

State of Oregon Real Estate Agency

REAL ESTATE BOARD

**Regular Meeting Minutes
June 12, 2006**

- MEMBERS PRESENT:** John Zupan, Acting Chair
Troy Costales
Victor Kee
Arthur Kegler
Robert LaDu
Marianne Wood
- MEMBERS ABSENT:** Michael Graeper
Maxine Ribera-Card
Vada Salinas
- STAFF PRESENT:** Scott Taylor, Commissioner
Katie Cannon, Deputy Commissioner
Dean Owens, Administrative Services Section Manager
Carmen Twenge, Agency Board Liaison
Louann Rahmig, Recorder
- GUESTS PRESENT:** Daniel Kasch
Patrick Kesgard
Rose Sutton, United Country Real Estate
Debbie Sorensen, United Country Real Estate
Ray South, United Country Real Estate
Thomas Bahrman
Jana Jarvis, Oregon Association of Realtors
Andrea Bushnell, Oregon Association of Realtors

The Oregon Real Estate Board met for its regularly scheduled meeting at the Real Estate Agency, 1177 Center Street NE, Salem, Oregon. Acting Chair John Zupan called the meeting to order at 10 a.m. Roll call was taken and a quorum was determined.

Commissioner Scott Taylor announced that Carmen Twenge, Agency Board Liaison, is leaving the agency on June 15 and introduced Louann Rahmig who will be performing the board support duties for a while.

AGENDA ITEM 1. Approve minutes from the April 17, 2006 meeting.

Troy Costales requested that the location of the April 17 meeting be added to the minutes. The meeting was held at the Homebuilders Association of Metropolitan Portland, Lake Oswego, Oregon. Acting Chair Zupan ruled the minutes approved as corrected.

AGENDA ITEM 2. Review applications for waiver.

• **Thomas E. Bahrman** appeared to request a waiver of experience for a sole practitioner's license. He advised that he has practiced law for about six years, most of which dealt with real estate transactions, and is now involved as a principal officer with a real estate development company in central Oregon. He pointed out that his request includes lists of transactions in which he was involved as an attorney and as a principal with Desert Scape. He recognizes that being involved with real estate transactions as an attorney and being involved as a principal are very different from being involved in brokering. As an attorney he was involved in many transactions advising brokers, and as a principal he has either represented himself or his company, or has been on the other side of the transaction. Therefore, he believed he has a lot of experience dealing with brokers in various situations although not directly as a broker. He was requesting a waiver for a sole practitioner's realtor's license and understood that his experiences till now doesn't completely compensate for actual broker experience but thought they demonstrate his knowledge of the law and transactions. He also knew there would be some continuing learning necessary but felt he had access to adequate resources.

Art Kegler commented that Mr. Bahrman can do all the things as an attorney that can be done as a broker, relative to real estate. He asked why he needed a broker's designation. Mr. Bahrman responded that multiple listing services (MLS) won't acknowledge him without it and he wants to be more involved directly in transactions, to participate in multiple listing services.

Bob LaDu indicated the application was impressive but believed it is premature to consider a waiver of experience when none of the other requirements for a license have been fulfilled. He believed that consideration of a waiver should be the last step and not the first step.

Acting Chair Zupan asked if Mr. LaDu meant pre-licensing education and the exam. Mr. LaDu responded experience and everything the board requires for a broker's license. He did, however, recognize Mr. Bahrman's attorney status.

Mr. Bahrman responded that the education part would be completed this week and the exam taken the following week but had requested the waiver now since the board doesn't meet again for two months.

MOTION by Victor Kee to deny Mr. Bahrman's waiver request. Seconded by Art Kegler.

Discussion: Marianne Wood was impressed by the packet and Mr. Bahrman's extensive real estate and contract experience.

Troy Costales suggested approving the request based on passing the exam.

Vote in favor: Kee, LaDu

Opposed: Costales, Kegler, Wood

MOTION FAILED.

MOTION by Troy Costales to approve Mr. Bahrman's waiver request for a sole practitioner license pending passage of the broker exam and completion of the education requirements, but if the exam is not passed or the education not completed, the board will revisit in 60 days as an agenda item for the next meeting.

Seconded by Art Kegler.

Vote in favor: Costales, Kee, Kegler, LaDu, Wood

Opposed: None

MOTION CARRIED UNANIMOUSLY.

Art Kegler commented that Mr. Bahrman can do all the things as a member of the bar, the difference being access to the MLS and some other information, so the board had put things in good stead by making sure that the education and testing requirements are met.

