



Oregon

Theodore R. Kulongoski, Governor

Real Estate Agency

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State of Oregon Real Estate Agency

REAL ESTATE BOARD

Regular Meeting Minutes

June 18, 2007

MEMBERS PRESENT: Michael Graeper, Chair
Troy Costales, Vice-Chair
Victor Kee
Arthur Kegler
Maxine Ribera-Card
Marianne Wood

MEMBERS ABSENT: Robert LaDu
John Zupan

STAFF PRESENT: Gene Bentley, Commissioner
Katie Cannon, Deputy Commissioner
Dean Owens, Administrative Services Manager
Leandra Cooley, Administrative Specialist
Louann Rahmig, Board Liaison

GUESTS PRESENT: Max E. Smith, Max E. Smith & Associates, P.C.
Joyce Beach, Oregon Association of Realtors (OAR)
Jana Jarvis, OAR

I. BOARD BUSINESS

- A. **Call to Order.** Chair Graeper called the meeting to order at 10 a.m. at the Real Estate Agency office, 1177 Center Street NE, Salem, Oregon.
- B. **Roll Call.** Robert LaDu and John Zupan were excused.
- C. **Approval of the Agenda and Order of Business.** The agenda was approved as submitted.
- D. **Approval of the April 16, 2007, regular meeting minutes.** The minutes were approved as submitted.
- E. **Date of the Next Meeting.** August 20, 2007, in Astoria, Oregon.

II. PUBLIC COMMENT. Max E. Smith, Max E. Smith & Associates, spoke later in the meeting. (Refer to the minutes following "Announcements.")

III. REQUESTS FOR WAIVERS

Waiver request log. No discussion.

IV. BOARD ADVICE/ACTION

A. Approve final version of advertising rule for permanent filing by June 29. Ms. Cannon distributed the latest version of the rules, prepared from comments received by agency staff and advisory committee members (**EXHIBIT A**). Discussion. Art Kegler commented that he doesn't think the font size is a significant issue. He is uncomfortable with the limitation.

Chair Graeper thinks the rule should be written so that if there is egregious violation, action would be taken. It seemed to him that if information is misleading to the public, a violation has occurred. He asked if the rule had been reviewed by the Attorney General. Ms. Cannon responded that it will be after it is finalized. The chair continued that it seems it could be in violation of the Oregon Constitution and may be challenged.

Maxine Ribera-Card raised an issue about "corporation" names being larger than the primary company name. Marianne Wood indicated that she is experiencing that some "teams" are creating "brands" and their own stationery and their advertising shows that information instead of the company name. She is seeing signs where the franchise name is very small in comparison.

Mr. Kegler commented that in web page advertising, "ratio" is problematic and feels this is an infringement on freedom of speech. He suggested using a ratio like 1-1/2 to 1 or similar language and felt further review was needed. Ms. Wood asked what font size would standardize "misleading."

Commissioner Bentley offered that this part of the rule was at the request of the industry members on the advisory committee. The real purpose is that the advertising isn't misleading to the public. The issue is where the broker name is very large and the company name is small. The agency is looking for a way to enforce. Chair Graeper suggested that the rule be worded so advertising is not misleading to the public. Mr. Costales emphasized that enforceability is key. If the specifics are not in rule, the agency could create a policy to use discretion (without review). If left up to someone's opinion for basis of enforcement, cases will not hold up.

Ms. Ribera-Card suggested that it be in written corporation policy manuals, how advertising is to be done. Mr. Kegler agreed that is a good place to put it. Everything needs to be legible. A ratio could be used as a limit and defined in rule. Maybe we could proceed with this rule, as the total agency rule review provides another opportunity to modify.

Mr. Costales stated that if the responsibility lies within the company to have a policy in place, the burden of enforcement then falls onto the company rather than the

agency. Mr. Kegler felt company policy is fine but there needs to be a top parameter not to be exceeded.

MOTION BY TROY COSTALES TO APPROVE RULE. Discussion. Mr. Kegler asked if this can be changed. Ms. Cannon responded yes. The commissioner stated that in discussion with the chair, a later implementation date would allow current inventory to be used up.

MOTION CARRIED UNANIMOUSLY.

The chair requested the board comments be made a part of the rulemaking record.

B. Board advice on posting board meeting packets on Agency website. Chair Graeper asked if waiver requests would be included. Ms. Cannon responded that the waiver request form would be, but not all the “backup” information. Mr. Costales responded that their boards’ entire packets are on the web. The board felt this is a good idea. The commissioner asked members if they wish to access the packets online or continue receiving hard copies. Board members requested hard copies.

V. NEW BUSINESS

A. Discuss complete rule review of agency administrative rules. Request board members to be on the advisory committees. Ms. Cannon explained that since the task will be broken down into four areas, the agency would like to have more than one board member participate. Ms. Ribera-Card asked about the timeframe and time commitment. Commissioner Bentley explained that we will start with a group to establish concepts, and then draft rules so the agency wants as much input as possible. There is a high probability that some statutes will need to be addressed. Ms. Ribera-Card volunteered to work on the property management rules; Ms. Wood and Mr. Kee on licensing; and Mr. Kegler on land development.

B. Future topics for discussion. None.

VI. COMMUNICATIONS

A. Administrative Actions Summary. Report included in board packet. The commissioner explained how the fines are calculated. Commissioner Bentley is considering reducing the amount of information published in the *OREN-J* and providing a link to the “full record” for those wanting more detail.

