

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

December 17, 2015 Meeting Minutes

A. OPENING

Chairman Thomas Kubert called to order the December 17, 2015 meeting of the Nebraska Real Property Appraiser Board at 9:02 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 December 14, 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 Staff Assistant, Melissa Rice-Griffin.

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 9:04 a.m. Board Member Saxton seconded the motion. The motion carried with Gutwein, Saxton, Langemeier, Woodle, and Kubert voting aye.

Bradly Rogge and David Drew appeared before the Board at 9:50 a.m.

Gutwein exited the meeting at 10:05 a.m.

Gutwein reentered the meeting at 10:10 a.m.

Break from 10:40 a.m. to 10:52 a.m.

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

Board Member Langemeier moved to come out of executive session at 11:46 a.m. Board Member Woodle seconded the motion. The motion carried with Gutwein, Saxton, Langemeier, Woodle, and Kubert voting aye.

Break from 11:46 a.m. to 12:01 p.m.

G. WELCOME

Chairman Kubert welcomed all.

H. BOARD MEETING MINUTES

1. APPROVAL OF NOVEMBER 13, 2015 MEETING MINUTES

Chairman Kubert asked for any additions or corrections to the November 13, 2015 minutes. With no further discussion, the Chairman called for a vote. Board Member Woodle moved to adopt the November 13, 2015 meeting minutes as presented. Board Member Langemeier seconded the motion. The motion carried with Gutwein, Saxton, Langemeier, Woodle, and Kubert voting aye.

I. DIRECTOR'S REPORT

Director Kohtz presented twelve charts outlining the number of appraisers and AMCs as of December 17, 2015. The Director summarized each chart and reported the number of appraisers as follows: 66 total Licensed, 62 credentialed through education, experience, and examination, and 4 through reciprocity; 229 total Certified Residential, 187 credentialed through education, experience, and examination, and 42 through reciprocity; 403 total Certified General, 249 through education, experience, and examination, and 154 through reciprocity. In addition, there are 0 Registered and 60 Trainees currently credentialed.

As of December 17, 2015, a total of 698 appraisers, not including the Trainee classification, were reported by the Director, up 2 from November, and down 14 from December 2014. A total of 758 appraisers, including the Trainee classification, were also reported by the Director, up 1 from November, and down 9 from December 2014. A total of 498 appraisers credentialed through education, experience, and examination, not including the Trainee classification, was reported, which is down 8 from December 2014, and a total of 200 appraisers credentialed through reciprocity was reported, which is down 6 from December 2014.

In addition, the Director addressed the number of temporary permits issued. There were 10 permits issued in November compared to 26 permits issued in October. Director Kohtz also noted that many applications submitted in November were not processed until December due to staffing issues, so December will show a high number of permits issued. As of November 30, 2015, 176 temporary permits have been issued for the calendar year. Finally, the Director reported 101 AMCs registered, which is down 11 from December 2014.

The Director ended his report by informing the Board that 66% of Certified General, 67% of Certified Residential, and 75% of Licensed Residential Real Property Appraisers have renewed as of December 16, 2015.

J. FINANCIAL REPORT AND CONSIDERATIONS – DECEMBER 2015

1. APPROVAL OF NOVEMBER RECEIPTS AND EXPENDITURES

The receipts and expenditures for November were reviewed by the Director by line item with the Board. Director Kohtz provided details related to some specific November expenses, and brought attention to the date processing expense of \$2050.12, and informed the Board that this amount includes the expenses for both October and November; the publication and print expense of \$980.75 includes the quarterly copier service fees; and the office supplies expense of \$611.39 includes toner cartridges for the Canon copier, which cost approximately \$100.00 apiece. For the Real Property Appraiser Program, which includes both the appraiser fund and the AMC fund, a total of \$30,892.12 in expenditures and \$46,719.98 in revenues were reported. As of the end of November, expenses amount to 32.44 percent of the budgeted expenditures for the fiscal year; 41.92 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.

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

2. PER DIEMS

Director Kohtz requested a per diem payment in the amount of \$100.00 for Chairman Kubert for representing the Board at a December 7, 2015 applicant meeting with Director Kohtz. Board Member Woodle moved to approve a per diem payment in the amount of \$100.00 for Board Member Kubert for participating in the December 7, 2015 applicant meeting. Board Member Langemeier seconded the motion. The motion carried with Gutwein, Saxton, Langemeier, and Woodle voting aye. Kubert abstained.

