

**NEBRASKA REAL PROPERTY APPRAISER BOARD
NRPAB OFFICE MEETING ROOM, FIRST FLOOR
NEBRASKA STATE OFFICE BUILDING
301 CENTENNIAL MALL SOUTH, LINCOLN, NE**

September 23, 2015 Meeting Minutes

A. OPENING

Chairman Thomas Kubert called to order the September 23, 2015 meeting of the Nebraska Real Property Appraiser Board at 9:14 a.m., in the Nebraska Real Property Appraiser Board meeting room located on the first floor 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 September 21, 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, Compliance and Education Specialist, Grant Krieger, 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, Saxton, Langemeier, 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 9:17 a.m. Board Member Saxton seconded the motion. The motion carried with Woodle, Langemeier, Saxton, Gutwein, and Kubert voting aye.

Break from 10:15 a.m. to 10:32 a.m.

Board Member Langemeier moved to come out of executive session at 11:40 a.m. Board Member Saxton seconded the motion. The motion carried with Langemeier, Saxton, Gutwein, Woodle, and Kubert voting aye.

Break from 11:40 a.m. to 11:53 a.m.

Lunch served to board members and staff at 11:50 a.m.

G. WELCOME AND CHAIR'S REMARKS

Chairman Kubert welcomed all, and announced that temporary employee, Gaylena Gibson, will be assisting staff with renewal application processing for the next few months. Diane Moore was the only member of the public in attendance.

H. BOARD MEETING MINUTES

1. APPROVAL OF AUGUST 20, 2015 MEETING MINUTES

Chairman Kubert asked for any additions or corrections to the August 20, 2015 minutes. With no further discussion, the Chairman called for a vote. Board Member Saxton moved to adopt the August 20, 2015 meeting minutes as presented. Board Member Woodle seconded the motion. The motion carried with Gutwein, Langemeier, Woodle, Saxton, and Kubert voting aye.

I. DIRECTOR'S REPORT

Director Kohtz presented twelve charts outlining the number of appraisers and AMCs as of September 23, 2015. The Director summarized each chart and reported the number of appraisers as follows: 67 total Licensed, 63 credentialed through education, experience, and examination, and 4 through reciprocity; 226 total Certified Residential, 185 credentialed through education, experience, and examination, and 41 through reciprocity; 397 total Certified General, 248 through education, experience, and examination, and 149 through reciprocity. In addition, there are 0 Registered and 58 Trainees currently credentialed.

As of September 23, 2015, a total of 690 appraisers, not including the Trainee classification, were reported by the Director, up 1 from August, and down 13 from September 2014. A total of 748 appraisers, including the Trainee classification, were also reported by the Director, up 1 from August, and down 1 from September 2014. A total of 496 appraisers credentialed through education, experience, and examination, not including the Trainee classification, was reported, which is down 10 from September 2014, and a total of 194 appraisers credentialed through reciprocity was reported, which is up 2 from September 2014.

In addition, the Director addressed the number of temporary permits issued. There were 18 permits issued in August compared to 8 permits issued in July. As of August 31, 2015, 117 temporary permits have been issued for the calendar year. Finally, Director Kohtz reported 102 AMCs registered.

J. FINANCIAL REPORT AND CONSIDERATIONS – SEPTEMBER 2015

1. APPROVAL OF AUGUST RECEIPTS AND EXPENDITURES

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 the encumbered communication expense of \$565.46, which includes the costs for the phone system installation in the new office; the encumbered print and publication expense of \$771.52, which includes the quarterly copy service cost for the last quarter of FY 14-15; the encumbered office supplies amount of \$1,221.56, which includes cabinets and a storage bin system for the new office; and the non-capitalized equipment purchase expense of \$564.71 for the projector electrical installation. For the Real Property Appraiser Program, which includes both the appraiser fund and the AMC fund, a total of \$27,742.11 in expenditures and \$8,445.67 in revenues were reported. As of the end of August, expenses amount to 14.36 percent of the budgeted expenditures for the fiscal year; 16.99 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 Woodle moved to accept and file the August 2015 budget reports for audit. Board Member Gutwein seconded the motion. The motion carried with Langemeier, Saxton, Gutwein, Woodle, and Kubert voting aye.

