

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

May 21, 2015 Meeting Minutes

A. OPENING

Chairman Thomas Kubert called to order the May 21, 2015 meeting of the Nebraska Real Property Appraiser Board at 9:00 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 May 18, 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, Christopher Langemeier, Larry Saxton, and Sandra Gutwein were present. Board Member Marc Woodle was absent and excused. 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 Langemeier moved to adopt the agenda as printed. Board Member Saxton seconded the motion. With no further discussion, the motion carried with Gutwein, Langemeier, Saxton, and Kubert voting aye.

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

Board Member Langemeier 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 9:02 a.m. Board Member Saxton seconded the motion. The motion carried with Saxton, Langemeier, Gutwein, and Kubert voting aye.

Break from 10:24 a.m. to 10:36 a.m.

Board Member Langemeier moved to come out of executive session at 11:20 a.m. Board Member Gutwein seconded the motion. The motion carried with Saxton, Gutwein, Langemeier, and Kubert voting aye.

Lunch served to board members and staff at 11:30 a.m.

G. WELCOME AND CHAIR'S REMARKS

Chairman Kubert welcomed everyone in attendance, and thanked Director Kohtz for attending the spring AARO conference. Diane Moore was the only member of the public in attendance.

H. BOARD MEETING MINUTES

1. APPROVAL OF APRIL 16, 2015 MEETING MINUTES

Chairman Kubert asked for any additions or corrections to the April 16, 2015 minutes. With no further discussion, the Chairman called for a vote. Board Member Saxton moved to adopt the April 16, 2015 meeting minutes as presented. Board Member Gutwein seconded the motion. The motion carried with Langemeier, Gutwein, Saxton, and Kubert voting aye.

I. DIRECTOR'S REPORT

Director Kohtz presented twelve charts outlining the number of appraisers and AMCs as of May 21, 2015. The Director summarized each chart and reported the number of appraisers as follows: 68 total Licensed, 64 resident and 4 reciprocal; 219 total Certified Residential, 180 resident and 39 reciprocal; 387 total Certified General, 245 resident and 142 reciprocal; and 0 Registered for a total of 674 appraisers. The total number of appraisers is up 7 from April, and down 15 from May 2014. The Director also informed the Board that there are 56 Trainees, which is even compared to April, and up 12 from May 2014.

In addition, the Director addressed the number of temporary permits issued. There were 18 permits issued in April compared to 13 permits issued in March. As of April 30, 2015, 63 temporary permits have been issued for the calendar year. Finally, Director Kohtz reported 104 AMCs registered.

J. FINANCIAL REPORT AND CONSIDERATIONS – MAY 2015

1. APPROVAL OF APRIL RECEIPTS AND EXPENDITURES

The receipts and expenditures for April were reviewed by the Director by line item with the Board. Director Kohtz provided details related to some specific April expenses, and informed the Board that "Publication and Print Expense" included costs of a short notice public meeting notice to the Omaha World Herald for a board meeting due to issues with the Journal Star publishing the notice timely, and "Dues and Subscriptions" included \$237.50 for the Journal Star renewal. For the Real Property Appraiser Program, which includes both the appraiser fund and the AMC fund, a total of \$29,246.39 in expenditures and \$9,591.26 in revenues were reported. As of the end of April, expenses amount to 77.93 percent of the budgeted expenditures for the fiscal year; 83.29 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 Langemeier moved to accept and file the April 2015 budget reports for audit.

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

- 2. 2015-17 BIENNIAL BUDGET REQUEST UPDATE:** Director Kohtz provided an update to the Board regarding the 2015-17 Biennial Budget Request, and informed the Board that it did very well. The Board was appropriated the full amount for all DAS assessments as requested; change in rent and depreciation surcharge was fully funded; the Board asked for an increase of \$32,000.00 for contractual services, and ended up with \$25,000.00; Attorney costs increases were fully funded as requested; and the Board was appropriated the full \$79,409.00 for database improvement projects as requested.