K. GENERAL PUBLIC COMMENTS

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

L. EDUCATION

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

NEW CONTINUING EDUCATION ACTIVITIES AND INSTRUCTORS

McKissock, LP

Appraising Small Apartment Properties (C21559-I)/6 Hours – Tracy Martin

Adjustments: Supported or Not Supported? (C21560-I)/5 Hours –

Dan Bradley, Tracy Martin

Nebraska Chapter of Appraisal Institute

2016-2017 7-Hour National USPAP Update Course (C21601)/7 Hours – Cay Lacey

RENEWAL OF CONTINUING EDUCATION ACTIVITIES AND INSTRUCTORS

McKissock, LP

Appraising Manufactured Homes (C9963-I)/7 Hours – Alan Simmons

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

M. UNFINISHED BUSINESS

- 1. OPEN 1ST CONGRESSIONAL DISTRICT CERTIFIED REAL PROPERTY APPRAISER REPRESENTATIVE POSITION:** Director Kohtz indicated that he has received feedback from individual board members during the past month, and requested comments from the Board to provide to the Governor's office concerning the 1st Congressional District appointment. There was no further discussion.

N. NEW BUSINESS

- 1. 2016 BOARD MEETING SCHEDULE:** Director Kohtz presented a calendar marking the proposed 2016 board meeting dates. With no further discussion, Board Member Woodle made a motion to approve the 2016 board meeting dates as presented. The motion was seconded by Saxton, and carried with Gutwein, Saxton, Langemeier, Woodle, and Kubert voting aye.
- 2. FTC GUIDANCE ON ACTIVE SUPERVISION OF STATE REGULATORY BOARDS:** Director Kohtz presented a document titled "FTC Guidance on Active Supervision of State Regulatory Boards" to the Board for review. The Director summarized the document, and indicated that for the most part the document confirms what has already been stated. The document includes guidance on what is state supervision and when it is met, what is state action defense and how it is obtained, and how a board's make-up and decision making authority affects state supervision. Director Kohtz finished by bringing attention to Scenario 2 on page N.13, and informed the Board that this is the first that he has seen active supervision linked to administering a disciplinary process. The Director stated, "Although disciplinary action limiting one appraiser's ability to engage in appraisal practice is likely not anti-competitive, disciplinary action against multiple appraisers that limits a number of appraisers' ability to engage in appraisal practice may be anticompetitive depending on the situation." Director Kohtz informed the Board that any disciplinary action the Board is considering that limits an appraiser's ability to engage in real property appraisal practice should be reviewed by Assistant Attorney General Hart.
- 3. LEGISLATIVE AUDIT COMMITTEE RECOMMENDATIONS FOR CHANGE TO APA:** Director Kohtz presented a memorandum from the Legislative Performance Audit Committee to all State Agencies to the Board for review, and provided a summary of the memo. The Director indicated that the proposed changes to the definition of "Rule" does provide better clarity regarding what is and is not a rule. The Committee is also proposing a new "Guidance Document," which would be a written statement that provides an interpretation of a law or rule, but does not have the force of a law or rule. This document would replace the use of policies for the Board. Finally, Director Kohtz informed the Board that a procedure would be created to allow for emergency rules. The Director closed by saying that the changes will result in more steps, but it would still allow for the Board to provide its interpretation of a law or a rule to the public. Compared to previous legislation regarding this topic, agencies may be willing to support this as a compromise.

O. LEGISLATIVE REPORT AND BUSINESS

1. **REQ03907 – USPAP UPADATE BILL:** Director Kohtz presented REQ03907 to the Board for final review, which includes the Board’s recommendations made at the November meeting. In addition, the Director informed the Board that Senator Johnson has agreed to carry the bill.

The Director then brought attention to the two comments received from the public. The first comment was from a professor at the University of Nebraska at Omaha. This individual asked that an exemption be included in the Real Property Appraiser Act for valuation research projects. The Director informed the Board that many conversations have taken place between the Board and this individual, and it is the Board’s position that the valuation research performed by UNO does not fall under the Act. Board Member Langemeier asked if this is the position of the individual professor or the University. Director Kohtz responded that it is likely the position of the professor alone. Board Member Langemeier requested that Director Kohtz ask the professor if he represents himself or the University with this position. The Director indicated that he will follow up with the professor.

