

State of Oregon Real Estate Agency

REAL ESTATE BOARD

**Special Meeting Minutes
July 7, 2006**

- MEMBERS PRESENT:** Robert LaDu, Acting Chair
Troy Costales
Victor Kee
Arthur Kegler
Marianne Wood
Maxine Ribera-Card
John Zupan (by telephone)
- MEMBERS ABSENT:** Michael Graeper
Vada Salinas
- STAFF PRESENT:** Scott Taylor, Commissioner
Katie Cannon, Deputy Commissioner
Louann Rahmig, Board Liaison
- GUESTS PRESENT:** Emily Cedarleaf, Multifamily Housing Council of Oregon
Geoff Guilfooy, Aldrich, Kilbride & Tatone
Deborah Imse, MMHA Property Management Coalition
Jana Jarvis, Oregon Association of Realtors
Jeremy Starr, Oregon Association of Realtors
Michelle Deister, Legislative Fiscal Officer

I. BOARD BUSINESS

- A. Call to Order.** Acting Chair Bob LaDu called the special meeting to order at 10:05 a.m. at the Real Estate Agency, 1177 Center Street NE, Salem, Oregon.
- B. Roll Call.** John Zupan attended via teleconference. A quorum was present.
- C. Date of Next Meeting:** August 21, 2006 in Bend, Oregon. Location to be announced.

II. BOARD ADVICE

Commissioner Scott Taylor advised that the Interim Task Force will meet July 17. They are interested in this board's input on the structure of the board. He has a meeting Monday, July 10 with the Governor to discuss these same items.

Mr. Taylor introduced Geoff Guilfooy who is with a local CPA firm that has consulted with the agency on the Department of Administrative Services (DAS) audit. Geoff will act as a facilitator for this meeting. A form titled "Board Structure and Responsibilities" was distributed (**EXHIBIT A**) to use as a framework for discussion.

Mr. Guilfooy provided his background and explained the process for the meeting. We are looking at the board as it goes forward, rather than looking back at the DAS audit and events at the legislature. We need to concentrate on what this board should look like in the future, considering the needs of licensees, needs of consumers, the need for a healthy industry in Oregon and how to best strike that balance and be the very best regulatory body. He pointed out the topics listed on **EXHIBIT A** on which he hoped to reach consensus.

The first main topic was "Board Structure and Appointment." Advisory board vs. policy board. Number and composition of members. Should board members be appointed by the Governor? The industry? What is the commissioner's role? The structure of the board will impact the commissioner's role. Should the position be a commissioner or an administrator? Who should appoint the commissioner? What are the board responsibilities and the commissioner/agency responsibilities? What about discipline, one of the major areas? What role should the board and staff play in discipline?

Acting Chair LaDu asked if any of the board members wished to comment at this point.

Mr. Costales stated that when dealing with business interests, there is a conflict of interest issue. Board members need to be aware of situations of conflict of interest where there is a business relationship. The agency and the governor must be aware of potential conflicts.

Guilfooy advised that discussion will be included under number and composition of board members. The board is now advisory. There are more policy boards than advisory boards in state government for major regulatory functions. The commissioner is empowered by statute with a lot of authority. Other licensing boards get very involved in setting policy and direction in reviewing actions. The composition of the board now has heavy representation from the industry being regulated, and not as great a representation from public interests. Most advisory boards have more representation from industry than do policy boards. How should board members be appointed? Some advisory boards and advisory commissions are appointed by agency directors. Who should appoint board members? The Governor with senate confirmation? Governor alone? Board appoint with positions defined by statute? The members may be regulating the very industry they are in.

Starting with "Policy or Advisory," where are you in respect to that?

Ms. Ribera-Card asked what would be a policy situation?

Guilfooy responded that statute will empower the policy board to regulate the industry, and will define what that means and some expectation what that is. The policy board will interpret the scope of practice for this profession, set the standards, set the policies, etc. and be heavily involved in determining competency to work in the profession; how people are disciplined; how that process would work. With an advisory board, the commissioner proposes legislation and asks for advice from the board. Your challenge is to determine what is best for this industry going forward.

Costales indicated that a policy board would probably meet at least monthly. There will be an increased time commitment and a huge amount of homework. The board will be decision-making and set policy for the entire industry in the state.

Guilfooy explained that resources are available including access to the Attorney General. The role of a board member becomes bigger, doing some of the work (to a lesser extent) that the commissioner and his staff now do. Monthly board meetings may be necessary because if making disciplinary decisions, people can't be put "on hold" for months at a time. There is more of an obligation.