The three areas that did not receive full or near full funding after the Board's hearing were temporary staffing, the additional health insurance allocation for fiscal year 2016-17, and funding for the purchase and distribution of USPAP books. For the temporary position, the Board received \$6,000.00 in lieu of the \$12,000.00 as requested. The Director informed the Board that he can work with this allocation. For the additional health insurance allocation the Board received \$0 of the \$5,247.00 requested. The Director continued by saying that the Appropriations Committee's position was that the Board can make a deficit request for this amount if needed. Finally, the Director indicated that through conversations with Mike Lovelace in the fiscal office, it is becoming very clear that the Appropriations Committee does not consider \$18,000.00 for the purchase and distribution of USPAP books to be a necessary expenditure. This position is heavily influenced by the fact that the Board has the option to distribute USPAP electronically. Strategic Planning will be a great opportunity to discuss this further.

The Director also mentioned that LB139A includes additional appropriations for the next biennial period. The \$18,290.00 included in LB139A will be added to the allocation once the provisions of LB139 become law in September.

3. **FEDERAL REGISTRY FEE LIABILITY ACCOUNT BALANCE:** Director Kohtz brought a negative balance of \$3,307.50 in the federal registry fee liability account to the Board's attention. The Director presented a summary of activity per fiscal year between FY 2002-03 and the current fiscal year, and informed the Board that FY 2004-05, FY 2007-08, and FY 2009-10 ended with large negative balances, which have been carried through to the present fiscal year. Director Kohtz indicated that the Board could do a one-time balance transfer from the Real Property Appraiser Fund to clear the negative balance. Board Member Saxton asked, "Would this one-time transfer affect the current budget?" Director Kohtz responded, "I don't believe so, but I would have to check. I believe that it would only affect the Real Property Appraiser Fund balance." Board Member Kubert recommended that the Board hold off on any action until the Director has an opportunity to research what affect a one-time balance transfer may have on the current budget. The Director informed the Board that he would report back at the June meeting.

K. GENERAL PUBLIC COMMENTS

Chairman Kubert asked for any public comments. With no comments, the Chairman proceeded to Education.

L. EDUCATION

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

New Continuing Education Activities and Instructors

1. McKissock, LP
 - a. The New FHA Handbook 4000.1 – Online (C21533-I)/7 Hours - *Approve*
 1. Dan Bradley - *Approve*
2. Allterra Group, LLC
 - a. FHA Appraisals and Reporting Requirement (C21534-I)/7 Hours - *Approve*
 1. Craig Julian - *Approve*
 2. Peter Gillispie - *Approve*

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

M. UNFINISHED BUSINESS

- 1. NRPAB OFFICE RELOCATION UPDATE:** Director Kohtz informed the Board that the earliest the move will take place is now mid-June.

N. NEW BUSINESS

- 1. APPRAISERS TO UPLOAD WORKFILES TO AMC:** Director Kohtz presented his response to a Nebraska credentialed appraiser and an article which was the basis for his response to the Board for review. The Director summarized the article and indicated that an AMC is now requesting appraisers to submit his or her workfile with the appraisal report. The Nebraska credentialed appraiser asked the Director if this would have any implications if a complaint was filed with the Board. The Director responded that there may be a problem if the workfile submitted to the AMC and the workfile submitted to the Board contain significant differences or changes, but at the same time, workfile is not defined by the AMC, so the information submitted to the AMC may be the minimum materials to support the opinion of value. In other words, it is difficult to make this determination in general. Board Member Gutwein indicated that, to date, she has not been asked to submit a workfile to an AMC. Director Kohtz was asked to monitor this situation; no further discussion took place.
- 2. DEFINITION OF APPRAISAL MANAGEMENT COMPANY:** Director Kohtz presented the current definition of Appraisal Management Company to the Board for review as requested by the Board at the April meeting. Board Member Kubert indicated that the purpose was to discuss what meets this definition. Director Kohtz informed the Board that the AMC Final Rule has been approved and will be published in the Federal Register within the next few weeks. There was a lot of interesting conversation at AARO regarding the Final Rule. The Director continued by saying that the thing that surprised him was the fact that if an organization does not meet the minimum federal definition of an AMC, the organization may not be included on the ASC Federal Registry. This means that each state must only register those that meet the federal requirements, or must have two separate registrations; one for those that meet the federal requirements, and one for those that do not. At AARO, during the regulators round table discussion with the ASC, the ASC made two interesting points; 1) it intends to issue a unique identifier for each AMC, and 2) it does not have time table as to when it will establish new Policy Statements pertaining to the AMC Final Rule. Director Kohtz informed the Board that the unique identifier is a problem because AMCs are registering in different states with different ownership groups and corporate structures; which technically make them different companies. Also, each state must implement the requirements of the AMC Final Rule within three years of publication in the Federal Register, but the ASC has no time table for the development and implementation of the Policy Statements related to the Final Rule. This means that states must make their own interpretations, and then hope it works with the ASCs future interpretation. The Board agreed that this should be discussed further when changes are drafted to update the Appraisal Management Company Registration Act.
- 3. SUPERVISORY APPRAISER DISCLOSURE:** Director Kohtz brought attention to an increase in requests being made for the names of supervisory appraisers of trainees. The Director continued by saying that although this information must be given if the proper request is made, he has been reluctant to just give it out when casually requested. The Director indicated that he has concerns regarding the intent of the request. An appraiser recently made such of a request and brought it to Board Member Langemeier's attention. Board Member Langemeier indicated that the appraiser was verifying access to the local MLS. The appraiser had reason to believe that appraisers are giving MLS access to trainees without paying for the use. Director Kohtz asked if the Board has any recommendations or directives regarding release of the names of supervisory appraisers. The Board agreed that the information should be disclosed, but a record is also needed for each request.