MOTION by Bob LaDu that candidates will show they have fulfilled all the requirements prior to requesting a waiver of experience. Seconded by Art Kegler.

Vote in favor: Costales, Kee, Kegler, LaDu, Wood

Opposed: None

MOTION CARRIED UNANIMOUSLY.

Acting Chair Zupan advised that in the future when someone asks for a waiver, they must have the education and licensing requirements completed first.

Commissioner Taylor requested clarification. If someone requests an unrestricted waiver and they want to be a principal broker, does the board want the principal broker's course out of the way also?

Mr. LaDu felt that could be an exception.

• **Daniel Lee Kasch** appeared to request a waiver of experience for a sole practitioner's license. He informed the board that he has been a licensed contractor for 14 years and has executed and closed numerous contracts.

Ms. Wood asked about the type of contracts. Mr. Kasch responded that they were mostly for remodeling, renovation and inspection of 1940s era homes. Ms. Wood asked if he estimated costs for materials. Mr. Kasch answered that he did estimations through

completion. Ms. Wood asked why he thought obtaining a principal broker's license would improve service to his contracting clients. Mr. Kasch responded that a sole proprietor license would be another tool as he has been asked on several occasions by clients to help them. He could do inspections but could not complete the transactions. Ms. Wood asked if that would be listing homes for sale, assisting buyers in purchasing properties, etc. Mr. Kasch indicated his client base is very loyal to older homes and he understands them and wants to be able to take them through the whole process. Ms. Wood advised that there is a lot to this business, and there is a good reason for the three-year requirement to become a principal broker. She pointed out that Mr. Kasch has no real estate experience. Kasch responded that he has bought and sold his own homes. Ms. Wood asked if he wouldn't want to work inside a real estate office and get a little experience. Mr. Kasch stated that he has been a sole practitioner for most of his life, knows how to run a business and has been successful, but agreed that mentorship would help. Ms. Wood reiterated that he needs some real estate experience.

Mr. Kegler asked how many pages are in a real estate transaction. Mr. Kasch responded that he has done 50- to 60-page ones and has seen transactions on four pages. Mr. Kegler concurred with Ms. Wood's comments indicating that he has been a broker for 16 years and there are a lot of legal issues. Mr. Kegler asked if Mr. Kasch had access to someone with whom he could do brokerage for a year or so and then return to the board. Mr. Kasch answered yes. Mr. Kegler invited him back after a year or so of experience.

MOTION by Art Kegler to deny Mr. Kasch's waiver request. Seconded by Ms. Wood.

Discussion: Mr. LaDu concurred with Mr. Kegler's comments and indicated that after an affiliation with and a letter from Gary Freeman, he would have a stronger case for a waiver.

Mr. LaDu added that the affiliation should be a "real" one where Mr. Kasch would consult on ethics and other problems with a case. The board has discussed in the past the importance of transmission of real estate knowledge, especially about ethics and related matters, from person to person and not just use information from a book. He urged Mr. Kasch to have that affiliation with his colleague/friend and to take advantage of his experience.

Vote in favor: Costales, Kee, Kegler, LaDu, Wood

Opposed: None

MOTION CARRIED UNANIMOUSLY.

Acting Chair Zupan commended the board on their decision as he doesn't believe the board has ever granted a waiver without some type of experience in the field or more college or law school.

• **Patrick Charles Kesgard** appeared to request a waiver of experience for a principal broker's license and referred to his request which contains his experience and goals. He did not plan to go out on his own, but to have a license assistant to help with an existing client base and brokerage. He approaches businesses to identify their needs, locate appropriate properties (industrial and commercial). He works closely with brokers in his office to be sure his thinking process is valid.

Ms. Wood asked Commissioner Taylor if there is any licensing category that distinguishes between a principal broker who has been actually designated a managing principal broker and a principal broker who is a team principal broker.

Commissioner Taylor responded that the agency's computer system basically identifies these. In an office where there are multiple principal brokers, the only thing the agency knows relative to the licensing system is that they are principal brokers. We don't know the manager of the office.

MOTION by Bob LaDu to approve Mr. Kesgard's waiver request. Mr. LaDu expressed that he was impressed with the applicant's experience. Seconded by Victor Kee.

Discussion: Mr. Kegler indicated he did real estate in central Oregon for awhile and knows Steve Scott, so his letter of recommendation was influential.

Ms. Wood noted that Mr. Kesgard is only a few steps away from obtaining his CCIM (Certified Commercial Investment Member). Mr. Kesgard stated that is correct and that he is on the board for CID (Commercial Investment Division) in central Oregon, an educational committee.