Mr. Zupan referred to the survey of state boards previously sent out (**EXHIBIT B**). Of the agencies that responded, the majority have policy-making boards. There must be a reason for that high percentage. Meetings could be a full day every other month, or one-half day monthly. There are probably qualified individuals willing to commit that amount of time. Industry members are probably more on top of what is going on in the industry than the commissioner. People directly involved with industry and the public are better able to make policy.

Guilfooy explained that in the survey, the respondents were mostly people regulating licensees.

Mr. Kegler pointed out that the ARELLO study shows most states have policy boards. Three have advisory boards (Oregon being one) with a commissioner in control. He supports a policy board and stated his high regard for Commissioner Taylor. If some of those responsibilities are spread to a policy board, there will be input not just from industry members but lay members as well, which is of more value. He believes this is a wise move for the future.

Acting Chair LaDu reported that Deputy Commissioner Katie Cannon went over the items on **EXHIBIT A** with Mike Graeper on the telephone. Mr. Graeper supports a policy board. Mr. LaDu reported that the Oregon Board of Nursing is a policy board and gets involved in the regulatory aspects of their profession. They meet for 2-1/2 days at a time.

Mr. Costales sided on a policy board which would have the ability and authority to delegate to a subcommittee or the commissioner. There is group discussion but if the board delegates, it must let it happen.

Kegler asked Mr. Costales if there is a structure within policy boards where there are three members making up a subcommittee to hear issues/cases. Is there a prehearing? If those three people have concerns, do they take them up with the whole board, or do they have the ability to make the decision?

Costales responded from his frame of reference. The Transportation Commission has subteams which include the commissioner and seven or eight others (i.e., bicycle and pedestrian-related issues) who have been delegated decision authority. If the group is unable to reach a decision, the issue can be taken to the full commission.

Mr. Taylor reported on the workings of the Maryland Commission, which has nine members. They have a subcommittee that meets outside the board's regular meetings and brings final actions back to full commission on regulatory/disciplinary issues.

Ms. Wood indicated that it seems responsibility could be spread out and a balance reached in membership for the best interests of the public and licensees. She supported Commissioner Taylor.

Ms. Ribera-Card was in favor of a policy board. This board is now responsible for education and requirements for testing so believes the board should be involved in policy-making decisions.

Mr. Kee had mixed emotions. He stated that he has gotten calls from the realtor segment of the industry. Why there is a big push from realtors to change this? He felt more time is needed to do research.

Kegler responded that the legislature had issues and formed an interim committee to evaluate the real estate industry and Real Estate Board. In evaluating, one looks at different forms of boards, policy-making and/or advisory and all the other items listed on **EXHIBIT A**. The interim task force is to make a recommendation back to the legislature on what the Real Estate Agency should look like. On that basis, we have to take a look.

Kee stated that he was aware of all that, but wondered why it was being pushed so hard. This will be a major change. Why are some groups pushing it to happen right away?

Guilfoy continued that the challenge as a board is to look out for the industry in the broadest sense. We want to have a viable real estate industry in Oregon and to have good quality realtors, with a perspective of what is in the public's best interests because the board represents the public. Board input is crucial and should be based

on what is seen as the needs of the industry as it continues to develop and to emerge. There is broad statutory authority, not just for licensing realtors, but to deal with condos and all kinds of property management. This is a pretty broad scope so one must think about the best way for this industry to be regulated, to have the board actively engaged and have people who can be appointed to the board who have the time, ability, expertise and the understanding to be effective. Will that be a better model for the future, or is the model that exists now the best model? Policy boards require more time. Another factor is how much the board, as a policy board, decides to delegate. There is the ability to delegate basically everything the statute will allow. If the board becomes a policy board, the legislation needs to be written in such a way as to give the board good authority to do that. The board is in the best position to look at the industry comprehensively and say what is going to be the best model to govern and regulate it over the next several years.

Acting Chair LaDu asked if there is consensus that this board should be a policy-making board.

Zupan answered that he did.

Ms. Wood requested discussion and asked for Commissioner Taylor's thinking.

Mr. Taylor has some biases and has tried to leave them out. The board now has authority over pre-licensing which was delegated to the agency but still has ultimate control and still sets direction. The advantage of a policy board, that he sees from his position, is that he is not hanging out there all alone when someone wants to take a "potshot." There would be a group of individuals who discuss and together reach decisions rather than one individual. The down side is it makes the process more cumbersome and not as efficient. Everything depends on having a quality board wanting to expend the time and effort. He wants good, quality, dedicated individuals who have good knowledge. There is a potential "down side" with the commissioner position the way it is because of uncertainty of next individual to fill it.