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The Board recommended that Director Kohtz request that anyone seeking this information make a proper written request. Board Member Saxton asked, “Is there a way that we can publish a list of supervisory appraisers? It would be great if we had a place where trainees could go to find supervisory appraisers.” Director Kohtz responded, “I don’t know if the Board can or not, I would have to check with the Attorney General’s Office concerning what information can be published. However, I would not recommend any sort of a matching service. This is not a liability that the Board wants. If something goes wrong as a result of such service, the trainee or supervisory appraiser would go back to the Board.” Board Member Saxton asked if it would be possible to add a note to the “Appraiser Lookup” on the website. Director Kohtz indicated that he will look into this and report back at the June meeting.

O. 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.

LB375 – This bill passed final reading on May 20, 2015.

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 informed the Board that he has no additional changes or recommendations. With no further discussion, Board Member Langemeier moved to send the draft Title 298 to the Attorney General’s Office for an informal review. The motion was seconded by Gutwein, and carried with Saxton, Gutwein, Langemeier, and Kubert voting aye.

P. BOARD POLICIES AND PROCEDURES

1. BOARD POLICIES

- a. **Current Board Policies:** No discussion.

2. APPRAISER FORMS AND PROCEDURES

- a. **Appraisal Review Format Change for Real Property Appraiser Applicants:** Director Kohtz informed the Board that he would like it to look at the appraisal review format for real property appraiser applicants now that the new investigative procedures are in place. The Director indicated that he and Chairman Kubert have had a brief conversation about the possibility of having a simplified review completed for applicants. Director Kohtz asked if the Board had any thoughts on this matter. Board Member Saxton stated, “People need to know where they stand. I don’t want to see a double standard for applicants compared to grievances. I don’t support a change.” Board Member Kubert said, “We have higher standards, is that alright?” Board Member Langemeier responded, “It is good to have higher standards.” The Board agreed that no changes should be made to the real property appraiser applicant appraisal review format.

- b. NRPAB Investigative Procedure Update:** Director Kohtz presented the investigative procedures approved at the April meeting with a new “Introduction” section added. The highlighted language reflects the conversation the Board had in April concerning its intent that the regulatory program is educational in practice when possible. Board Member Saxton asked that “directed” be changed to “suggested” on line two of the second paragraph. With no further discussion, Board Member Langemeier moved to approve the investigative procedures as amended. Seconded by Saxton, and carried with Gutwein, Saxton, Langemeier, and Kubert.

