

State of Oregon Real Estate Agency

REAL ESTATE BOARD

**Regular Meeting Minutes
October 23, 2006**

- MEMBERS PRESENT:** Michael Graeper, Chair
Troy Costales
Arthur Kegler
Robert LaDu
Maxine Ribera-Card (*arr. 10:55 a.m.*)
- MEMBERS ABSENT:** Victor Kee (Excused)
Vada Salinas (Absent)
Marianne Wood (Excused)
John Zupan (Excused)
- STAFF PRESENT:** Scott Taylor, Commissioner
Katie Cannon, Deputy Commissioner
Laurie Skillman, Land Development Section Manager
Dean Owens, Administrative Services Section Manager
Louann Rahmig, Board Liaison
- GUESTS PRESENT:** Jyl Meier, Oregon Escrow Council
Katie Cox, American College of Real Estate and Appraisal
Andrea Bushnell, Oregon Association of Realtors (OAR)
Jana Jarvis, OAR
Karna Gustafson, Landye Bennett

Note: Due to a lack of quorum at the beginning of the meeting, several “nonaction” items were taken out of order and the “action” items handled after a quorum was met at 10:55 a.m.

I. BOARD BUSINESS

- A. Call to Order.** Chair Mike Graeper called the meeting to order at 10:15 a.m. at the Real Estate Agency office, 1177 Center Street NE, Salem, Oregon.
- B. Roll Call.** Victor Kee, Marianne Wood and John Zupan were excused. At the time of roll call, Maxine Ribera-Card and Vada Salinas were absent. Being no quorum, the chair proceeded with items not requiring board action, delaying the action items until such time as a quorum was met. (*Note: Ms. Ribera-Card arrived at 10:55 a.m.*)

- C. Approval of the Agenda and Order of Business.** Hearing no objections, the Chair ruled the agenda approved as submitted.
- D. Approval of the August 21, 2006, regular meeting minutes.** Hearing no objections, the Chair ruled the minutes approved as submitted.
- E. Approval of the 2007 board meeting calendar. (Action taken after quorum met.)** The Chair recommended changing the proposed February 20, 2007, meeting to February 12, 2007 (the second Monday). Hearing no objections, the Chair ruled the meeting schedule approved as amended.
- F. Date of the Next Meeting.** December 18, 2006, in Salem.

- II. PUBLIC COMMENT.** Katie Cox, Program Director, American College of Real Estate and Appraisal, Tigard, Oregon. Her comments were regarding online education. Since this appears to be the “wave of the future,” they want to know how they can help. They want to look into the qualifications of schools for distance education and do a study on how many reprimands have been brought against licensees from schools doing distance education vs. those doing live lectures.

Chair Graeper asked that a copy of the materials in Agenda Item VII.C. be provided to Ms. Cox, which is a good explanation of the criteria for licensing.

Ms. Cox feels improvements are needed. She is concerned that the standards set are not actually being followed. Many higher education departments have online education and it is regulated. She feels the education requirements need to be improved. One of the reasons the challenge exams were eliminated was that about 70 percent of the licenses were issued to people who were challenging their license rather than taking the education courses.

Commissioner Taylor advised that the agency has no documentation that would support or refute and doesn't have available resources to research the issue. The agency has the authority to determine course content. ARELLO does a certification of the methodology for distance education but not the content of the courses and it is quite rigorous. We have the authority to do a lot of what Ms. Cox is asking.

Mr. Kegler reported that in talking to new agents taking online courses, there is a vast difference in the amount of time spent online. He is curious about schools offering online studies and the relationship to time (content) vs. required hours.

Commissioner Taylor offered to obtain information for the next board meeting.

Mr. Kegler reiterated that we need to look at content vs. hours. Some people can assimilate faster than others. In live classes, you go at the speed of the instructor. If online, you go at your own speed. There is a vast difference between content and hours particularly when one goes online. Commissioner Taylor agreed that people learn at different rates. The real question is whether they have learned the material.

Chair Graeper was curious about college courses taught online and how they do that. Ms. Cox felt that the classes she took online were more challenging than the live classes taken. She explained the requirements and process, including the element of interaction with other students and the professor.

Mr. Taylor reported that the ARELLO certification works in a similar manner and he will obtain information from them.

Bob LaDu agrees that emphasis should be on the mastery of content, not the fulfillment of hours. The examination will measure that.