Mr. LaDu stated consensus by Mr. Graeper and Mr. Zupan for a policy board. Unless there are objections, he sensed consensus that this should be a policy board. (No objections were voiced.) We can move on.

Mr. Guilfooy stated that was the key to the rest of the work to be done, which should go faster. The next item is "Number of Board Members." The average size in the ARELLO study and in other places is typically seven to nine. In state government it is five to nine. The idea is how to get the best balance. If regulating the profession, what is the best composition? Some expertise is needed. Obviously you need some perception the board is not dominated by the industry. Should the commissioner sit on the board as a full voting member?

Mr. Costales expressed his concerns as one of the two non-industry members of the board. Since appointed six years ago he has tried to make the majority of the meetings, which apparently prior to that was difficult. He looks at things differently regarding consumer protection and consumer interests. He believes if the board has nine members, five should be from the industry and four not. If a seven-member board, four industry, three not. "Industry" needs to be defined from the citizen's point of view. "Industry" would mean "anyone who derives income from any type of real estate transaction." Currently, the other "public" member is a real estate lawyer. Most people would say that is not a citizen representative. The makeup of the board and a definition for industry are both needed. Two examples: Currently the governor's advisory committee on DUI's ranges from 11 to 15 to 18 members. Each member represents a different area of expertise. No area is duplicated (law enforcement, prosecution, courts, victim, treatment, etc.) and all areas involved in the DUI system are represented. The Transportation Commission has five members representing different parts of the state. That commission has to be careful and look at what is on the agenda to be sure that there is no conflict of interest which can prolong the decision-making process. That is a good reason to have more non-industry representation on the board to help in situations where there is conflict of interest.

Mr. Guilfoxy asked if there were other comments about the number of board members, composition of that, or role of the commissioner?

Mr. Kee commented that we are protecting our consumers and looking after our industry, but in our industry not all licensees belong to a trade organization. So the policy board should be made up with that in mind. Shouldn't someone from a nontrade organization be on the board?

Mr. Guilfoxy responded that that should be part of the decision when figuring out the composition of the board.

Mr. Zupan stated that since there will probably be some subcommittees, he would like to see from 9 to 11. He believed they should be looking more at a concept and deal with the makeup later. Not sure he had enough information to decide that. Wanted to see the makeup of every regulatory board in the state, members of group being regulated and public members, i.e., doctors, nurses, etc. If a five/four board where there are four public members and two industry members are absent, then the public members have a majority which may be fine, but there may be some things they don't understand. We don't want the perception that we have the "fox guarding the henhouse" but over the last 20 years or so the Oregon Association of Realtors has brought forth more public protection legislation than the agency itself. That is proof there is protection. Regarding Mr. Kee's question: If you are a licensee or someone from the real estate industry, it doesn't matter whether you belong to an association. You can be appointed to the board.

Mr. Costales suggested that with a nine-member board, six would be the voting majority. So with two distinct groups, neither could comprise a voting block. Move the mark higher so there has to be collaboration and need for attendance to make decisions.

Mr. LaDu shared Mr. Graeper's thoughts – nine members, seven industry and two public.

Ms. Wood reviewed the statistics provided by Deputy Commissioner Cannon on the different boards around state and observed that seven and nine members are common. She was comfortable with nine members. Didn't recall a time when there has not been a quorum. Didn't know if it was important to make the decision now on the composition.

Mr. Kegler leans to the 7/2. Had no objection to having four lay people on the board. Was concerned with knowledge of the industry. Believed that anyone appointed to the board from the industry would also be a guardian of the public. They would have the background and quality to take into consideration the protection of the public. Agreed that with a 7/2 ratio a vote of six would be needed to take any action, with at least one public person part of that. The industry is complicated and indicated he has had too frequent opportunities to talk with attorneys who are licensed to do real estate but incidental to their practice. They are not knowledgeable about real estate. Had concern with too many lay people on the board.

Mr. Guilfooy indicated that the question had been raised if all of this needs to be decided today, and the answer is to decide on what you are comfortable deciding. There is benefit to not putting off too many of these. The two next important bodies this recommendation goes to are the Governor's office and the task force. Believed this board wanted to be a big voice in that, to the extent that this is the board's position. If the message goes back to those groups that the board couldn't decide and the industry is a much more cohesive, definitive group, then that is probably who will be listened to. To the extent you can make some consensus decisions, it really does help.