Director Kohtz brought attention to a procedural change for issuance of a temporary permit. In the past, the temporary permit has been issued to expire on the finish date listed in the contract, or at six months, whichever comes sooner. Board Member Kubert brought attention to the fact that appraisers never meet the contract deadline, which means they often have to make requests for a six month extension to the temporary permit. Board Member Kubert indicated that at one time, the Board used to issue temporary permits for a minimum of six months. Director Kohtz informed the Board that the guiding statute could be interpreted both ways, so the agency has returned to the practice of issuing temporary permits for six months, or upon completion of the assignment, whichever occurs first.

Q. OTHER BUSINESS

- 1. BOARD MEETINGS:** No discussion.

2. CONFERENCES/EDUCATION

- a. Kohtz AARO Conference Report:** Director Kohtz attended the Spring AARO Conference in Nashville, TN. The Director presented a detailed summary of the conference for the board members to review. Director Kohtz informed the Board that the highlights included the roundtable discussion with the ASC, the AMC Final Rule discussion, and information concerning the development of appraiser remedial education courses, and a USPAP for non-appraisers course by The Appraisal Foundation. Director Kohtz went on to say that the roundtable with the ASC was likely the most productive session he has had at AARO; it forced the ASC to address the questions of regulators in a mass setting. The Director indicated that he hopes this becomes a regular occurrence at AARO. Also, the AMC Final Rule discussion was interesting due to what was, or was not, revealed by the ASC. Director Kohtz finished by saying that all the details are included in the summary, so if anyone has any questions or comments to let him know. There was no further discussion.

- b. Appraisal Management Company Symposium – Chicago, IL:** Director Kohtz presented documentation for the Appraisal Management Company Symposium in Chicago, IL on June 11, 2015. The Director informed the Board that he was interested in the symposium before attending AARO, but after all the AMC Final Rule discussion at AARO, he doesn't believe much would be gained by attending. Board Member Saxton asked, “Do you want to attend?” Director Kohtz responded, “No.” There was no further discussion.

- 3. MEMOS FROM THE BOARD:** Board Member Kubert brought attention to the drafted Memo From the Board concerning the overview of the 2015 first quarter appraiser counts, and indicated that some of the individuals listed may have renewed their credential in lieu of being new credential holders. Director Kohtz indicated that this will be checked. Board Member Langemeier moved to approve the Memo From the Board as amended, as needed to show only new credential holders. Seconded by Gutwein, and carried with Gutwein, Saxton, Langemeier, and Kubert voting aye.

4. APPRAISAL SUBCOMMITTEE

- a. ASAC for Development of Regulations Recommendations to the ASC:** Director Kohtz presented the findings from the Appraisal Subcommittee Advisory Committee for Development of Regulations to the Board for review. Director Kohtz brought attention to a few recommendations, including the committee's finding that a letter of good standing is burdensome, the recommendation to develop a unique identifier for each appraiser or appraisal management company, the recommendation to specifically define "special documented circumstances," and defining what constitutes an "investigation." The Director agrees with the committee's assessment that a letter of good standing is burdensome, which is why the Board is already phasing them out. The Director pointed to previous comments made regarding the unique identifier for appraisal management companies. Finally, Director Kohtz indicated that he does not agree that the ASC should define "special documented circumstances," and what constitutes an "investigation." The Director continued by saying that the ASC will develop a definition that disqualifies certain scenarios, and these matters should be defined on a case by case, or state by state basis. There was no further discussion.

- b. ASC Preliminary Report and Draft Response:** Director Kohtz presented the ASC's preliminary report to the Board for review. The Director indicated that he was not surprised by what was included on the report, but was surprised that the ASC went as far as stating "No" for compliance. The Director continued by saying that Title XI requires that, "at a minimum," all relevant AQB criteria must be adopted; the Board has, at a minimum, adopted all AQB criteria. Director Kohtz also presented a draft response to the ASC's preliminary findings to the Board for consideration. With no further discussion, Board Member Langemeier approved the response to the ASC's preliminary report. Seconded by Saxton, and carried with Saxton, Gutwein, Langemeier, and Kubert voting aye.

5. APPRAISAL FOUNDATION

- a. The Appraisal Foundation Remedial Education Survey Results:** Director Kohtz presented The Appraisal Foundation's remedial education survey results to the Board for review. Chairman Kubert indicated that this is another small step from developing courses to providing courses. There was no further discussion.