Vote in favor: Costales, Kee, Kegler, LaDu, Wood
Opposed: None

MOTION CARRIED UNANIMOUSLY.

• **Rose L. C. Sutton** appeared to request a waiver of experience for a principal broker's license and distributed a letter from Ray South, Principal Broker with United Country Real Estate (**EXHIBIT A**). Ms. Sutton indicated that she has been with United Country Real Estate since 2002 and that her initial intention was to be a secretary for the firm. However, after a short time, she began reviewing contracts and performing more substantial duties. Ms. Sutton stated that the agents in the office began to use her as a resource, to answer questions, etc. Mr. South convinced her last year to become a broker and so she studied and took the exam passing with a 92 percent. Ms. Sutton advised that Mr. South wishes her to take over the office, with his guidance and advice.

Ms. Wood complimented Ms. Sutton and asked how many agents are in the office. Ms. Sutton responded eight. Ms. Wood asked Ms. Sutton if she had ever listed any

properties. Ms. Sutton responded that she had. Ms. Wood inquired which side, buyers or sellers. Ms. Sutton answered that she has done both. Ms. Wood observed that Ms. Sutton helped write the policies and procedures manual. Ms. Sutton indicated that she took a sample off the internet, using the parts that made sense for their office. Ms. Wood asked if Ms. Sutton had any plans for obtaining any designations. Ms. Sutton replied that she is looking at the CRB (Certified Real Estate Broker) that is coming up in about two weeks. She is also planning to take the principal broker's class scheduled for their area in August. Ms. Wood commented that there is a difference in being a transactions secretary and being responsible for those people. Ms. Sutton advised that a secretary has been hired and she is now moving forward.

Mr. Ray South offered that he used to have a license in several states simultaneously and has a lot of real estate experience. He indicated that Ms. Sutton is an exceptional person, that she knows the law and is qualified.

Mr. Kegler asked Ms. Sutton if she ever thought she might be practicing real estate without a license. Ms. Sutton responded no. Mr. Kegler indicated he reviewed her application closely to be sure she had not.

MOTION by Marianne Wood to approve Ms. Sutton's waiver request for a principal broker's license subject to the courses she needs to take. Seconded by Mr. LaDu.

Discussion: Mr. Kegler asked Ms. Wood if that included passing all of the further exams and taking the education subject to that. Ms. Wood responded yes.

Mr. Costales commented that in the past there have been situations similar to this and the board has asked that there be a connection with the principal broker for mentorship, and had received verbal assurances that would still exist. He asked Mr. South if he will be there and be accessible to continue mentoring Ms. Sutton. Mr. South responded that due to his health he has handed over his construction responsibilities to his son so is in the office now; however, he can no longer take the pressures of being a principal broker but will be there for Ms. Sutton. As soon as she gets her license he wants her to be the full managing principal broker for that office.

Vote in favor: Costales, Kee, Kegler, LaDu, Wood

Opposed: None

MOTION CARRIED UNANIMOUSLY.

• **James Harris Coon** requested a waiver of experience for a principal broker's license. He did not appear. Carmen Twenge advised that Mr. Coon called and wanted it on the record that he would have attended the meeting had he received his letter in time. The letter apparently was sent to an address different from his current address.

Mr. LaDu commented that the applicant needs the basic experience of working with another broker in order to supervise others.

Ms. Wood expressed concern that since the individual did not appear, she could not ask questions. The waiver of experience requirements is for a principal broker's license as he wants to be a broker for a team, and it sounds like the team is going to be family for now. However, teams are rapidly growing and becoming a business within a business and can be huge. Her concern is there is no distinction so he could decide to go off on his own right away and have 20 people in his own shop.

Acting Chair Zupan stated that we are seeing more and more of this type of situation. In the future, we may want to consider a different type of license to differentiate between a principal broker who can open their own office with as many people as they want, or a team.

Mr. Kegler expressed confusion regarding location. Mr. Coon's address is in Milwaukie but the application is for Bend. He was not sure where he is working, where he is residing and where the family team will reside. The application was not clear as to what he is going to do.

MOTION BY Art Kegler to deny Mr. Coon's waiver request. Seconded by Victor Kee.

Discussion: Ms. Wood added that changes are occurring in the Eugene area where teams are developing with a substantial number of agents under the one principal broker. Complaints are starting to come in. If a team has a listing and a team member writes an offer for the buyer on that listing, then they are the same agency. There are too many teams that do not have that clear. It appears that education for teams is needed.