Acting Chair LaDu stated that most members have given support to a nine-member board with two of those being public. Unless there is objection, he sensed consensus on this.

Mr. Costales stated that that there is a second level of conversation needed before proceeding on the expectation of voting and a definition of industry vs. non-industry. This does impact statute. The legislature has the ability to do those definitions. The board should be regionally based, "industry" defined and a positive vote (or agreement) by the board needs to be explained, if it is five out the seven and one of the two. He had concerns about the "7/2."

Commissioner Taylor stated the statute right now specifies that an individual from the industry must have been a broker for five years to serve on the board. The last two governors have made sure there is geographic distribution and range of expertise. The board is probably a little weak now in commercial brokerage but Ms. Ribera-Card has some of that plus property management background. Mr. Kegler is from the east side and also does rural properties. Mr. LaDu has a big company, as does Mr. Graeper. Mr. Kee is on the coast, Mr. Zupan in southern Oregon and Ms. Wood the central valley.

Mr. Zupan reaffirmed that they do want the makeup to be regionally based for the state with some kind of minimum years of experience.

Mr. Guilfoxy offered that no matter how the legislation is proposed, there will be opportunity to testify on that. Is there consensus on 7/2?

Acting Chair LaDu responded, I believe so.

Mr. Costales indicated that if there is not going to be discussion about the secondary issues of what the 7/2 represents, he was still concerned but there are ways to alleviate with the structure, definition of industry or what the "seven" is. We are sitting at 8/1 now. We have to make sure the role of consumer protection as defined in statute is addressed.

Mr. LaDu added that the question of whether the commissioner has a vote also needs to be addressed.

Mr. Guilfoxy responded that that is the next question. Is the commissioner on the board?

Mr. Taylor advised that the commissioner has been and has not been.

Ms. Wood felt the commissioner would be valuable.

Mr. LaDu asked, with a vote?

Ms. Wood responded that she thought the commissioner should be able to vote. What would be an alternative?

Mr. LaDu stated that the commissioner could have a position analogous to the president of an organization where he may vote but not be obliged to vote.

Mr. Kegler added that the summary of state boards (**EXHIBITS B and C**) showed 14-1 that the commissioner does not sit on the board. He had no problem with the commissioner sitting on the board and voting. If so, is the commissioner part of the

nine or part of 10? If we make the decision that the commissioner should be on the board, need to review if he is part of the industry number.

Mr. Taylor agreed.

Mr. Guilfoxy requested clarification. Is the agreement that the commissioner would sit on the board and be a voting member? That he would not be one of the nine but be the tenth?

Mr. Costales felt the position should be ex officio. His view was the policy board would give particular delegations of responsibility to the commissioner to carry out so having a vote on the board would put him in a position of conflict of interest as there would be certain things the board is not going to do in the day-to-day operations. Those items have to be put in the hands of the commissioner. Also being a voting member on the policy board puts that person in conflict where sometimes he would be voting on items that would become part of the day-to-day job. The commissioner will likely have a real estate background, so ex officio would allow him to be involved in the discussion but not vote.

Mr. Zupan agreed with Mr. Costales. He would like the commissioner to be on the board but as an ex officio member and not vote.

Mr. Kegler didn't have an objection but felt Mr. Costales made a valid point.

Mr. LaDu sensed that there was consensus that the commissioner be on the board ex officio with no voting rights.

Commissioner Taylor thought that made sense because under the current situation there are a number of times that he would like to have said something, but without being asked (not being even ex officio) it was difficult to do so.

Mr. Costales asked the other members' opinion.

Mr. LaDu understood that Mr. Graeper was in agreement.

Mr. Guilfoxy summarized. Have talked about a policy board. Have talked about nine members, 7/2 split. Talked about the commissioner being a board member but a nonvoting member. Let's talk about the appointment process for board members and the commissioner. Who should appoint board members? The obvious choices are (1) the industry appoints, (2) the industry recommends and the governor decides, (3) the governor alone decides, or (4) the governor decides with senate confirmation. It is all over the board in state government. What is the best model for what you have decided?

Mr. Kegler suggested governor appointment with senate confirmation.

Mr. Zupan offered that the governor should listen to recommendations from the association or the industry. The governor can appoint but there should be an ability to make recommendations to the governor.

Mr. Taylor advised that there is.