6. IN THE NEWS: No discussion.

C. CONSIDERATION OF APPLICANTS AS NEBRASKA REAL PROPERTY APPRAISER:

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

T15002 (SA) / Approve as Supervisory Appraiser.

CR15003R / Approve as Certified Residential Real Property Appraiser.

CG15012R / Approve as Certified General Real Property Appraiser.

CG15013R / Approve as Certified General Real Property Appraiser.

CG15014R / Requirements for credentialing as a Certified General Real Property Appraiser approved as submitted. Authorize Director to issue credential upon completion of background check.

CR15001 / Approve to sit for exam; authorize Director to issue credential upon successful completion of exam.

CR15005 / Request updated log through June 3, 2015.

CG14041 / Deny additional experience submitted at the Board's request for non-compliance with 298 NAC Chapter 5, Section 007.

CR14025 / Approve as Certified Residential Real Property Appraiser; send advisory letter.

CG14037 / Send redacted copy of Standard 3 reviews, request written response within 10 days of receipt.

CR14026 / Hold

CR14017 / Hold

Approve all renewal applications received at that Board's office postmarked between April 8, 2015 and May 18, 2015 with advisory letters, and authorize Director to approve all renewal applications postmarked between June 13, 2015 and June 30, 2015 with advisory letter.

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

D. REGISTRATION AS APPRAISAL MANAGEMENT COMPANY

Board Member Langemeier moved to take the following actions for the AMC applicants as listed:

NE2015002 / Approve

NE2015003 / Request clarification of answer to question #9 on the application.

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

E. CONSIDERATION OF DISCIPLINARY ACTIONS/ ENFORCEMENT MATTERS:

Board Member Langemeier moved to take the following enforcement actions:

15-02 / Ongoing

15-03 / Ongoing

15-04 / Proceed with investigation for the alleged violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (4) (18) concerning a report in which appraiser may have violated the ethics rule of the Uniform Standards of Professional Appraisal Practice; may have engaged in an act or omission involving real estate which constitutes dishonesty, fraud, or misrepresentation; and may have demonstrated negligence, incompetence, or unworthiness to act as an appraiser.

15-05 / Open grievance and proceed with investigation for the alleged violation of Neb. Rev. Stat. § 76-2237 concerning a report in which appraiser may have violated the Uniform Standards of Professional Appraisal Practice.

15-06 / Open grievance and proceed with investigation for the alleged violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (4) (18) concerning a report in which appraiser may have violated the ethics rule of the Uniform Standards of Professional Appraisal Practice; may have engaged in an act or omission involving real estate which constitutes dishonesty, fraud, or misrepresentation; and may have demonstrated negligence, incompetence, or unworthiness to act as an appraiser.

13-26 / Close

14-15 / Monitor Consent Agreement; extend education deadline to August 1, 2015.

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
14-32 / Ongoing
14-33 / Ongoing
14-35 / Proceed with further investigation

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

F. CONSIDERATION OF OTHER EXECUTIVE SESSION ITEMS:

Inquiries I15-1, I15-5, I15-6, and I15-7 were discussed.

The Board reviewed information pertaining to an organization that may be in violation of the Appraisal Management Company Registration Act. The organization's surety bond has been cancelled.

Personnel matters were discussed.

Board Member Langemeier moved to take the following actions for other executive session items:

I14-32 / Hold
I14-33 / Hold
I15-1 / Close; send advisory letter.
I15-2 / Ongoing
I15-3 / Ongoing
I15-4 / Ongoing
I15-5 / Close; send advisory letter.
I15-6 / Close; send advisory letter.
I15-7 / Close; send advisory letter.
I15-8 / Ongoing
I15-9 / Ongoing
I15-10 / Ongoing
Item 1 / Open grievance 15-07 against appraisal management company and proceed with investigation for the alleged violation of Neb. Rev. Stat. § 76-3203 (4).

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

R. ADJOURNMENT

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

At 1:17 p.m. Chairman Kubert adjourned the May 21, 2015 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Tyler N. Kohtz
Director

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