

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

October 21, 2015 Meeting Minutes

A. OPENING

Chairman Thomas Kubert called to order the October 21, 2015 meeting of the Nebraska Real Property Appraiser Board at 9:08 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 October 19, 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 Saxton, Gutwein, Woodle, Langemeier, 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 9:10 a.m. Board Member Langemeier seconded the motion. The motion carried with Woodle, Langemeier, Saxton, Gutwein, and Kubert voting aye.

Break from 10:15 a.m. to 10:27 a.m.

Board Member Langemeier moved to come out of executive session at 11:10 a.m. Board Member Woodle seconded the motion. The motion carried with Gutwein, Woodle, Langemeier, Saxton, and Kubert voting aye.

Break from 11:11 a.m. to 11:21 a.m.

Lunch served to board members and staff at 11:22 a.m.

G. WELCOME AND CHAIR'S REMARKS

Chairman Kubert welcomed all, and thanked Board Member Saxton and Director Kohtz for attending AARO.

H. BOARD MEETING MINUTES

1. APPROVAL OF SEPTEMBER 23, 2015 MEETING MINUTES

Chairman Kubert asked for any additions or corrections to the September 23, 2015 minutes. With no further discussion, the Chairman called for a vote. Board Member Saxton moved to adopt the September 23, 2015 meeting minutes as presented. Board Member Woodle seconded the motion. The motion carried with Saxton, Gutwein, Woodle, Langemeier, and Kubert voting aye.

I. DIRECTOR'S REPORT

Director Kohtz presented twelve charts outlining the number of appraisers and AMCs as of October 21, 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; 399 total Certified General, 248 through education, experience, and examination, and 151 through reciprocity. In addition, there are 0 Registered and 61 Trainees currently credentialed.

As of October 21, 2015, a total of 692 appraisers, not including the Trainee classification, were reported by the Director, up 2 from September, and down 12 from October 2014. A total of 753 appraisers, including the Trainee classification, were also reported by the Director, up 5 from September, and down 4 from October 2014. A total of 496 appraisers credentialed through education, experience, and examination, not including the Trainee classification, was reported, which is down 12 from October 2014, and a total of 196 appraisers credentialed through reciprocity was reported, which is equal to October 2014.

In addition, the Director addressed the number of temporary permits issued. There were 23 permits issued in September compared to 18 permits issued in August. As of September 30, 2015, 140 temporary permits have been issued for the calendar year. Finally, Director Kohtz reported 101 AMCs registered.

The Director ended his report by informing the Board that SOS Temporary Employee, Gaylena Gibson, has obtained full time employment, and that Cindy Settrini has replaced her.

J. FINANCIAL REPORT AND CONSIDERATIONS – OCTOBER 2015

1. APPROVAL OF SEPTEMBER RECEIPTS AND EXPENDITURES

The receipts and expenditures for September were reviewed by the Director by line item with the Board. Director Kohtz provided details related to some specific September expenses, and brought attention to the postage expense of \$449.63, which includes the cost of the certified letters sent to appraisers for notification of the background check requirement with renewal; and the conference registration expense of \$900.00, which includes the Fall AARO Conference registration for Board Member Saxton and Director Kohtz. For the Real Property Appraiser Program, which includes both the appraiser fund and the AMC fund, a total of \$31,229.66 in expenditures and \$10,219.97 in revenues were reported. As of the end of September, expenses amount to 20.54 percent of the budgeted expenditures for the fiscal year; 25.21 percent of the fiscal year has passed. Finally, Director Kohtz presented three charts outlining the Agency twenty-five month expenses and revenues, historic cash balance, and twenty-five month cash balance.

(Continued on page 3)

(Continued from page 2)

Chairman Kubert asked if the figure for every other month only could be shown on the chart titled “Agency 25 Month Cash Balance?” Director Kohtz informed the Board that the change will be made for the November meeting. The Director asked the Board if it would like to see the same change on the chart titled “Agency 25 Month Expenses/Revenues?” Board Member Langemeier indicated that the change on this chart is not necessary because it is easy to follow with the figures for each month.

Board Member Woodle moved to accept and file the September 2015 budget reports for audit. Board Member Saxton seconded the motion. The motion carried with Langemeier, Woodle, Gutwein, Saxton, and Kubert voting aye.