Mr. Guilfooy explained that depending on where the governor is in his term can have a huge impact on how quickly appointments are done. Then there is the issue of senate confirmation, and there are times when the senate may be "cross wise" with the governor on an appointee. That puts the board in a position of an existing member generally volunteering to continue to serve until a replacement is named. That could become a real imposition but don't know that there is anything that can be done about that. The real issue is what process provides the most credible possible board in the eyes of the people who are being regulated and in the eyes of the industry and the consumers. What appointing process does the very best? Senate confirmation gives a check and balance. The governor appointment process gives a broad state representation. There is status when people are asked by the governor which can help attract better people.

Mr. Costales stated that once you step into the policy realm, he believed that governor appointment with senate confirmation was needed. Timing could be an issue but that doesn't necessarily have anything to do with the candidate but may just be politics between the legislative branch and the executive branch. The senate rules panel that does the appointments may not meet in the off-session for six months so there could be a situation where vacancies might cause voting problems.

Ms. Ribera-Card asked if there has ever been a real problem with just having the governor appoint without senate confirmation.

Mr. Guilfooy responded that it is done a lot and it can work fine. The question is, what do you think provides the best perception to people, taking into consideration the fact that it is going to be a longer process if you have senate confirmation?

Ms. Ribera-Card offered that when looking for replacements, there needs to be ample time, especially now with a policy board situation.

Mr. Guilfooy asked if there is consensus that the governor at least should be the primary person who initiates that process.

Mr. LaDu answered yes.

Mr. Guilfooy asked if there is consensus that there should be senate confirmation, or not?

Mr. LaDu responded that he didn't think there was consensus on that.

Mr. Costales said yes to senate confirmation.

Mr. Kegler added he would also.

Mr. Zupan preferred senate confirmation. If the process is started enough in advance, it could work.

Mr. Kegler added that if appointments are made when legislature is in session, there would only be a problem when vacancies occurred during off-session.

Mr. Costales advised that the senate has a responsibility to meet in the interim. There are emergency backups in place to deal with unusual circumstances.

Mr. Guilfoxy asked if there is consensus then on governor appointment with senate confirmation.

Mr. Kee thought there might be a problem with senate confirmation.

Mr. LaDu asked if there is consensus on appointment of members by the governor alone with no senate confirmation.

Ms. Ribera-Card agreed with that.

Mr. Kegler didn't want the governor alone.

Mr. Zupan asked if there are staggered terms so people are appointed every year.

Mr. Kegler responded that we can't control when people leave the industry.

Mr. Zupan guessed he would prefer the senate confirmation. There would have to be some timing problems ironed out.

Mr. Kegler added that the senate meets on an interim basis throughout the off-year so there would not be a two-year delay.

Mr. Zupan indicated he would go with governor appointment with senate confirmation.

Mr. LaDu indicated that there is no consensus on this issue. There are some in favor of senate confirmation and some not.

Mr. Guilfooy suggested moving to the commissioner. Right now statute requires that the commissioner either be someone from the industry or someone who has been with the agency for a certain amount of time. Is that right?

Mr. Taylor responded, strictly from the industry.

Mr. Guilfooy clarified that no non-licensee could be commissioner.

Commissioner Taylor indicated that there can be an interim up to one year, someone who has been in management in the agency for at least one year.

Mr. Guilfooy explained that a lot of the policy boards surveyed had administrators with no expertise whatsoever. So it is not a common requirement that the administrator be from industry, but it may be helpful given the fact that you are putting this person on the board, that you require the person to have industry expertise. Who should appoint the commissioner or the administrator? The board? The governor? The governor with board concurrence? The models out there are all different.

Mr. Zupan felt that if going to a full policy board, experience is not necessary. There may be someone who has done a good job in the agency who, when the commissioner retires, you want to move into that position. It would be a "slap in the face" to bring someone in just because they have experience but has no feeling on how the agency operates. It seemed to him that if there was the right person within, they should be moved up instead of looking outside for someone else. Did not have a strong feeling either way.

Mr. LaDu reported that Mr. Graeper believed that the position should be a commissioner and that the commissioner should be appointed by the board.

Mr. Zupan asked, how about commissioner from the industry or from without or does it matter?

Mr. LaDu stated he misread the note. Mr. Graeper believed the head of the agency should be an administrator appointed by the board.

Mr. Zupan sought clarification. No preference on whether they are from the industry?

Mr. LaDu said that Mr. Graeper didn't indicate that but knowing him, was sure he believed that person would be from the industry.

Ms. Wood asked about the difference between a commissioner and an administrator.