2. 2015-16 MID-BIENNIUM BUDGET ADJUSTMENT

Director Kohtz presented a memorandum from the State Budget Administrator regarding the 2016 Mid-Biennial Budget Adjustments, and a document titled “FY 2015-16 Mid-Biennial Budget Adjustment Considerations” to the Board for review. The Director outlined the budget changes since the strategic planning budget discussion, and informed the Board that the expenditures for this fiscal year are will within the budgeted amounts. Director Kohtz finished by informing the Board that he does not recommend that the Board make a budget deficit request for the current fiscal year. No action was taken by the Board.

3. EVENT ATTENDANCE EXPENDITURES

Director Kohtz brought attention to an event approved by the Board for the attendance of two members during the August meeting, and informed the Board that the expenses were not approved because the event was considered to be entertainment. The Director requested, if a board member would like an event considered for attendance, that the event is submitted to the office for vetting prior to being placed on the agenda for approval. There was no further discussion.

K. GENERAL PUBLIC COMMENTS

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

L. EDUCATION

Board Member Woodle moved to approve the following education activities and instructors as listed:

CONTINUING EDUCATION RENEWAL ACTIVITIES AND INSTRUCTORS

McKissock, LP

Advanced Hotel Appraising – Full Service Hotels (C2155-I)/7 Hours - Tracy Martin
The New FHA Handbook 4000.1 (C2156-I)/5 Hours - Dan Bradley, Tracy Martin

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

M. UNFINISHED BUSINESS

- 1. CUSTOMARY AND REASONABLE FEES:** Director Kohtz presented a report titled “Customary and Reasonable Fees Law Research” to the Board for review. The Director summarized the report, and outlined the similarities and differences between the laws and studies for each state included in the report. The Director finished informing the Board that it must determine what its position is concerning customary and reasonable fees prior to taking any further action. *(continued on page 4)*

(continued from page 3)

Board Member Woodle began discussion by stating, “We should have a study completed to determine if customary and reasonable fees are currently being paid in Nebraska.” Board Member Saxton asked, “What do we do with a study once it is completed?” Board Member Woodle responded, “The study could be used to determine if legislation is needed, or it could be used as a point of reference if a complaint is filed.” Board Member Langemeier indicated that, study or no study, the market will take care of the customary and reasonable fees discussion; soon the fees will be made public. Board Member Saxton reaffirmed his position by saying, “If there is no reason to proceed with a study, then why would we spend the money on a study.”

Chairman Kubert asked Director Kohtz when funds would be available for a study. The Director informed the Board that the earliest that a study could be budgeted for would be by the next fiscal year. Board Member Woodle indicated that a study could provide beneficial information concerning customary and reasonable fees, and could be available for use if a complaint is filed against an AMC. Board Member Woodle made a motion to establish funding for a customary and reasonable fee study. The motion was seconded by Langemeier. Chairman Kubert called for the vote. The motion passed with Gutwein, Woodle, Langemeier, and Kubert voting aye, and Saxton voting nay.

Board Member Saxton made a motion that no action is taken by the Board concerning a customary and reasonable fee study until a complaint is filed with the Board against an AMC. Chairman Kubert asked for a second. With no second, the motion was not considered for a vote.

N. NEW BUSINESS

- 1. U.S. SUPREME COURT OPINION CONCERNING THE NORTH CAROLINA BOARD OF DENTAL EXAMINERS VS. FEDERAL TRADE COMMISSION:** Director Kohtz presented a letter from the Nebraska Attorney General to State boards concerning the potential impact of North Carolina Board of Dental Examiners v. Federal Trade Commission, along with an email from Assistant Attorney General Hart regarding this opinion. The Director informed the Board that it is unclear what this decision means for the Nebraska Real Property Appraiser Board at the present time. Until there is a test case that sheds more light on the interpretation of this decision, the Board is advised to discuss alleged violations of the Real Property Appraiser Act by non-credential holders with AAG Hart prior to proceeding with the investigation. Chairman Kubert informed the Board that tax reps that represent home owners in tax appeal hearings, and non-credentialed individuals that provide an opinion for condemnation hearings, are examples of where this decision might come into play for the Board. Director Kohtz ended the conversation by stating that there will be discussion concerning this topic at AARO in October.