Troy Costales commented on content vs. time. If there is a wide variety of classes that can be taken and a standard of what they need to learn is not established, the default will be to time.

Chair Graeper asked that this issue be put on the December 18 agenda.

III. REQUEST FOR WAIVERS. Richard Joseph Osmon Jr. requested a partial waiver of experience for a principal broker license. **(EXHIBIT B) (Action taken when quorum met.)**

MOTION by Bob LaDu to approve the request. Discussion: Mr. Costales commented that in the past there has been written acknowledgment from the current broker that they will be available for assistance. He also asked if there is a conflict of interest between running a school and being a principal broker. Commissioner Taylor indicated that there is nothing in law to prohibit that and it is not uncommon. Chair Graeper added that the agency approves instructors and courses.

Mr. Kegler raised a question about Mr. Osmon's father signing certificates as the principal broker.

MOTION CARRIED UNANIMOUSLY.

IV. COMMUNICATIONS

A. Board meeting procedures. (Action taken when quorum met.)

MOTION by Bob LaDu to use Robert's Rules of Order as the board's

parliamentary authority. Discussion: Commissioner Taylor reported that the board has generally operated under Robert's Rules of Order.

MOTION CARRIED UNANIMOUSLY.

Mr. Kegler asked if the procedures outlined in **Agenda Item IV.A.** were from Robert's Rules of Order. Mr. LaDu responded essentially, yes. He advised that he took a qualifying exam to become a member of the National Association of Parliamentarians. The basic thread that runs through the rules is that any procedures used should facilitate the meeting. Chair Graeper asked for Mr. LaDu's assistance in following the correct procedures.

B. Waiver request log. Commissioner Taylor reported that this is a continuation of what we have been doing. Chair Graeper asked that the discussion be included for Karen L. Manske's denial. Mr. Taylor indicated that it was probably because she requested a waiver of the entire three years.

C. 2006 State Toy Drive. Mr. Taylor explained that the state participates every year and the agency is asking for the board's help.

V. REPORTS

A. Commissioner's report.

1. Agency's privacy policy. Commissioner Taylor referred to AG Kathleen Dahlin's August 15, 2005, memorandum. Concern had been raised about address information being available on the the agency's Web site. Chair Graeper asked about using the company address. Mr. Taylor responded that any address can be used. Chair Graeper asked that something be put in a future *OREN-J*. Commissioner Taylor stated that sole practitioners have to have a physical address rather than a post office box, and that is a problem if that is a home address.

Mr. Kegler stated the concern by the OAR executive committee. He will send a copy of the AG memo to them. He agrees that something should be put in the *OREN-J*.

2. 2007-09 Legislative concepts. Commissioner Taylor explained that there are three Legislative Concepts (LC). LC 353 will fix the problem of disbursement of disputed funds in a clients' trust account and relates it to a buy/sell transaction. Laurie Skillman explained that once the concepts are approved, Legislative Counsel drafts the bills. We responded with edits but we do not have the final versions and do not know when they will be ready. The Chair asked that Oregon

Association of Realtors be involved early on. Mr. Taylor reported that LC 354 clarifies “active” licenses and defines “nonlicensed.”

Mr. Costales suggested that all areas of statute need to agree so there are no conflicts. Ms. Skillman clarified that one either holds an active real estate license or is nonlicensed.

Mr. Taylor explained that LC 355 has to do with late renewals for escrow. The Department of Consumer and Business Services (DCBS) is introducing an LC on background checks. Deputy Commissioner Katie Cannon reported that House Bill 2157 (2005 session) that allowed background checks on licensees but did not include employees. A governor’s executive order has allowed us to do background checks on licensees and new staff. The DCBS bill will allow us to do background checks on new employees.

D. Agency’s land development areas of responsibility. (Taken out of order.) Laurie Skillman, Land Development Manager, referred to her October 11 overview of the land development work done by the agency.

Ms. Skillman advised that the agency handles condominiums, time shares, out-of-state subdivisions, manufactured dwelling parks, membership camping contract registrations and real estate marketing organizations. The majority of the work is in condominium filings. She defined condominiums and detailed the process for development approval. Ms. Skillman distributed a chart that shows the number of filings over a two-year period (June 2004-June 2006) (**EXHIBIT A**).