2. FEDERAL REGISTRY FEE LIABILITY ACCOUNT BALANCE

Director Kohtz presented to the Board federal registry fee invoices, in the amount of \$1,360.00 for February 2015, and in the amount of \$360.00 for March 2015, and informed the Board that the invoices were paid after the federal registry fee liability account balance was corrected in June. Director Kohtz explained that when making the correction, he believed that all invoices were paid. The Director informed the Board that the issue has been resolved, so the problem will not occur again. These invoices were sent to the ASC’s “Agency Financial Contact” during a time when the Board was transitioning between Business and Licensing Specialists; the invoices were sent to the previous BLS’s email account after employment ended, and were just missed. In the future, all federal registry fee invoices will be sent to the BLS and the Director to ensure that two email accounts receive the invoice. Director Kohtz asked for approval to make a one-time balance transfer in the amount of \$1,720.00 to the federal registry fee liability account to reconcile these two bills. Board Member Woodle moved to approve a transfer from the Real Property Appraiser Fund to the federal registry fee liability account in the amount of \$1,720.00. The motion was seconded by Langemeier, and carried with Woodle, Gutwein, Langemeier, Saxton, and Kubert voting aye.

3. PER DIEMS

Director Kohtz requested a per diem payment in the amount of \$100.00 for Chairman Kubert for representing the Board at the UNL Career Fair, and a per diem payment in the amount of \$300.00 for Board Member Saxton for traveling to and from, and attending the 2015 Fall AARO Conference. Chairman Kubert informed the Board that he does not wish to receive a per diem payment for his attendance at the career fair. Board Member Gutwein moved to approve a per diem payment for Board Member Saxton in the amount of \$300.00 for three days in which he was traveling to and from, and attending, the 2015 Fall AARO Conference. The motion was seconded by Langemeier, and carried with Langemeier, Gutwein, Woodle, and Kubert. Saxton abstained.

K. GENERAL PUBLIC COMMENTS

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

L. EDUCATION: None.

M. UNFINISHED BUSINESS: None.

N. NEW BUSINESS

- 1. OPEN 1ST CONGRESSIONAL DISTRICT CERTIFIED REAL PROPERTY APPRAISER REPRESENTATIVE POSITION:** Director Kohtz requested approval for a Memo From the Board concerning the 1st Congressional District Certified Real Property Appraiser position that will be open after Board Member Kubert's term expires. With no further discussion, Board Member Saxton made a motion to approve the Memo From the Board to notify appraisers of the open 1st Congressional District Certified Real Property Appraiser position. Seconded by Langemeier. The motion carried with Langemeier, Woodle, Gutwein, Saxton, and Kubert voting aye.
- 2. EDUCATION APPROVAL FLOW CHART:** Director Kohtz presented a flow chart developed by Compliance and Education Specialist Krieger consisting of the qualifying education review and approval actions to the Board for review. The Director informed the Board that Chairman Kubert asked for a flow chart to be developed so that Board members have a better understanding of the overall process. No further discussion took place.

O. LEGISLATIVE REPORT AND BUSINESS

- 1. TITLE 298 UPDATE:** Director Kohtz presented the latest draft of Title 298 to the Board for review. The Director continued by informing the Board that this draft utilized the draft previously approved by the Board as a foundation to add all the changes resulting from LB139. Director Kohtz informed the Board that he does not intend to cover every change, but would like to highlight some non-LB139 changes made since the last draft was approved.

The Director brought attention to 002.03A found on page 14, and informed the Board that this additional language was the result of a conversation between him and Chairman Kubert. The conversation pertained to a potential applicant that meets the "hours" requirements without doing anything more than selecting comps, or a similar real property appraisal activity. The Director indicated that the added language makes it very clear that the experience must be progressive.

Director Kohtz then directed the Board to page 17, and outlined the change to the procedure if an applicant's initial experience does not meet the Board's expectations. The previous draft language allowed for two options; 1) obtain additional experience, or 2) submit additional log. Both options allowed the Board to select additional reports upon completion of the required task. The Director informed the Board that the new language adds the option to just select additional reports to go along with the above mentioned options. This option would be beneficial in situations where an applicant does not necessarily need to complete additional education or experience prior to having a report evaluated.

Director Kohtz asked the Board to review 002.17B on page 18. The Director informed the Board that this language was added to provide an end to the application process. The Director continued by saying that applicants sometimes get put into a pattern where things just keep going, but there is really no reason to continue the application process. Board Member Langemeier expressed concern with the rigidity of the language. Board Member Langemeier indicated that the way it is written, there are no other options, even if the Board feels there should be. Many other Board members asserted a similar view. Board Member Langemeier asked that "shall" be changed to "may" on line three. Director Kohtz informed the Board that this change will be made.

The Director then pointed the Board to Chapter 9, and informed the Board that after the new investigative procedures have been in place for a bit, it has become apparent that verbal and electronic communications should be included where "written" appears. While gathering evidence, the agency speaks with many people, and at times it is easier to communicate important information verbally or electronically.