Vote in favor: Costales, Kee, Kegler, LaDu, Wood

Opposed: None

MOTION CARRIED UNANIMOUSLY.

- **Byron Tristan Frazer** requested a waiver of experience for a principal broker's license. He did not appear.

- **Linda Diane Frazer** requested a waiver of experience for a principal broker's license. She did not appear.

Ms. Wood pointed out that Mr. Frazer has two years, one month experience and has purchased Garden Valley Real Estate. She was going to ask Mr. Frazer if the principal broker was staying on and, if so, for how long and in what capacity. She was also curious how many agents Garden Valley employed.

Acting Chair Zupan indicated it doesn't matter because as the owner he can hire and fire, because as the principal broker, he has full authority. He is ten months short.

MOTION by Art Kegler to approve Mr. Frazer's waiver request. Mr. Kegler doesn't see any real reason to deny since he is within ten months. Seconded by Marianne Wood.

Discussion: Mr. Kegler commented that it is so much better when applicants appear. It is not evident whether or not Mr. Frazer has written a transaction.

Acting Chair Zupan advised that the board has the right to defer to the next meeting and ask the applicant to appear.

Mr. Costales stated that he couldn't determine transaction volume or complexity of transactions.

MOTION WITHDRAWN, WITH THE SECOND'S APPROVAL.

MOTION by Marianne Wood to deny Byron Frazer's and Linda Frazer's requests for waiver, and ask them to appear at the next board meeting. Seconded by Art Kegler.

Discussion: Troy Costales requested that they submit supplemental experience and transaction information for the board's consideration.

Vote in favor: Costales, Kee, Kegler, LaDu, Wood

Opposed: None

MOTION CARRIED UNANIMOUSLY.

AGENDA ITEM 3. Commissioner's report.

a. Real Estate Agency staff update. Commissioner Taylor advised the board that Rita Rush retired May 31 and introduced Dean Owens, her replacement as manager of administrative services. At the front counter, Christina Ulberg has been replaced by Tamera Schemmel. One of the agency's emphases, because of the focus groups' and Progress Board work, is to focus on good customer service. The position was declined by another person primarily due to the uncertainty of the agency's budget. Larry Taylor retired from the Regulation Division, and we are recruiting for that position and a new entry-level position that will spend a large percentage of time in the phone room. That person will be provided extensive training in the law, and we plan to have one or two people primarily doing that work so there is consistency. That position was offered to a candidate with real estate experience in excess of ten years. However, due to the salary offered, the individual was not willing to give up their real estate business, and we couldn't permit both.

Acting Chair Zupan commented that since the February board meeting, the front counter staff is completely different and he was impressed.

Commissioner Taylor continued that in real estate offices, the front desk is the first point of contact and the most important. Unfortunately, that is an entry-level position which makes it challenging to obtain the quality desired.

Coleen Oliva, who works in Land Development, has accepted a position in Portland and will be leaving in September.

Commissioner Taylor referred to the graph titled "Land Development Filings June 2004 to May 2006" (**EXHIBIT B**). He stated that the agency is receiving an average of 40 filings per month (which is a 78 percent increase over last year) with 56 received last month. There is a statutory requirement of 45 days to review once the filing is complete. If missed, it is like a mandamus, that at that point the project is deemed approved whether it is right or not. This is a continuing challenge.

b. Real Estate Agency Oversight Task Force update and f. HB 2604 rules update were combined. Commissioner Taylor reported that the Task Force has met twice since the last board meeting, once in Medford and once in Salem. The agency has been reviewing the audit report, how the agency works, what is being done in terms of reorganizing, and discussion on the rules. Following the last Task Force meeting, Senator Betsy Johnson contacted Art Kegler, Brad Vincent (President of the Portland Metropolitan Association of Realtors) and me to strongly suggest mediation on the HB 2604 rules. Former Representative Bryan Johnston is developing a contract to accomplish that. He will try to meet with the parties to determine who might participate in the mediation, tentatively set for June 21. The temporary rules expire June 29. Mr. Taylor has asked counsel what will happen if we do nothing. Legislative Counsel provided input that the temporary rules now in place cannot be "rolled over" into new temporary rules. The agency has the authority to promulgate permanent rules, but Commissioner Taylor wants to reach consensus with the industry. Former Representative Johnston has been heavily involved in developing the dispute resolution section at Willamette University Law School. They use interest-based mediation. He is highly regarded and understands government and rules. Mr. Taylor's commitment is to get everyone on the same page going forward.