Ms. Skillman introduced Karna Gustafson, a condominium attorney responsible for a significant number of filings with the agency, who is also part of the condominium/homeowners association working group that works on legislative concepts and rules.

Ms. Gustafson, a partner at Landye Bennett, explained her background and responsibilities with the firm. The Condominium Act in Oregon is segregated into three portions: (1) the creation of condominiums and the governing documents; (2) the administration of the association; and (3) the consumer protection sales aspect. Condos are a horizontal slice of air and there are many ways to do that. The Condominium Act does not govern construction. The local jurisdictions handle that.

Their firm would like to see faster response to condominium filings but understand that the increased workload has greatly affected reviews. Ms. Gustafson pointed out that Ms. Skillman does a thorough review of the documents.

Maxine Ribera-Card asked if commercial condos are treated the same as residential. Ms. Gustafson responded that they are different. The condominium itself is regulated but the sales are not. However, they are created the same. Certain types of businesses will not purchase condos. Many don't want a mix of ownership because of restrictions.

Ms. Skillman advised that she has reviewed three aircraft hangars, condo space for private planes. She asked Ms. Gustafson's opinion on whether the agency is the appropriate venue for condos and, if so, why she sees it that way.

Ms. Gustafson responded that the agency regulates realtors and the two are interconnected. Sales are regulated. There needs to be buyer protection. The agency has done the job to see that consumers are getting what they think are getting.

Chair Graeper commented that the task force asked if the Real Estate Agency is the best place. Ms. Gustafson feels the Building Codes Division is inappropriate but the Real Estate Agency is because it governs sales.

Art Kegler asked for an explanation of condominiums vs. timeshares. He asked if a condo can be a timeshare. Ms. Gustafson doesn't do timeshares. Harbor at Depoe Bay is a condominium that is a timeshare.

Ms. Skillman explained the difference. With a condo, one owns a specific unit. One buys time in a timeshare. Ms. Gustafson advised that to be out of the timeshare act, one can't sell more than 1/12 interest in a unit.

Mr. Kegler asked about condo hotels. Ms. Gustafson responded that the Inn at Spanish Head and the Inn at Seventh Mountain are condo hotels which were created about 25 years ago. Commissioner Taylor feels this activity needs to be in this agency because of the sales activity.

Chair Graeper asked Ms. Skillman how many people help with the reviews. She responded that she has an assistant who inventories the documents when received to be sure all are submitted. Ms. Gustafson interjected that if the 45-day statute deadline is missed, the filing automatically becomes approved. Deputy Commissioner Cannon advised that a limited duration position was approved and should be on board in November.

Ms. Gustafson believes there needs to be more than one person who understands all this.

Chair Graeper asked about the cost of review. Ms. Skillman responded that the agency charges a \$100 filing fee (deposit) and \$46 per hour. A good review can be done on a complete filing in two hours. The counties review the plats, which costs several thousand dollars.

Chair Graeper as if there is a way to standardize square footage. Ms. Gustafson responded that the plat must match the declaration which matches the disclosure statement. The county assessor should be using that figure. Ms. Skillman explained the various ways of measuring space that are used but all the information is included in the disclosure document so the purchaser knows what they are getting. Initial purchasers get all of that information but subsequent purchasers do not. We need more information in ORS chapter 105 to get to that problem.

Mr. Kegler asked if there are different square footages in resale. Ms. Gustafson responded that she didn't know as their firm is not typically hired for resales.

Mr. Kegler feels the hourly rate should be increased. Mr. Taylor responded that the agency can charge what the job costs. Up until the recent increase in activity, the rate was probably adequate. We can take a look at that.

Recessed for 5 minutes to pick up lunch.

3. Other states' transition to on-line newsletters. Commissioner Taylor advised that he had sent out a question to the ARELLO administrators' newsletter. He distributed responses from seven of the 43 jurisdictions (**EXHIBIT C**). Five of the seven are doing on-line only newsletters. Georgia also allows an on-line subscription service. Louisiana's process is new and they will let us know of complaints. Most moves to on-line publication are for cost reduction.

Mr. Kegler asked if there was a way to determine the number of people who read the hard copies vs. those who read it on the Web site.

Mr. Taylor responded that in his travels he has mentioned things that were in the publication and is not so sure items other than the compliance issues are well read.

Ms. Cannon indicated that we could do a survey. We have had the *OREN-J* on the Web for some time so we could now ask whether it is read in print or on the Web, which would probably be more appropriate before going solely to the Web version.