Director Kohtz asked if the Board members had anything that they would like to discuss. Chairman Kubert requested clarification in a couple areas, then asked Director Kohtz if it is required to state that the experience described in 002.08 must conform to USPAP, when 002.03B indicates that all experience must conform to USPAP. Director Kohtz replied that it is not needed in 002.08, and that “and conforms to the Uniform Standards of Professional Appraisal Practice” will be removed. Chairman Kubert then brought attention to 001.01 on page 73, and asked the Board what it thought about the language. Specifically, should valuation and evaluation, or just valuation be included. The Board held a discussion concerning this drafted rule, and agreed that no change should be made to the draft at the present time.

Board Member Saxton moved to approve the draft as amended and send to the Attorney General’s Office for second informal review. The motion was seconded by Langemeier, and carried with Saxton, Langemeier, Woodle, Gutwein, and Kubert voting aye.

Break from 12:58 p.m. to 1:08 p.m.

2. **LEGISLATIVE PERFORMANCE AUDIT COMMITTEE REPORT ON USE OF APA AND BEST PRACTICES:** Director Kohtz provided a study titled “Nebraska Administrative Procedure Act: Review of Selected Agencies and Best Practices” developed by the Legislative Performance Audit Committee to the Board for review. The Director summarized the study, and informed the Board that the line between a formal rule and informal policy has always been troublesome. The problem is that the statutes pertaining to rulemaking can be read to be very strict, or very forgiving. Director Kohtz brought attention to legislation introduced during the past few sessions with the intent of defining a policy as a rule. The legislation did not go far because of the agencies position against it. Such a law would prevent the Board from establishing any policies to interpret its statute or rules, which means that the formal rule making process would have to be invoked every time the Board wanted to address an issue; this would be nearly impossible to keep up with. The Director indicated that the Board’s use of policies falls somewhere between the three agencies featured in the document. The committee acknowledges that any resolution needs to be fair to agencies, but it also needs to prevent the abuse that currently exists. Director Kohtz finished by informing the Board that he expects another bill this legislative session, but this will be the first bill with a study to back it up.

P. BOARD POLICIES AND PROCEDURES

1. BOARD POLICIES

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

2. FORMS AND PROCEDURES

- a. **2016-17 USPAP Standard 3 Review Form:** BLS Kienholz-Howsden presented the “2016-17 USPAP Standard 3 Compliance Review Report” form to the Board for consideration. Kienholz-Howsden informed the Board that no changes were needed for the 2016-17 Edition of USPAP. The only change on the form was to update the email address. Director Kohtz was asked if there was a way to develop generic email addresses to prevent forms from being updated for no other reason. Director Kohtz informed the Board that the agency can have generic email accounts created, and linked to existing email accounts. In other words, an email account named compliance.nrpab@nebraska.gov could be linked to CLS Krieger’s email account. The Board recommended that Director Kohtz pursue generic emails accounts for the agency.

- b. Board Meeting Packet Documentation Release Procedures:** Chairman Kubert brought attention to the board meeting packet documentation release procedures, and indicated that they have been in place for a few months, so now would be a good time to review the effectiveness of the procedures. The Chairman asked the Board if it had any feedback for the Director. Board Member Langemeier indicated that he is receiving too many unimportant items. He would prefer that if the issue isn't pressing, that the document is not sent in advance. Chairman Kubert agreed with Board Member Langemeier, and recommended that the documents sent be kept to only those that are large files, or those that are very important. Director Kohtz informed the Board that this change will be made. The Director also added that in the future all emails will be released by him, so the information being sent is controlled and is consistent. Board Members Saxton and Gutwein offered their agreement with what is being said, and both felt that it is easier to focus on the Board meeting when the packet is released as a whole.

Q. OTHER BUSINESS

- 1. BOARD MEETINGS:** Chairman Kubert informed the Board that thirty days is needed between the November and December meeting to allow for the proper public notice of the rules hearing in December. The Chairman proposed moving the November meeting from Thursday, November 19, 2015, to Friday, November 13, 2015. Board Member Woodle informed the Board that he would be absent; all other board members confirmed attendance on November 13, 2015.