Director Kohtz informed the Board that the second comment pertains to the proposed change that two of the three congressional district representatives be certified real property appraisers, instead of certified general real property appraisers. The appraiser feels that removal of the certified general requirement removes required knowledge from the Board. Chairman Kubert indicated that this may have been true in the past, but changes during the past year makes board member appraisal expertise less crucial; at the same time, many more appraisers are eligible for the openings.

The Board agreed that no changes are needed based on the comments reviewed. Board Member Langemeier moved to accept the REQ03907 as presented. The motion was seconded by Woodle, and carried with Gutwein, Saxton, Langemeier, Woodle, and Kubert voting aye.

2. **REQ03832 – AD VALOREM MASS ASSESSMENT BILL:** No update.
3. **Title 298 JANUARY 21, 2016 HEARING:** Director Kohtz informed the Board that the Title 298 hearing has been rescheduled for January 21, 2016. The Director declared that he miscalculated 30 days and was one day short for the December 17, 2015 meeting as originally planned. The thirty day notice must be fully completed prior to the date of hearing; the Director indicated that he thought the thirty day notice includes the date of hearing. The Director apologized for the mistake. Chairman Kubert stated that the mistake does not have an impact on the progression of Title 298. There was no further discussion.

P. BOARD POLICIES AND PROCEDURES

1. **BOARD POLICIES**
 - a. **Current Board Policies:** No discussion.

Q. OTHER BUSINESS

1. **BOARD MEETINGS:** No discussion.
2. **CONFERENCES/EDUCATION**
 - a. **Kohtz Columbus Board of Realtors Presentation Report:** Director Kohtz gave a presentation to the Columbus Board of Realtors on November 17, 2015. The Director provided a summary of his experience to the Board, and provided some details that he found interesting. The Director indicated that there were approximately fifty individuals in attendance, which included a mix of those in the banking industry, appraisal industry, and realtors. Overall, the Director felt that it was a positive and educational experience for all in attendance.

b. UNL Spring Career Fair: Director Kohtz provided information regarding the UNL Spring Career Fair at Pinnacle Bank Arena on February 17, 2016, and asked if the Board had interest in attending again. The Director was asked if he thought attendance at the spring fair was beneficial. The Director responded, “Anytime the Board can engage in dialog with students about the appraiser profession, it is beneficial. It would ideal to be able to give classroom presentations, but this is what is available right now.” Chairman Kubert added that more could be done to draw those students in, but there were productive conversations. The Chairman went on to say that the Board was one of the few booths selling a career and not a job, which is difficult. Board Member Saxton asked if there would be any benefit to having a list of contacts for potential supervisory appraisers. Director Kohtz indicated that he is not comfortable with that; it puts too much liability on the Board if something goes wrong in the training process. Board Member Woodle moved to approve attendance at the UNL Spring Career Fair on February 17, 2016. The motion was seconded by Langemeier, and carried with Gutwein, Saxton, Langemeier, Woodle, and Kubert voting aye.

3. MEMOS FROM THE BOARD: No discussion.

4. APPRAISAL SUBCOMMITTEE: No discussion.

5. APPRAISAL FOUNDATION

a. The Appraisal Standards Board November Q&A’s: The Appraisal Foundation’s document titled “USPAP Q&A” issued on November 17, 2015 was presented to the Board for review. This document discussed three questions; one pertaining to the application of Standard 3 for a review performed by an ethics committee or professional appraisal organization, another pertaining to disclosure of prior services, and the final question pertaining to a definition of value in an appraisal review report. There was no discussion.

6. IN THE NEWS: No discussion.

R. RECOGNITION OF OUTGOING BOARD MEMBER AND CHAIR’S COMMENTS:

Chairman Kubert ended his term on the Board by saying, “In any volunteer opportunity, the best we can hope for is to leave the situation better that we found it. I totally understand that we do not volunteer to serve on the Nebraska Real Property Appraiser Board to be popular. We volunteer because it is important to the appraisers in our state, the financial sector of our state, as well as the citizens of our state. It is far from an easy job, but it is a necessary job. I thank former Governor Heineman for giving me the opportunity to serve.