Mr. Guilfooy believed it is generally semantics. With a policy board, you are more likely to have an administrator who is someone who has been a licensee and has

experience in that area. Technically, what you call that person is probably not as important as what that role is. When you said a commissioner vs. an administrator, you were really after whether the person should be from the industry or not. Correct?

Ms. Wood believed that the person should be from the industry, appointed by the board with “blessing” by the governor.

Mr. Guilfoxy advised that there are situations like that. He thought the Director of Veterans’ Affairs may be that way, or the Veterans’ Advisory Board, makes the appointment and the governor then gets to weigh in. Believes there was a controversy about that several years ago.

Mr. Zupan asked if the governor has veto power in that situation.

Mr. Guilfoxy continued that in that case, he thought the governor tried to remove the incumbent director and was unable to do that.

Mr. Costales added that in different agencies where statutorily there are boards or commissions that hire/fire with the advice and input of the governor, if the governor wants to remove someone, he does not have statute authority to do the removal part.

Ms. Wood asked if it was his experience that that would not be a good situation. Does it encumber the board’s consensus?

Mr. Costales was not saying that it is good or bad. It is what it is. During the 1999-2001 session concerns were expressed with different agencies so those agency heads were moved to be direct to the governor. That was the temperament of that session.

Mr. Kegler leaned toward board appointment without getting the governor involved. That person has to work with the board without governor interference. The board is going to set policy and direct that administrator/commissioner. Throwing the governor in there will muddy up the water.

Mr. Zupan added that the governor has appointed the board members. If he thinks enough of the people he has put on the board they should have the authority to hire or fire the commissioner.

Mr. Kegler supported the board without the governor appointing the commissioner.

Mr. Guilfoxy asked if the commissioner should be from the industry.

Mr. Zupan didn’t think it was necessary.

Mr. Kegler added that there would be seven members from the industry on the board and if they saw someone coming through the agency that was qualified, but had never

really closed a transaction, that person could become commissioner. He didn't see that it was necessary the person be from the industry.

Mr. Guilfooy asked if there was a lack of consensus on that issue.

Mr. LaDu, hearing no objections, yes.

Mr. Guilfooy responded that it was a split. Should that person be appointed by the governor? Should that person be appointed by the board? Should there be some mixture of that somehow?

Mr. LaDu stated that there is consensus that appointment should be by the board.

Mr. Guilfooy suggested moving on to board and commissioner responsibilities. Who should set broad policy for the agency? The board? The commissioner?

Mr. Zupan thought that a policy-making board would set broad policy. The commissioner is in charge of running the staff, the day-to-day operations and fulfilling the policies of the board. The board shouldn't have any power to hire or fire within the agency. That should be the commissioner's job. He is the person running the agency on a day-to-day basis.

Mr. Guilfooy asked if knowing the board has the authority to hire or fire the commissioner, is there consensus that the board would set broad policy for the agency?

Mr. LaDu responded yes.

Mr. Guilfooy asked if there was consensus on setting operational policy for the agency and managing the day-to-day operations of the agency would be the role of the commissioner/administrator.

Mr. LaDu responded yes.

Continuing, Mr. Guilfooy moved on to administrative actions. Since none of us are experts in this area except probably the commissioner and deputy commissioner, we may need to call on them to explain a little of this with respect to administrative actions. He asked Mr. Taylor to go down the list and explain the actions to get a feel. Who will have final authority over these items?

Mr. Taylor explained that regarding investigations, there have been some fairly extensive discussions over the last year. Following an investigation, the Regulation Manager reviews and decides whether or not to move forward. If we get to the point where we are going to a contested case, that notice as it is right now is a formal document that sets out what the agency believes are the facts and alleged violations,

and then says what ought to be done. As it is today, the commissioner is the one who signs those. Expertise is needed for this part of it, to be able to take the facts, apply the law to them, make sure the violations are supported by the facts, and whether or not that warrants that type of sanction before signing off on it. That's really what we are talking about there.

Mr. Guilfooy asked whose responsibility that should be.

Mr. Zupan followed up with a question. Are we bound by the law that we have a hearing officer outside of the agency?

Mr. Taylor answered yes.

Mr. Zupan affirmed that that can't be changed.

Mr. Taylor advised that would take legislation.

Mr. Zupan continued that in his opinion that since "stuff" comes in on a day-to-day basis (unless we decide to break into subcommittees), the commissioner should still have that authority, but with an appeal to the board allowed somewhere down the line, if the people aren't happy with the results.