2. CONFERENCES/EDUCATION

- a. Kubert and Kohtz UNL Career Fair Report:** Chairman Kubert and Director Kohtz attended the UNL Career Fair on September 30, 2015 at Pinnacle Bank Arena in Lincoln. Director Kohtz informed the Board that attendance at the UNL Career Fair was a good experience. There are some areas that the Board could improve on for next year, but a number of people were reached. The Director also commended Chairman Kubert for his ability to capture the attention of students from a professional prospective. Chairman Kubert added, "The difficult thing is that we were selling a career not a job. Everyone kept wanting to give us their resume." The Chairman concluded that overall it was good to bring notice to the appraiser profession. If we can get people to think about the career now, they will have a plan for the education and experience requirements in the future when that time comes.
- b. Saxton and Kohtz Fall AARO Conference Report:** Board Member Saxton and Director Kohtz attended the Fall AARO Conference October 16-19, 2015 in Washington, D.C. The Director informed the Board that he will send his full notes once received, but that he would like to touch on a couple points. There was quite a bit of talk concerning credentialing requirements; much of that centered on competency based experience. An example would be, remove all experience hours and only require that a number of reports are completed and submitted for experience credit. This would allow an applicant to reach competency at a faster or slower pace depending on many factors, but for the most part, it puts it in the hands of the applicant, which is different than now. The Appraisal Subcommittee has a little more guidance regarding the AMC Final Rule, but it has still not developed policies for enforcement. There was a great presentation on the SCOTUS decision regarding the North Carolina Board of Dental Examiners vs. FTC. The speaker broke the case down to a basic level, and did a great job of interpreting what was happening throughout the opinion. His most important message was not to panic, and follow the legal advice given by the A.G.'s office. Board Member Saxton presented a handout of notes regarding the conference, and summarized some of the notes included. Board Member Saxton indicated that the conference was well planned and represented.

- 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 applicants as listed:

- T15010 / Requirements for credentialing as a Trainee Real Property Appraiser approved as submitted. Authorize Director to issue credential upon completion of background check.**
- T15010 (SA) / Approve as Supervisory Appraiser.**
- CG15023R / Requirements for credentialing as a Certified General Real Property Appraiser approved as submitted. Authorize Director to issue credential upon completion of background check.**
- CG15024R / Requirements for credentialing as a Certified General Real Property Appraiser approved as submitted. Authorize Director to issue credential upon completion of background check.**
- CG15026R / Requirements for credentialing as a Certified General Real Property Appraiser approved as submitted. Authorize Director to issue credential upon completion of background check.**
- CR15007 / Invite to advisory meeting; send redacted copy of Standard 3 reviews and request written response within 10 days. Board Member Saxton assigned.**
- CR15009 / Accept written correspondence; continue with credentialing process.**
- CG15025 / Accept written correspondence; continue with credentialing process.**
- CG14041 / Approve as Certified General Real Property Appraiser.**
- CG15016 / Hold**

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

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

- CG15015 / Rescind September action. Request two reports and workfiles, send one for review; costs associated with subsequent review paid by applicant.**
- CR14026 / Hold**
- L15002 / Request updated experience log for the period between October 21, 2015 and December 31, 2015.**

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

- 15-17 / Dismiss without prejudice**
- 14-15 / Close**
- 14-16 / Dismiss without prejudice**
- 14-17 / Dismiss without prejudice**
- 14-18 / Dismiss without prejudice**
- 14-19 / Dismiss without prejudice**
- 14-20 / Dismiss without prejudice**
- 14-22 / Agency select one report from log; request true copy of appraisal report and workfile and send for review.**
- 14-23 / Monitor Consent Agreement; refer to 14-22**
- 14-24 / Monitor Consent Agreement; refer to 14-22**
- 14-26 / Monitor Consent Agreement; refer to 14-22**
- 14-27 / Monitor Consent Agreement; refer to 14-22**
- 15-03 / Ongoing**
- 15-04 / Ongoing**
- 15-05 / Hold**
- 15-06 / Ongoing**
- 15-07 / Ongoing**
- 15-09 / Hold**
- 15-10 / Ongoing**
- 15-11 / Ongoing**
- 15-14 / Ongoing**
- 15-15 / Ongoing**
- 15-16 / Ongoing**

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

F. CONSIDERATION OF OTHER EXECUTIVE SESSION ITEMS:

I15-03, I15-04, I15-05 were discussed.

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

I14-32 / Hold
I14-33 / Hold
I15-02 / Close; send advisory letter.
I15-03 / Close; send advisory letter.
I15-04 / Close; send advisory letter.
I15-16 / Hold
I15-17 / Hold
I15-18 / Hold

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

R. ADJOURNMENT

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

At 1:45 p.m. Chairman Kubert adjourned the October 21, 2015 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Tyler N. Kohtz
Director

These minutes were available for public inspection on November 3, 2015, in compliance with Nebraska Revised Statute §84-1413 (5).