brought attention to the "in lieu of" education requirements for the licensed residential real property appraiser found in section 001.02B.2 of Chapter 2, and asked the Board for comment. There were no comments regarding the language as drafted. Director Kohtz then brought attention to section 001.01D of Chapter 3 concerning the log requirements for reciprocal applicants. Board Member Kubert asked if the sentence could be broken up a bit to make it easier to read. Director Kohtz informed the Board that this section will be redrafted. The Director finished by informing the Board that changes will be made to the investigative language to incorporate the procedures approved today, and that the Director intends to have a draft ready for a vote next month. There was no further discussion.

Q. BOARD POLICIES AND PROCEDURES

1. **BOARD POLICIES**

- a. **Current Board Policies:** Director Kohtz presented an amendment to Board Policy 14-02 concerning the acceptability of experience obtained in another jurisdiction as discussed by the Board at its March meeting. The Board asked that "all applicable Nebraska laws are met, and" be removed from the policy in addition to the changes discussed during the March meeting. Director Kohtz informed the Board that this change will be made. Board Member Woodle made a motion to approve Board Policy 14-02 as amended. The motion was seconded by Saxton, and carried with Langemeier, Gutwein, Woodle, Saxton, and Kubert voting aye.

- b. **New Board Policies:** Director Kohtz presented new Board Policy 15-03 concerning the acceptability of experience log formats to the Board for review. Chairman Kubert provide background regarding this policy, and indicated that when the Board approves a new log format an applicant must redo his or her log so that the log submitted with an application is on the form approved by the Board; this is causing unnecessary work for many applicants, and the purpose of this policy is to allow an applicant to submit a log on the format approved by the Board at the time the experience was obtained. With no further discussion, Board Member Woodle made a motion to approve Board Policy 15-03 as presented. The motion was seconded by Saxton, and carried with Gutwein, Saxton, Langemeier, Woodle, and Kubert voting aye.

R. OTHER BUSINESS

1. BOARD MEETINGS

- a. **2015 Strategic Planning Meeting:** Director Kohtz presented options for the 2015 Strategic Planning Meeting to the Board for consideration. After a brief discussion, the Board agreed to hold a condensed regular meeting, beginning at 8:00 a.m., on June 18, 2015, and the strategic planning meeting is to immediately follow.

2. CONFERENCES/EDUCATION: No discussion.

3. MEMOS FROM THE BOARD: No discussion.

4. APPRAISAL SUBCOMMITTEE: No discussion.

5. APPRAISAL FOUNDATION: No discussion.

6. IN THE NEWS: No discussion.

C. CONSIDERATION OF APPLICANTS AS NEBRASKA REAL PROPERTY APPRAISER:

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

ST208 (SA) / Approve as Supervisory Appraiser
CR15002R / Approve as Certified Residential Real Property Appraiser
CG15011R / Approve as Certified General Real Property Appraiser

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

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

CG14041 / Hold
CR14025 / Hold

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

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

CG14021 / Approve as Certified General Real Property Appraiser

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

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

CG14037 / Hold
CR14026 / Hold
CR14017 / Hold

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

Board Member Woodle moved to approve all renewal applications received at that Board's office postmarked between March 17, 2015 and April 7, 2015 with advisory letters. The motion was seconded by Langemeier, and carried with Gutwein, Saxton, Langemeier, Woodle, and Kubert voting aye.

D. REGISTRATION AS APPRAISAL MANAGEMENT COMPANY: None

E. CONSIDERATION OF DISCIPLINARY ACTIONS/ ENFORCEMENT MATTERS:

Board Member Woodle moved to take the following enforcement actions:

15-02 / Proceed with investigation

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

Board Member Woodle moved to take the following enforcement actions:

15-03 / Open grievance and proceed with investigation for the alleged violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (4) (16) concerning a report in which appraiser may have engaged in an act or omission involving real estate which constitutes misrepresentation, and may have developed a report in a negligent or incompetent manner.

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

Board Member Woodle moved to take the following enforcement actions:

13-26 / Monitor Consent Agreement
14-15 / Monitor Consent Agreement
14-16 / Hold
14-17 / Hold
14-18 / Hold
14-19 / Hold
14-20 / Hold
14-22 / Monitor Consent Agreement
14-23 / Monitor Consent Agreement
14-24 / Monitor Consent Agreement
14-26 / Monitor Consent Agreement
14-27 / Monitor Consent Agreement

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

Board Member Langemeier moved to take the following enforcement actions:

14-32 / Ongoing

14-33 / Ongoing

14-35 / Ongoing

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

F. CONSIDERATION OF OTHER EXECUTIVE SESSION ITEMS:

Inquiry I15-11 was discussed.

Inquiry I15-12 was discussed concerning an organization that may have engaged in business as an AMC in Nebraska without first obtaining registration issued by the Board. The organization was reported by the Director based on an email received from a Nebraska credentialed appraiser. The Board agreed that the organization is not acting as an AMC, but provides software to those in the Banking industry for solicitation of appraisers for assignments.

The Board reviewed a report submitted by a registered AMC as requested by the Board concerning the organization's pending legal matters. No action was taken by the Board.

Vice Chair Woodle moved to take the following actions for other executive session items:

I14-32 / Hold

I14-33 / Hold

I15-1 / Ongoing

I15-2 / Ongoing

I15-3 / Ongoing

I15-4 / Ongoing

I15-5 / Ongoing

I15-6 / Ongoing

I15-7 / Ongoing

I15-8 / Ongoing

I15-9 / Ongoing

I15-10 / Ongoing

I15-11 / Close with advisory letter

I15-12 / Close

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

S. ADJOURNMENT

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

At 1:15 p.m. Chairman Kubert adjourned the April 16, 2015 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Tyler N. Kohtz
Director

These minutes were available for public inspection on May 1, 2015, in compliance with Nebraska Revised Statute §84-1413 (5).