Commissioner Taylor reminded the board that they took a position at the last meeting to support going to the Emergency Board (E-Board) for limitation to continue to operate beyond September. Mr. Taylor referred to a copy of the May 24 letter to the E-Board co-chairs that was in the board packet. We will be appearing before them on June 22. The task force at their next two meetings in July and August here in Salem will be looking at the composition of this board. The board needs to be prepared in case it becomes a policy-setting board.

Mr. Costales advised that a former agency employee called him and provided their view of what was going on and expressed concerns.

c. Board authority regarding pre-license, post-license and continuing education. Commissioner Taylor referred to a June 8 e-mail from Raul Ramirez, the agency's Assistant Attorney General, regarding the agency's statutory authority to set educational standards (**EXHIBIT C**). The agency has limited authority to set educational standards. Most of the guidelines are in statute and most of the discretionary authority is granted to the commissioner, which includes course approval for continuing education relative to what is core and what is elective. Mr. Taylor suggested the members review Mr. Ramirez's memo and continue discussion at the August meeting.

Mr. Kegler referred to a newsletter he had from the Nebraska Real Estate Commission which contained information on obtaining continuing education history on their Web site. He found it interesting and thought it would be advantageous for Oregon to use a similar method, where now a principal broker has the authority to determine the applicability of presentations. Sole practitioners can self-certify. He believed the Nebraska model may be of value.

Commissioner Taylor responded that Nebraska was the beta site for the licensing system that this agency had prior to switching to License 2000. That system did not have the capability of doing that. He advised that there is a Board of Morticians somewhere in the U.S. that has a set-up whereby an individual can scan a card when a class is taken and the information is automatically downloaded to their data base. This agency's problem is lack of authority in continuing education beyond setting rules for what brokers might consider when approving it, and the core courses. He advised that every state except Oregon approves continuing education.

Mr. Kegler felt it is important that either the board or the industry take the lead to uplift the educational documentation so that what is classified as education is in fact actual education. The Association should diligently work with the agency to try to make education a more viable record and be better quality.

Mr. LaDu indicated that trying to enter that information into the data base would be overwhelming under the present system.

Commissioner Taylor advised that the next OREN-J is due out soon and he is including an article on items being found in compliance reviews on continuing education. Some brokers feel they don't need it. That law changed in 1995. Some brokers are not maintaining certificates which is required in both statute and rule.

d. Exam Review Committee – revise existing exam questions. Commissioner Taylor reported that about a year ago the agency started computer-based exams and part of that contract had to do with ultimately going through the question data base. He hoped that at some point the national portion of the exam will be used as well

as one done by the provider. The advantage would be that it would be kept current and it would be tougher for schools to teach to the test, rather than teach real estate. Board members John Zupan, Bob LaDu and Marianne Wood were asked to serve on a review committee to meet 9 a.m. June 27, working with the exam provider (PSI).

e. Property management work group update. Commissioner Taylor commented that the agency's rules on property management are very old. A work group of property managers was formed and has met three times to date. Concepts were developed that have been mostly agreed to by the industry and the agency. A draft of new rules to totally replace the old rules should be available soon. A copy will be provided to the board members. We do not want to dictate what is to be done. For example, they use software provided by commercial vendors throughout the country, and if the rules are too restrictive, the software may not work.

f. HB 2604 rules update. Discussed simultaneously with Agenda Item 3.b.

g. Real Estate Agency 2007-2009 Emergency Board and Budget. Deputy Commissioner Katie Cannon referred to the Action Plan provided in the packet. The Emergency Board (E-Board) request and the concepts for next biennium are based on this action plan, a copy of which was provided to the Task Force at their last meeting and will be used as a basis for discussion at the upcoming meeting. Referring to the "Increased Expenditure Limitation Summary," Ms. Cannon pointed out that the agency received a budget for the first 15 months of this biennium, where normally it would receive a 24-month budget. The Task Force recommended going to the E-Board in September, which caused problems because we couldn't appear before the E-Board at the same time as the report is due to the Task Force and be able to complete the paper work to continue the positions beyond October 1. After October 1 the agency would not have any positions or limitation to do business. She explained the difference between the limitation and the budget. The limitation limits how much can be spent, which is usually less than the total budget. As discussed at the April board meeting, the agency needs to appear before the E-Board in June to obtain adequate limitation, to cover expenses that were discussed during the legislative hearing; i.e., Oregon State Police (OSP) increase in cost for criminal background checks and a new contract with PSI for testing services. Our report to the board in April indicated an estimated \$211,000 shortage in limitation for July 2005 through March 2006. The limitation needed for April through September 2006 is about \$305,000. Therefore, the total needed through the end of October is about \$790,000. The agency then needs to return to the E-Board in September to request an estimated \$2,559,000 limitation for the remainder of the biennium (November 2006 through June 2007). Ms. Cannon pointed out that implementation of the proposed Action Plan will cost about \$290,000. (Note: A copy of the E-Board request letter was included in the board packet.)