Commissioner Taylor indicated that there may be a way to build that in beyond this. He offered to give some thoughts later.

Mr. Costales saw two tracks. There will be one set of answers from those who want to see a commissioner who is industry based, but if the lead person of the agency is not industry oriented, then there will be a different set of answers. He was comfortable with both of these until the rare occasion that might come to the board.

Mr. Zupan assumed that most of time the commissioner is going to be from the industry. There will be a rare situation when he may not. Cited an example of the commissioner retiring and someone who has been with the agency with knowledge of the laws and was competent to make those kinds of judgments. If the board didn't feel comfortable with that type of person, they could look outside the agency, probably for someone from the industry. He thought that would be the safeguard.

Mr. Taylor advised that his phone rings a lot. Generally it doesn't happen before a contested case notice but happens in the next phase. If the board takes on some of these responsibilities, a lot of training will be needed. How much of this does the board want to take on? Because you can get involved in a situation where someone complains and wants to appeal beyond what the APA allows but you can't go there. If you don't know what you are doing, you can get yourself into trouble.

Mr. Guilfooy offered that there will have to be some point where a person gets all the opportunities they are entitled to have. What the commissioner brings up is a challenge to policy boards, when a licensee calls a board member directly. One has to be careful not to enter into ex parte communications. Must be careful in conversations with affected parties so as not to damage the case. This is an important area to talk about. When is it appropriate and at what level should one get involved? When is the right time? Is it the level of approving the initial contested case notice and offering the opportunity for hearing? Or is it approving final orders or consent orders?

Mr. LaDu share that Mr. Graeper felt the board would review and approve final proposed orders and final orders. The rest of it would be up to the administrator or commissioner.

Mr. Zupan understood that the board wouldn't ever listen to a hearing. The evidence would be looked at and the final order that the commissioner makes, approved.

Mr. LaDu indicated that was how he read Mr. Graeper's answer.

Mr. Guilfooy asked how much different that will be for them.

Commissioner Taylor explained that after a hearing, he gets a proposed order from the hearings officer, considers any exceptions, prepares the final proposed order, then sends it back through the process, creates and approves a final order. A policy board could take on that responsibility. At that point, depending on how its set up, either the agency or the agency's attorney, someone would make a presentation to the board, provide the findings of fact and conclusions of law, review the record and make a decision, or do it at the final proposed order which may involve actually going through it twice.

Mr. Costales advised that any responsibility that the board is assigned in statute, they could delegate. This was raised last session as an area of concern. The board could take action at the last step (final order) but the board could also say that belongs to the commissioner.

Seeking clarification, Mr. Guilfooy asked if the suggestion is, then, the board would approve the final order, but would reserve the right to delegate. Or not any of those other steps, with respect to a particular case or a particular person in the commissioner position, and not wanting someone during their first year to do it? You want to reserve that option, but want to create a situation where the board is not necessarily engaged in these steps.

Mr. Costales suggested that this is where there could be subcommittees and conflict of interest. The seven industry members must be aware of any possible perception of affiliation.

Ms. Wood agreed.

Mr. Kegler leaned toward the board at final order stage. Up to that point it should be the commissioner. Maybe there should be a string attached so if the board wants to review a case in a significant situation, they can be involved at any point. Seems most sensible to delegate to the commissioner and review the final order. Still don't have a problem with a subcommittee of three or so to actually do the final order review and if there is a significant conflict or appeal, then the total board should take a look at it.

Mr. Guilfooy suggested statutory language that would say something like "the board or the board's designee shall" do this or that, and that never takes away ultimate authority.

Mr. Kegler reiterated that a really tough issue should bounce up to the full board.

Mr. LaDu said there is consensus on this issue.

Mr. Zupan sought clarification, that what we have consensus on is that unless we otherwise state, the commissioner is going to take care of all these things except the final order which the board has to approve and sign off on. Is that correct?

Mr. LaDu answered yes.

Mr. Guilfooy asked if there were any of the rest of the items absolutely needing to be discussed.

Mr. Taylor didn't see anything.

Mr. Guilfooy asked of what is left, what is most important to obtain advice from the board?

Commissioner Taylor advised that the last two in terms of violations, conclusions and sanctions are pretty well set out in statute and rule. The authority to sign a final order in a contested case probably goes hand in hand with the authority to approve. He requested some direction on the authority to overturn a hearings officer decision.

Mr. Guilfooy suggested that because the agency doesn't have a fulltime hearings person the way it is constructed, he would guess the commissioner would not want to let go of the ability to overrule. The question is, who should do that? The board or the commissioner?