B. Frequently Asked Questions (FAQ) report. Report included in board packet.

C. Copies of letters to/from the Governor’s office on SB 324. Letters included in board packet.

D. Copy of letter to Curtis Irving on document initialing. Letter included in board packet. The issue can be taken up during the rule review. Mr. Irving has agreed to participate in this activity.

- E. Copy of letter to OAR on sales concessions.** Letter included in board packet. Chair Graeper asked if the appraisers have responded. Ms. Cannon advised that a legislative change would be needed and the agency advised them of that. Several industries are involved. It is too late for this session but could be considered for a future session.
- F. Collaborative Real Estate Board/Commissioner Model.** Included in board packet. Ms. Cannon reported this was prepared by the agency using comments from Peter Cogswell (Governor's office). Mr. Bentley indicated the agency has a budget note to recreate a similar task force to revisit this issue. Ms. Cannon added that no legislative assignments have been made yet. Mr. Kegler felt that continuity from the previous task force is important.

VII. REPORTS

- A. Commissioner Gene Bentley.** The commissioner wants to visit with the board about their role in the future.
- B. Deputy Commissioner Katie Cannon**
- 1. 2007 Legislative report.** Included in board packet. Ms. Cannon distributed the bills that have been signed: SB 166 (cleanup of HB 2604 [2005]); SB 167 (cleanup of inconsistent language); SB 168 (allows late renewal of escrow licenses); HB 2252 (allows criminal background checks on employees and replaces an executive order that has been in place allowing this in the past) (**EXHIBIT B**). Information will be placed on our website of pertinent bills.
 - 2. Report on 2007-09 agency budget.** Included in board packet. Ms. Cannon advised of correction to 29.63 fte (full-time equivalents) from 30.63. She distributed and explained the agency's budget note (**EXHIBIT C**). The land development and licensing positions will be continued as limited duration next biennium (2007-09). The commissioner added that the licensing system has limited capabilities and the agency wants to expand usage so more online services can be available.
 - 3. Online licensing: Phase Two timeline.** Included in board packet. Dean Owens, Administrative Services Manager, is looking at many alternatives for expanding the licensing system. Commissioner Bentley added that licensees want renewal confirmations to go to principal brokers, which the system does not now provide.
 - 4. Hits on the OREN-J on agency website.** The agency wasn't able to obtain information this month.
- C. Board Member Troy Costales report on appearance before Ways and Means.** Mr. Costales reported on the board's role, noted the recent reviews of the agency, and

advised the committee of subsequent actions taken as a result of those reviews. The chair expressed appreciation for testifying.

D. Chair Graeper report on the joint meeting with OAR on education. The chair shared OAR's notes with the board members (**EXHIBIT D**). A second meeting is planned at the agency. Ms. Cannon reported that ARELLO presented information at a recent conference on certification of instructors that Mesheal Heyman could provide to the group. The commissioner added that the association (ARELLO) is gearing up to approve/certify classes. Ms. Cannon referred to **EXHIBIT C** on compliance reviews. There has been feedback from brokers and principal brokers indicating they like our process. The "Summary of Performance Measure Action" contains a measurement item on assessing whether exam questions are appropriate and if they adequately test applicants. The agency is not sure how to measure this and requests the board's input.

E. Board Member Ribera-Card report on the Property Management Education/Exam Work Group. Ms. Ribera-Card reported that the group is planning a meeting by the end of this month to finalize recommendations for the board. Mr. Bentley asked if the group is dealing with trust accounts and reconciliations. Ms. Ribera-Card responded that these were important issues for the committee.

VIII. ANNOUNCEMENTS

The August 20, 2007, board meeting will be in Astoria, Oregon. Board Member Victor Kee reported that the local realtors' association would like to have the commissioner and possibly the board chair speak at a luncheon the day of the meeting. The commissioner wants to meet principal brokers throughout the state to discuss issues, and will plan to speak about the rule and statute review. Mr. Costales offered that the agenda should reflect a recess for the lunch period. If there is a quorum of board members attending the luncheon, it must be open to the public.

Public comment (taken out of order). Max E. Smith, real estate appraiser, appeared to discuss the concessions issue, referring to several documents (**EXHIBIT E**). He has asked for a formal opinion from the Attorney General. He doesn't believe the board has all the facts.

Ms. Ribera-Card clarified that the Real Estate Agency doesn't oversee appraisers. Ms. Cannon reiterated that it is a statute problem. Disclosure will require a statute change. The chair reported on the meeting with the appraisers regarding this issue. Raul Ramirez spoke to the board in February. The attorney for OAR issued information to their membership. The concern has been shared.

The commissioner asked if the board members want to receive the "ARELLOgram" (**EXHIBIT F**). Several already receive it. He asked that members review and approve their bios for posting to the agency website (**EXHIBIT G**). Mr. Costales suggested adding a statement that board members continue to serve until replaced by the Governor.

IX. ADJOURNMENT

Chair Graeper adjourned the meeting at 11:52 a.m.

Meet the Commissioner.

Respectfully submitted:

/s/ Gene Bentley

GENE BENTLEY
COMMISSIONER

Respectfully submitted:

/s/ Michael R. Graeper

MICHAEL R. GRAEPER
BOARD CHAIR

Exhibits distributed:

- A. OAR 863-015-0125 advertising rule documents, *Agenda Item IV.A.*
- B. Approved 2007 Legislative bills, *Agenda Item VII.B.1.*
- C. REA Budget Report, *Agenda Item VII.B.2.*
- D. Joint REA/OAR Education Meeting Notes 5/9/07, *Agenda Item VII.D.*
- E. Documents from Max E. Smith, *Public Comment*
- F. *ARELLOgram* June 15, 2007
- G. Board Member bios