There are many complex aspects to appraisal regulation. In retrospect, during my five year term, I have determined that in year one I knew nothing about serving on the Board, in years two and three I thought I knew most things about serving on the Board, and in years four and five I realized, again, that I had much to learn about appraisal regulation and Board activity.

I appreciate the work of Executive Director Tyler Kohtz who has done an excellent job of restructuring the agency. Tyler's diligence and dedication in assisting with multiple appraisal law rewrites and the upcoming total update to Title 298 Rules and Regulations should be appreciated by all who make a career in real estate appraisal.

I thank all the people that I was blessed to serve with such as Board veterans like Phil Barkley, Brad Moore, Eldon Tyrell, David Hartman, and Gregg Mitchell, as well as the current Board members Marc Woodle, Chris Langemeier, Larry Saxton and Sandra Gutwein. Often, we all fail to thank people who are trying to make a difference. To these current and former Board members, I say thank you for your time, knowledge, judgment, and your willingness to serve.

As I leave the Board, I am confident that I leave it in good hands and I am hopeful that I leave the Nebraska Real Property Appraiser Board better than I found it.”

Many kind words were said to outgoing Board Member Kubert by other board members and staff. Board Member Woodle presented a plaque to Chairman Kubert for his dedication and service to the Board.

C. CONSIDERATION OF APPLICANTS AS NEBRASKA REAL PROPERTY APPRAISER:

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

T15012 / Requirements for credentialing as a Trainee Real Property Appraiser approved as submitted. Authorize Director to issue credential upon completion of background check.

T15012 (SA) / Approve as Supervisory Appraiser.

CG15028R / Requirements for credentialing as a Certified General Real Property Appraiser approved as submitted. Authorize Director to issue credential upon completion of background check.

CG15029R / Requirements for credentialing as a Certified General Real Property Appraiser approved as submitted. Authorize Director to issue credential upon completion of background check.

CG15016 / Approve terms of resolution.

CR14026 / Approve as Certified Residential Real Property Appraiser.

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

Board Member Woodle moved to approve renewal of credential for Item #1. The motion was seconded by Langemeier, and carried with Gutwein, Saxton, Langemeier, Woodle, and Kubert voting aye.

Board Member Woodle moved to approve all renewal applications received at that Board’s office postmarked between December 1, 2015 and December 15, 2015 with advisory letters. The motion was seconded by Langemeier, and carried with Gutwein, Saxton, Langemeier, Woodle, and Kubert voting aye.

Board Member Woodle moved to authorize agency to approve all renewal applications received at the Board’s office postmarked between December 16, 2015 and December 31, 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 authorize Special Assistant Attorney General, Bill Blake, to conduct an investigation into Grievances #15-22, 15-23, and 15-24 and submit his findings and recommendation to the Board upon completion of the investigation. Director Kohtz is authorized to approve expenditures as needed to assist SAAG Blake with his investigation. The motion was seconded by Saxton, and carried with Saxton, Langemeier, Woodle, and Kubert voting aye. Gutwein recused herself.

Board Member Woodle moved to take the following enforcement actions:

- 15-25 / Dismiss without prejudice; send advisory letter.**
- 15-26 / Dismiss without prejudice.**
- 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 / Remand to agency for further investigation.**
- 15-04 / Ongoing**
- 15-05 / Hold**
- 15-06 / Authorize Special Assistant Attorney General Blake to file formal charges for violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (4) and (23).**
- 15-09 / Hold**
- 15-10 / Ongoing**
- 15-11 / Dismiss without prejudice.**
- 15-14 / Ongoing**
- 15-15 / Ongoing**
- 15-16 / Ongoing**
- 15-18 / Ongoing**
- 15-19 / Ongoing**
- 15-21 / Dismiss with prejudice.**

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

F. CONSIDERATION OF OTHER EXECUTIVE SESSION ITEMS:

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

- I14-32 / Hold**
- I14-33 / Hold**
- I15-16 / Hold**
- I15-17 / Hold**
- I15-18 / Hold**

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

Board Member Woodle moved to approve Item #1 as amended. Seconded by Langemeier. The motion carried with Gutwein, Saxton, Langemeier, Woodle, and Kubert voting aye.

R. ADJOURNMENT

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

At 1:03 p.m. Chairman Kubert adjourned the December 17, 2015 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Tyler N. Kohtz
Director

These minutes were available for public inspection on January 4, 2016, in compliance with Nebraska Revised Statute §84-1413 (5).