Mr. Zupan stated that if overruled, the board would review the final order anyway, so the commissioner would have the authority to overrule and the board would review the final order and agree or disagree.

Mr. Taylor agreed, so its there. Another way would bring the board in at an earlier step.

Mr. Zupan explained that he was looking at a broader picture and felt like the discussion was getting into some details, and those are things that could be hammered out with testimony. He thought that this board is going to be a policy-making board but the commissioner is still going to run the show with direction from the board, and the board has the final say on some things, this being one of them. Other than that the board should keep its nose out of it other than pointing out the direction they want the commissioner to go. The commissioner needs some power to operate. If the board gets involved every time he turns around, it takes that authority away.

Mr. Taylor thought that most of the things below "Commissioner," are things that are probably not going to be addressed in statute but will be things that the board in doing their broad policy setting will decide what they do or don't do. These are not things he will need to say anything about to the committee.

Mr. Kegler indicated "commissioner" all the way down the line with monthly meetings.

Mr. LaDu stated that Mr. Graeper mirrored his comments.

Mr. Guilfooy asked if there would be anyone in disagreement with any of those. Be sure to raise any concerns you have.

Ms. Wood, Mr. Costales said okay.

Mr. Guilfooy stated that it looks like consensus on all of those. Regarding the frequency of board meetings, he believes initially the board will have to meet more often.

Mr. Kegler suggested that if it is put in statute, should be at least monthly.

Mr. Guilfooy didn't recommend putting meeting frequency in statute. It is partly a budget issue. Need to make sure there is adequate budget for the meetings that are held.

Mr. Zupan suggested budgeting for teleconference meetings.

Mr. Costales responded that meeting locations should not be in statute. Any comments to the task force should reflect that the current board feels that other

meeting sites besides Salem are important. Agreed with Mr. Zupan that when no one is appearing before the board, teleconference meetings might be a good idea. But when people are appearing, it is important for the board members to be present together rather than by teleconference.

Mr. Guilfooy summarized that it seemed like there was consensus to not put the meetings in statute, and initially the board will have to meet more frequently but the board will decide when it is time to meet.

Mr. LaDu acknowledged Mr. Guilfooy's assistance by facilitating the meeting.

III. PUBLIC COMMENT

Jeremy Starr, president of Oregon Association of Realtors (OAR). Reading from a prepared statement, Mr. Starr stated that their board of directors at their last meeting approved the true commission model. All but five of the state directors were in attendance at the meeting and all but two or three voted for a true commission. A true commission would be comprised of industry experts and members of the public. Industry experts have the most current information on industry trends and practices. A true commission is not subject to union management tensions. Budget priorities would reflect spending focused on keeping current with the changing industry. A true commission would bring a wider perspective on how the consumer can be protected than a central commissioner. A true commission would not personalize decisions in disciplinary cases or rulemaking and would better reflect the practical needs of the industry in meeting current market conditions.

Mr. Costales asked for clarification of the statement that all but five of the state directors were present.

Mr. Starr responded that there are 118 directors throughout the state and all but five were in attendance.

Ms. Wood asked if the board model fits with the OAR model.

Mr. Starr indicated it seems to very closely fit it.

Ms. Wood followed up by asking if there was anything outstanding that didn't.

Mr. Starr answered, not to his knowledge. He thought it very closely fits what they were looking for.

IV. ANNOUNCEMENTS

Commissioner Taylor asked the board members to meet briefly with Katie Cannon and Selina Barnes following the meeting for input on a new renewal/activation form.

The next regular board meeting is August 21, 2006, in Bend. Location to be announced.

Mr. Costales expressed appreciation for the agency staff work on the information provided prior to the board meeting to facilitate the discussion.

Ms. Cannon reported that the small number of agency responses (**EXHIBIT D**) was probably due to the holiday weekend, and she will attempt to obtain information from the remainder.

V. ADJOURNMENT

Acting Chair LaDu adjourned the meeting at 11:52 a.m.

Respectfully submitted,

/s/ Scott W. Taylor

SCOTT W. TAYLOR
COMMISSIONER

Approved,

/s/ Michael R. Graeper

MICHAEL R. GRAEPER
BOARD CHAIR

Exhibits distributed

- A. Form titled "Board Structure and Responsibilities"
- B. Summary of board composition (e-mailed prior to meeting)
- C. Survey of state boards (e-mailed prior to meeting)
- D. Survey results summary (16 responses)(e-mailed prior to meeting)