O. LEGISLATIVE REPORT AND BUSINESS

- 1. NEBRASKA REAL PROPERTY APPRAISER ACT USPAP UPDATE:** Director Kohtz presented the initial draft of the Nebraska Real Property Appraiser Act with the 2016-17 UPSAP updates to the Board for consideration. The Director summarized all changes as the Board reviewed the draft.

Chairman Kubert asked that the definition of workfile found on page 14 in the draft be changed to match that in USPAP. Director Kohtz indicated that he was attempting to bring the definition more in line with the language found in the Record Keeping Rule. Chairman Kubert indicated that the definition of workfile and the Record Keeping Rule should be kept separate. Director Kohtz informed the Board that the revisions will be removed, so that the original definition remains.

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Chairman Kubert offered insight as to why the exemption was added for a person that is appointed by a county judge to serve on a board of appraisers on page 16 of the draft, and explained that this exemption would allow a credentialed appraiser to participate as an appointed appraiser, but relieve that appraiser of some of the restricting USPAP requirements. The Board agreed that this is a good addition.

Board Member Langemeier moved to accept the draft as amended and continue the vetting process. The motion was seconded by Woodle, and carried with Saxton, Langemeier, Gutwein, Woodle, and Kubert voting aye.

Director Kohtz offered the Board an apology, and informed the Board of one more topic that must be discussed concerning the USPAP update draft. Director Kohtz presented to the Board for review, the changes to the Real Property Appraiser Qualification Criteria pertaining to background check requirements that become effective on January 1, 2017. The Director asked the Board if it wished to make changes to the Real Property Appraiser Act as a result of the new language, wait to make changes in the future, or not make changes at all. The current language in the Act, which was based on the language in the Real Property Appraiser Qualification Criteria effective on January 1, 2015, is more stringent than the new AQB language. After discussion, the Board agreed that the general nature of the new AQB language should be included in the Act to ensure that the intent of the new language found in the Real Property Appraiser Qualification Criteria is met. Director Kohtz was asked to add “The applicant must not possess a background that would call into question public trust or a credential holder’s fitness for credentialing” to each section in which the background check requirements are found in the Act. The Board also agreed that the information found in Guide Note #9 should be considered during the next Rules update.

Board Member Woodle moved to rescind the previous motion, accept the draft as amended, and continue the vetting process. The motion was seconded by Gutwein, and carried with Saxton, Langemeier, Gutwein, Woodle, and Kubert voting aye.

Break from 1:30 p.m. to 1:45 p.m.

P. BOARD POLICIES AND PROCEDURES

1. BOARD POLICIES

a. Current Board Policies: No discussion.

2. APPRAISER FORMS AND PROCEDURES

Five applications were presented to the Board for consideration; Application for Nebraska Appraisal Management Company Registration, Application for Renewal of Nebraska Appraisal Management Company Registration, Application for Nebraska Real Property Appraiser Credential by Reciprocity, Application for Nebraska Real Property Appraiser Credential, and Application for Supervisory Appraiser Registration.

During review of the “Application for Nebraska Appraisal Management Company Registration” document, Board Member Gutwein asked if the language under “Application and Registration Fees” on page one can be changed from “Upon Registration Approval, Total Fee Due: \$2,000,” to “Total Fee Due Upon Registration Approval: \$2,000.” Business and Licensing Specialist Kienholz-Howsden informed the Board that this change would be made.

During review of the “Application for Nebraska Real Property Appraiser Credential by Reciprocity” Chairman Kubert asked if “Completed” could be added between “Highest” and “Level” under the heading “Education Questions” on page one. Attention was also brought to the language under the heading “Other Credentials Held” on page two. BLS Kienholz-Howsden was asked to add “publicly issued” before “professional” and after “other,” and change “that you presently hold in Nebraska or any other jurisdiction” to “that you currently hold or have held in Nebraska or any other jurisdiction with in the past five years.” Finally, BLS Kienholz-Howsden indicated that the headings that shifted to the incorrect page will be corrected.