Ms. Cannon indicated that the "OREA Cash Flow and Monthly Fund Balances" document (included with the board packet) is being updated currently. She explained how the figures on page 2 coincide with the information in the "Summary" previously

discussed and provided detail on the line items. There was a recommendation in the agency performance measures to measure five different customer service areas, so we joined with the Progress Board to do a customer service survey. Ms. Cannon explained the different categories of positions (temporary, limited duration, permanent). The agency has used temporary employees in licensing for some time to keep up with increased workload. Department of Administrative Services Human Resources has strongly suggested moving to limited duration positions because of continued need and to maintain an adequate service level. She explained the time limitation on use of temporary employees and the impact of continual training. Ms. Cannon pointed to the figure budgeted for ARELLO (Association of Real Estate License Law Officials) to obtain information on board makeup.

Ms. Cannon explained the reasons for the limited duration positions mainly address the Task Force issues, to maintain adequate service levels in licensing and land development activities. Information from the focus groups, the customer service survey, the board and staff all indicate that the education area needs work, both internally and externally. There appears to be no consistency in answers people are getting from staff. There are many complaints externally about the quality of education being delivered. All seem to be adamant about wanting the agency to be involved. Our compliance reviews are educational and are primarily to provide information so people can do their jobs better. The phone room is educational and is where questions come in initially. Those positions are currently in the Regulation Division and could be moved into an Educational Section for uniformity in internal and external education.

Mr. Kegler asked about the hour limitation for temporary employees. Ms. Cannon explained that it is a state policy to work temporary employees no more than 1,040 hours per year, or about six months. The unions took issue with agencies that employed temporary employees for years, resulting in a change of rules. Returning retirees help alleviate the workload and save on training.

The agency has received considerable input to improve its Web site to provide information to licensees and would welcome additional information on industry needs. Some of the needed work can be accomplished by staff but other work may need outside help.

The business process evaluation item is intended to be a review of current practices in Regulation and Licensing and make a recommendation on how to improve processes so they work for the agency and the licensees and meet legal requirements. Ms. Cannon is exploring either a contract or use of a state employee.

The Action Plan also discusses increased board involvement, including information on surveying the industry.

Ms. Cannon summarized the total limitation need for the current biennium.

(Recessed for 5 minutes)

Ms. Cannon referred to the "OREA Board 2005-07 and 2007-09 Budget Discussion" document dated June 12, 2006 (**EXHIBIT D**) which shows a comparison of costs between the two biennia and explained what is included in the "Personal Services" and "Services and Supplies" categories. The figure for services and supplies in the "Proposed Increase Over 05-07" is incorrect. She explained the "option packages" that address the Action Plan items on customer service, education and training improvements, information technology maintenance and improvements, and possible relocation of the agency office, for an overall increase of about 11 percent in 2007-09, the majority being in new positions to meet customer service needs. No revenue figures were available but will probably plan for a five percent decrease which leaves us with a projected ending fund balance in 2005-07 of \$4.1 million.

Mr. Costales commented that it appears the agency is about where they need to be in their projected ending fund balance. Ms. Cannon indicated that the agency would like to do some modeling. We need to examine how our revenue would be affected if the industry should experience a downturn similar to the one in the 1980s. The direction is to have a three-month reserve cash balance, but in the event of a significant decrease in activity, the agency needs to have enough money to see it through. Even though the agency believed things would level off, she reported that 450 people took exams last month, which is about twice the normal number.

Commissioner Taylor offered that in the 1980s in Medford, the board membership dropped by one-half. There is a negative impact on income when that happens. He does not want to see that happen again to the agency because many of the problems being experienced now are a result of what happened in the early 1980s, in his opinion. It is important that we keep a healthy ending cash balance to protect against that.

h. Investigative Case Review. Mr. Taylor explained that this item is for information. Last meeting there was discussion on the various types of boards. Assuming this board becomes policy-setting, there will be some participation in investigative cases required. Ms. Cannon presented examples of the volume in three cases where action was taken. She explained the process used by Building Codes Division involves presenting an investigative report and a proposed order to the boards. The members generally did not review all the evidence. She pointed out the three large folders on a case that went to hearing, and Mr. Taylor advised that in that situation the board would get a record of the hearing, and explained that the files are "behind" the record. If presented with a settlement order, he must review the entire file. If this board becomes policy-setting, it must decide on the depth of their review.