Mr. LaDu stated that one of the functions of the publication is to set forth the matters the agency wants licensees to be aware of. Even though the agency doesn't know whether the publication is read, it has sent it, so recipients should know. He favors maintaining the current procedure.

Mr. Taylor feels it should be on-line only. However, it does force the licensees to do something affirmative. Perhaps we could develop an on-line subscription service for e-mail distribution like Georgia's. There are no constraints on the number of pages for on-line versions.

Chair Graeper asked about the cost per issue. Ms. Cannon responded that the postage cost is about \$25,000. She estimates that each issue is \$1.50 per copy. She will bring more accurate figures to the next meeting.

The Chair asked the board members to poll their staff to get an idea of preference. He agrees with Mr. LaDu on continuing the current procedure. Mr. Kegler believes the preference will differ depending on the age group.

B. Deputy Commissioner's report

- 1. Hits on the *OREN-J* posted on the agency Web site.** Deputy Commissioner Cannon explained the information provided in the packet. She pointed out that the number of unique visitors to the *OREN-J* is less than 100.
- 2. Agency vacancy announcements published in *OREN-J*.** Ms. Cannon explained that announcements are placed on the agency Web site. In some cases, the recruitment timing may not coincide with the newsletter so it would be difficult to do this on a regular basis. We could place a Web link address in the *OREN-J*.
- 3. Cash flow model for three-year license renewals.** Ms. Cannon reported that going to a three-year license renewal probably will not affect the cash flow that much. However, there are some risks in doing that as it will show as a large amount in the "reserve" fund. With a larger ending fund balance, risk that the legislature deciding that fees should be reduced or using the funds for other things. During the first renewal, licensees would have three years to take the Advanced Real Estate Practices course.

Mr. Taylor discussed the problems experienced in California in 1995 due to a recession. They have a four-year renewal cycle. Their

legislature took what they thought were excess funds resulting in layoffs and office closures. Ms. Cannon added that legislators have to be educated in cash flow issues.

Chair Graeper felt that moving to a three-year renewal period would save the agency money. Ms. Cannon indicated that new applications take more time than renewals. The agency is averaging \$1,000 more revenue per month than a year ago.

Katie Cox asked if the continuing education requirement would change if the agency went to a three-year renewal. Chair Graeper responded that he felt that the requirement would probably change to 45 hours for renewal, possibly requiring 15 hours per year.

- 4. Common questions received in the phone room.** Referring to the information in the packet, Deputy Commissioner Cannon pointed out the key percentage areas. About 54 percent of the calls were from consumers. Three categories (real estate, licensing and property management) account for about 70 percent of the calls. Mr. Costales asked about the volume of calls. Ms. Cannon responded that this information is for one month, and based on approximately 8,000 calls in a year, the data is probably based on less than 1000 calls.

Chair Graeper commented that the percentage of “not determined” seems to be out of proportion. He wants to see this continued.

Mr. Kegler asked if a checklist is used to determine the nature of the calls. Ms. Cannon replied that this is the first time we have attempted to break down the information. It needs to be automated as this takes a lot of time. The information is divided into categories and we are working on putting the information in an Access data base. However, at present there is no money available to purchase consulting services to put the data base together so this may not occur until the next biennium.

Mr. Taylor added that there is one person spending 50 percent of her time in the phone room. Fewer people staffing the phone room will allow the data entry portion to be improved to lessen the number of “undetermined” calls.

Chair Graeper referred to “hot line reports” from OAR and Portland Metropolitan Association of Realtors (PMAR) based on “checklists.”

- 5. September Emergency Board results.** Ms. Cannon reported that the E-Board approved nearly \$2.2 million to the end of the biennium,

extension of the 30 existing positions and two limited duration positions. We will probably need to return to the E-Board during session since they allowed only about \$8,000 for unanticipated expenses.

6. **Agency 2007-09 budget request.** Ms. Cannon distributed “OREA Budget Comparison” (**EXHIBIT D**) and “Agency Program Package Appeal” (**EXHIBIT E**). **EXHIBIT D** compares the figures for three biennia. All agencies’ program option packages are being denied by the governor’s office which is normal practice during election years.
7. **Status of on-line license renewals.** Ms. Cannon advised that the product purchased works very well if a renewal doesn’t include any changes, which is about 70 percent of the renewals. The system will not allow any changes. We are trying to make changes and are testing now.
8. **Report of ARELLO conference.** Ms. Cannon referred to the item in the packet. She attended the “Commissioner College” which was excellent.