During review of the “Application for Nebraska Real Property Appraiser Credential” document, Board Member Gutwein once again asked if the language under “Application and Credentialing Fees” on page one can be changed from “Upon Appraiser Credentialing Approval, Total Fee Due: \$340,” to “Total Fee Due Upon Appraiser Credentialing Approval: \$340.” Director Kohtz also added that upgrades are not charged the federal registry fee because they have already paid in for the year under a lower credential; this needs to be addressed. The Board requested that “Status” be removed from the “Employment Record” document. Finally, Director Kohtz informed the Board that the education tiers found on the previous applicant for the “Certified Residential Real Property Appraiser Application Checklist,” and the “Certified General Real Property Appraiser Application Checklist” must be added back in. The current forms do no differentiate between an upgrade from a credential other than Trainee. BLS Kienholz-Howsden informed the Board that these changes will be made.

During review of the “Application for Supervisory Appraiser Registration” document, BLS Kienholz-Howsden informed the Board that the section headings will be moved back to the appropriate pages. There was no further discussion.

There was no discussion on the “Application for Renewal of Nebraska Appraisal Management Company Registration.”

Board Member Langemeier moved to approve the presented applications as amended. Seconded by Saxton. The motion carried with Saxton, Woodle, Langemeier, Gutwein, and Kubert voting aye.

Q. OTHER BUSINESS

1. BOARD MEETINGS: Chairman Kubert asked if there were any changes to the October, November, or December meeting dates. There was no further discussion.

2. CONFERENCES/EDUCATION

a. Kohtz MWAA Fall Conference Presentation: Director Kohtz informed the Board that he gave a presentation concerning the Board’s compliance program at the Mid-West Appraisers Association Fall Conference on September 16, 2015. The Director proceeded to give a short summary of the event, and indicated that it went well. Board Member Saxton asked how many were in attendance. Director Kohtz responded, “I believe there were around fifty in the audience, including the other speakers from earlier in the day.” The Board thanked Director Kohtz for his presentation.

3. MEMOS FROM THE BOARD: Chairman Kubert asked that staff release renewal reminder memos similar to last year. Director Kohtz informed the Board that staff will prepare to release the memos, which will contain information similar to the memos released last year, on or about the same date as last year.

4. **APPRAISAL SUBCOMMITTEE:** No discussion.

5. **APPRAISAL FOUNDATION**

- a. **AQB Concept Paper – Alternative Track to the Experience Requirements in the Real Property Appraiser Qualification Criteria:** Director Kohtz presented the AQB Concept Paper “Alternative Track to the Experience Requirements in the Real Property Appraiser Qualification Criteria” to the Board for review. After a brief discussion, Chairman Kubert stated that this is a topic that the Board must continue to monitor.
- b. **Senators Rounds/Thune Letter to The Appraisal Foundation:** Director Kohtz presented a letter to The Appraisal Foundation co-signed by Senators Rounds and Thune of South Dakota concerning appraiser qualifications. The Board had a brief discussion.
- c. **An Open Letter to the Valuation Profession:** Director Kohtz presented The Appraisal Foundation’s “An Open Letter to the Valuation Profession” to the Board for review. A discussion took place concerning this letter. Board Member Saxton indicated that he had a conversation with Jim Amorin, a past president of the Appraisal Institute, regarding this matter. According to Board Member Saxton, the real issue resulted from an Appraisal Institute member saying some things that were untrue and did not represent the Appraisal Institute; the relationship between the Appraisal Institute and The Appraisal Foundation eroded from there.
- d. **Exposure Draft – The Measurement and Application of Market Participant Acquisition Premiums:** Director Kohtz presented the Exposure Draft titled “The Measurement and Application of Market Participant Acquisition” to the Board for review. No discussion took place.