Ms. Cannon explained that a case resulting in an educational letter consists of about one file folder of material. Some cases take a considerable length of time to investigate and others are "cut and dried." As a policy board, the members would have to determine how to process the cases.

Ms. Wood asked where the recommendations are originating for this board to become involved in such things as reviewing investigative files. Acting Chair Zupan advised that the Task Force is suggesting this board become policy-setting but the details on how to review cases would be left up to the board. Mr. Taylor added that what happens will depend on the legislature next session, meaning that nothing will change until about 2008.

Mr. Kegler advised that the board could designate some members to participate in the case review rather than the entire board performing that function.

i. Real Estate Board models. Mr. Taylor reported that last meeting there was discussion about obtaining information from ARELLO regarding what might be a good board, etc. He referred to the “Key Aspects of an Effective Real Estate Regulatory Program” prepared by Janet Thoren, Deputy Legal Counsel for ARELLO. He suggested that the board “weigh in” on how they think it should function. Ms. Thoren reviewed several policy-setting boards or commissions of various sizes and determined that the most effective are “stand-alone” agencies. He pointed to the section of the report on agency oversight that explains their “powers,” which provides the range of authority. Some boards do hearings, which would take a statutory change in Oregon because of the hearings officer panel. He discussed the time commitment based on the frequency and length of meetings. The board would be more involved in the development of the agency’s budget request. The report also discusses staff needs, legal counsel, prosecutions and trade associations and offers some conclusions. Mr. Taylor requested the board’s permission to share the report with the interim work group.

Art Kegler from the interim work group thought it would be worthwhile to share. There was consensus agreement to allow Mr. Taylor to provide the information to the work group. He asked if there was anything further needing to be done.

Acting Chair Zupan urged the board members to read the report and be prepared to discuss at a future board meeting. Ms. Cannon offered that Sen. Johnson requested groups provide proposals on board structure to be considered. Oregon Association of Realtors and the agency were asked to bring back information. The agency input will be the Governor’s position.

Mr. Costales asked if that was part of the National Digest. Mr. Taylor responded that the digest uses “raw” numbers that don’t necessarily mean anything. They talk about regulatory boards vs. advisory boards, but as you read the ARELLO report you can see there is quite a variation in what policy-setting boards do.

Mr. LaDu offered that there are some pertinent questions for the board to consider such as involvement in disciplinary activities or investigations. He understands that the Oregon Board of Nurses performs those functions and meets for two days at a time. It might be interesting to obtain their assessment.

Mr. Taylor advised that the committee meets in July and August so if this board wants to provide input, a special meeting may be required.

Mr. LaDu was concerned that there is not enough time for this board to meet and provide information, but would have to deal with the issue over the next biennium. Mr. Taylor responded that the board would then become reactive rather than proactive.

Mr. Kegler asked if this information had gone to the interim committee. Mr. Taylor responded that it had not. Ms. Cannon indicated that the data from the digest was provided to the committee.

Mr. Costales requested that one of the Task Force co-chairs and Nancy Goss Duran from the Governor's office both be invited to any special board meeting as resources to answer questions and provide information on behalf of the Task Force. Mr. Taylor offered that perhaps someone from the policy side of the Governor's office should also be included.

Ms. Cannon shared the tentative Task Force meeting dates for July and August. Mr. Zupan stated that if this group wants to meet, it should be before the July Task Force meeting. Mr. Costales was concerned about whether the board should actually be proactive. He thinks the agency is responsible since the board members are appointed by the Governor. Ms. Cannon believes it would be beneficial for the board to provide input to the commissioner before appearing at the Task Force.

Mr. Zupan indicated that the industry will present their position. There will likely be a different group on the new board, and members of this board may not be willing to make the commitment where someone else might, and that could bias what we see as a position.

Mr. Taylor offered that the agency is ongoing and the work doesn't stop. All nine members probably won't continue on to the next board. As commissioner, he would not look forward to having a complete new board that would be expected to decide what they want to do, what policies they want to make, and what authorities they want and don't want.

Ms. Wood commented that it took her nearly two years to become effective as a board member when considering waivers. She agreed that starting with a complete new group and increasing what they will do is unsettling.

Mr. Zupan asked whether the board members want to meet early July or allow the industry to present their position and the agency present theirs, which is the Governor's.

Mr. Kegler asked if the commissioner thinks the board's input would be valuable to him. Mr. Taylor responded, yes, and valuable to the Governor.