C. **Board chair’s report of September 12 board member training.** The Chair will report at the December meeting.

VI. BOARD ADVICE

VII. UNFINISHED BUSINESS

- A. **Final Interim Task Force report.** Copy provided in board packet for action in **Agenda Item VII.B**.
- B. **Board portion of the OREA Action Plan. Taken out of order.**
Chair Graeper asked why board action was needed on this item. Ms. Cannon responded that the Interim Task Force did not feel the board acted on the action plan. These items are built into the agency’s 2007-09 budget request. This information has been provided to the board on other occasions. The agency is asking that if the board is in agreement with the agency proposals for improvement, they take affirmative vote.

Mr. LaDu commented that the board reached consensus on most of the items at the July 7 special board meeting. He suggested each board member respond individually by e-mail then have a follow-up discussion at the December 18 meeting on any differences.

- C. Agency's authority, requirements and processes for instructor credentials and course outlines.** Commissioner Taylor advised that this item and **Agenda Items VII.D. and VII.E.** were labeled for possible board action in case the board wanted to give the agency some advice.
- D. Improvements to pre- and post-license and continuing education.** The Chair requested volunteers for a work group to discuss and bring recommendations to a future board meeting. Mr. Taylor suggested thoroughly reading the information in **Agenda Item VII.C.** and reviewing OAR 863-015-0055 on continuing education. *Note: A copy of the rule is contained in VII.C.*
- Mr. Costales wants to be sure that adequate time is allowed at the December 18 meeting for discussion on the action plan and the education items.
- E. Suggestions to revise the Continuing Education Certificate of Attendance.** This item will be included in the education work group discussion.
- F. Administrative Actions Summary.** The report in the packet covers February 1 through July 31, 2006. Ms. Cannon distributed a synopsis of the educational letters of concern from April through October 2006 (**EXHIBIT F**).

VIII. NEW BUSINESS

- A. Property management exam questions.** Commissioner Taylor reported that at the last meeting the board directed the agency to develop exam questions to be reviewed by the board. In order to do that, the board needs to decide what the exam should look like, the scope and style, what types of questions are needed and how the changes should be implemented. As mentioned by Katie Cox, changes in the competencies for pre-licensing are also needed.

The Chair suggested a work group for this project and asked Ms. Ribera-Card to oversee the group. Mr. LaDu offered that the board should provide direction to the group.

MOTION by Bob LaDu to create a two-part exam and to include reconciliation. No discussion.

MOTION CARRIED UNANIMOUSLY.

B. Revised test questions based on PSI's examination development report. Commissioner Taylor reported that PSI periodically reviews our exam questions and issues a report. These questions were reviewed and discussed with a work group, rewritten as necessary and are now recommended to be included in the exam. He recommends approval. Ms. Cannon pointed out that page 10 of PSI's report lists the work group participants. **MOTION by Bob LaDu to approve.** No discussion.

MOTION CARRIED UNANIMOUSLY.

Mr. Costales left at 1:20 p.m.

C. Future topics for discussion. See previously discussed items.

IX. ANNOUNCEMENTS

Commissioner Taylor announced his retirement effective December 31, 2006.

The next regular board meeting is December 18, 2006, in Salem.

Tour of agency for board members immediately following the board meeting.

X. ADJOURNMENT

Chair Graeper adjourned the meeting at 1:32 p.m.

Respectfully submitted,

/s/ Scott W. Taylor

**SCOTT W. TAYLOR
COMMISSIONER**

Approved,

/s/ Michael R. Graeper

**MICHAEL R. GRAEPER
BOARD CHAIR**

Exhibits distributed:

- A. Land Development Filings June 2004 to June 2006, **Agenda Item V.D.**
- B. Richard Joseph Osmon Jr. Waiver Request, **Agenda Item III**
- C. States Responding to Electronic Newsletter Question, **Agenda Item V.A.3**
- D. OREA Budget Comparison, **Agenda Item V.B.6**
- E. Agency Program Package Appeal, **Agenda Item V.B.6**
- F. Educational Letters of Concern synopsis, **Agenda Item VII.F.**