6. **IN THE NEWS**

- a. **Appraisal Buzz – The Mass Litigation Phenomenon:** Director Kohtz presented the Appraisal Buzz article titled “The Mass Litigation Phenomenon” to the Board for review. No discussion took place.
- b. **FHA vs USPAP – Appraisers Caught in Catch 22:** Director Kohtz presented the document titled “FHA vs USPAP – Appraisers Caught in Catch 22” to the Board for review. The Board held a brief discussion concerning this topic.

C. **CONSIDERATION OF APPLICANTS AS NEBRASKA REAL PROPERTY APPRAISER:**

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

Application 2 / Deny

T15009 (SA) / Approve as Supervisory Appraiser.

CR15008R / Requirements for credentialing as a Certified Residential Real Property Appraiser approved as submitted. Authorize Director to issue credential upon completion of background check.

CG15020R / Approved as Certified General Real Property Appraiser.

CG15021R / Requirements for credentialing as a Certified General Real Property Appraiser approved as submitted. Authorize Director to issue credential upon completion of background check.

CG15022R / Requirements for credentialing as a Certified General Real Property Appraiser approved as submitted. Authorize Director to issue credential upon completion of background check.

L15002 / Invite to advisory meeting; send redacted copy of Standard 3 reviews and request written response within 10 days.

CR15009 / Request clarification of services performed on submitted log, and request an additional 2-4 family report for qualification of experience.
CG15019 / Approve to sit for exam; authorize Director to issue credential upon successful completion of exam.

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

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

CG14041 / Hold

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

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

CG15015 / Select and send appraisal report for Standard 3 review.

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

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

CR14026 / Hold

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

D. REGISTRATION AS APPRAISAL MANAGEMENT COMPANY: None.

E. CONSIDERATION OF DISCIPLINARY ACTIONS/ ENFORCEMENT MATTERS:

Board Member Woodle moved to take the following enforcement actions:

- 15-08 / Dismiss without prejudice**
- 15-10 / Proceed with investigation**
- 15-11 / Proceed with investigation**
- 15-12 / Dismiss without prejudice; refer to Real Estate Commission**
- 15-13 / Dismiss without prejudice; refer to Real Estate Commission**
- 14-15 / Select report from log; request true copy of appraisal report and workfile, and send for Standard 3 review.**
- 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**

15-03 / Ongoing
15-04 / Ongoing
15-05 / Ongoing
15-06 / Ongoing
15-07 / Ongoing
15-09 / Hold

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

Board Member Langemeier moved to take the following enforcement actions:

14-32 / Hold
14-33 / Hold
14-35 / Ongoing

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

F. CONSIDERATION OF OTHER EXECUTIVE SESSION ITEMS:

Appraisal reports submitted to the Board for verification of experience by applicants for credentialing were discussed by the Board. The appraisal reports were found to contain USPAP deficiencies during Standard 3 review process, and the Board agreed to open an inquiry for each supervisory appraiser to gather more information concerning the subject appraisal reports and associated Standard 3 reviews. Board Member Woodle moved to open inquiries I15-16, I15-17, I15-18, send a redacted copy of the Standard 3 review for each subject appraisal report, and request a written response within 10 days. Board Member Langemeier seconded the motion. Motion carried with Gutwein, Saxton, Woodle, Langemeier, and Kubert voting aye.

I15-13, I15-14, I15-15 were discussed.

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

I14-32 / Hold
I14-33 / Hold
I15-02 / Ongoing
I15-03 / Ongoing
I15-04 / Ongoing
I15-13 / Close; open grievance 15-14 and proceed with investigation for the alleged violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (15), (18).
I15-14 / Close; open grievance 15-15 and proceed with investigation for the alleged violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (15), (18).
I15-15 / Close; open grievance 15-16 and proceed with investigation for the alleged violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (15), (18).

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

R. ADJOURNMENT

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

At 2:45 p.m. Chairman Kubert adjourned the September 23, 2015 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Tyler N. Kohtz
Director

These minutes were available for public inspection on September 30, 2015, in compliance with Nebraska Revised Statute §84-1413 (5).