July 6 or 7 was suggested for the special meeting. The agency will poll the board members by e-mail and establish the agenda based on availability. Mr. Taylor referred to a June 11 letter from Betty Reynolds (former Deputy Commissioner) with input to the board on this issue (**EXHIBIT E**).

j. Legislative concepts timeline. Commissioner Taylor referred to the “Legislative Concept Development Schedule” that was in the board packet and “Legislative Concept Procedures” (**EXHIBIT F**). The agency concepts have been approved so the next step is to draft legislation for submission to Legislative Counsel. Once that is done, we will be able to share information with the industry and the board to try to arrive at something everyone will support. One revision only is allowed.

Mr. Costales announced that he needed to leave for another meeting but suggested that the August 21 meeting be held off-site and that future board meetings be scheduled from 10 a.m. to 1:30 p.m. with a working lunch. (Mr. Costales left at 12:55 p.m.)

AGENDA ITEM 4. Board Advice.

a. Applicant experience waiver request log. Commissioner Taylor discussed the running log of board actions on waiver requests. Carmen Twenge included the agency’s internal log in the board packet. Chair Graeper had recommended adding the reason for approval or denial. Mr. Taylor asked the board to review the log and let the agency know if this will work, or if different information is desired.

b. Electronic publication of Real Estate Manual. Mr. Taylor offered that the manual could be put online. To format it to allow searches will take some time. He asked the board to consider this move and provide input. If this is done, the manual would become free, which would affect revenue some.

c. Real Estate Agency mission statement. Mr. Taylor indicated that the agency’s mission statement has been in effect since about 1981. He requested input from the board to determine if it should be changed. Mr. Zupan thought it might be premature given the anticipated change in board structure.

d. Contact board members via Real Estate Agency’s website. Mr. Taylor referred to previous discussion suggesting providing information so the public can access board members, including biographical information. He asked members if they want the agency to do that.

Ms. Wood expressed concern that licensees might contact members with complaints, when they should go to the agency. She asked what they should do with those types of communications, and indicated she would need guidance so as not to be inappropriate.

Mr. Taylor responded that it would be important that parameters be established. Ms. Cannon advised that should a complaint be received, board members would advise that it is being forwarded to the appropriate people at the agency. The agency would have one

contact point from which the complaints would be referred to the proper section for response. Mr. Zupan felt that there may be some complaints but the industry would be more apt to contact board members on policy issues.

Mr. LaDu suggested delaying any action on this issue.

e. Real Estate Board article for *Oregon Real Estate News – Journal*. Commissioner Taylor asked if there is a board member interested in writing an article. He offered his assistance. The next issue is in September. Mr. Zupan indicated that either he or Chair Graeper would write an article.

AGENDA ITEM 5. Schedule board meeting locations. Acting Chair Zupan agreed with Mr. Costales' suggestion for meetings with a working lunch. There was consensus agreement to do this for the August 21 meeting. Following discussion, Bend was selected.

AGENDA ITEM 6. Public Comment. There was none.

Commissioner Taylor distributed the HMH report from the focus groups (**EXHIBIT G**) and the "Oregon Progress Board Final Report" (**EXHIBIT H**).

Commissioner Taylor was asked about Sen. Johnson and the proposed mediation and if the OAR (Oregon Association of Realtors) people had been consulted.

Ms. Cannon reported that she contacted Bryan Johnston for available dates. He wants to talk to all involved. Sen. Johnson was in agreement with that to determine which "players" should come to the table. Mr. Johnston will talk to those folks individually and then as a group, tentatively June 21, but a firm date had not been set. She will follow up with him. Mediation is moving forward.

Acting Chair Zupan adjourned the meeting at 1:15 p.m.

Respectfully submitted,

/s/ Scott Taylor

SCOTT TAYLOR
COMMISSIONER

Approved,

/s/ Michael R. Graeper

MICHAEL R. GRAEPER
BOARD CHAIR

Exhibits distributed:

- A. Letter from Ray South, Principal Broker with United Country Real Estate, **Agenda Item 2.**
- B. Graph titled "Land Development Filings June 2004 to May 2006," **Agenda Item 3.a.**
- C. Raul Ramirez e-mail, **Agenda Item 3.c.**

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- D. OREA Board 2005-07 and 2007-09 Budget Discussion, **Agenda Item 3.g.**
- E. Letter from Betty Reynolds, former Deputy Commission, **Agenda Item 3.i.**
- F. Legislative Concept Procedures, **Agenda Item 3.j.**
- G. HMM report from the focus groups
- H. Oregon Progress Board Final Report