

STATE OF ALASKA  
DEPARTMENT OF COMMERCE, COMMUNITY & ECONOMIC DEVELOPMENT  
DIVISION OF CORPORATIONS, BUSINESS AND PROFESSIONAL LICENSING

**REAL ESTATE COMMISSION  
MEETING MINUTES**

**October 28, 2011**

By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a scheduled teleconference of the Real Estate Commission was held October 28, 2011 at the Atwood Building, Room 640, Anchorage, Alaska.

**Friday, October 28, 2011**

Call to Order

Chairman Bradford Cole called the meeting to order at 10:05 a.m. at which time quorum was established.

Roll Call

Members present:

Brad Cole, Associate Broker/3<sup>rd</sup> Judicial District  
Anita Bates, Broker/Broker at Large  
Marianne Burke, Public Member  
Chris Swires, Associate Broker/Broker at Large

Members present via teleconference:

Charlene Flyum, Public Member  
Nancy Davis, Broker/ 1<sup>st</sup> Judicial District

Staff Present:

Sharon Walsh, Executive Administrator  
Nancy Harris, Project Assistant  
Don Habeger, Director of Corporation, Business and Professional Licensing

Staff Present via teleconference:

Sara Chambers, Program Coordinator, Juneau  
Misty Frawley, Administrative Officer II, Juneau  
Jun Maiquis, Regulation Specialist, Juneau

Guests Present:

Jeanne Webster, Salesperson, 4 Seasons Real Estate  
Waltraud Barron, Broker, Barron Investments  
Sandy Eherenman, AK Association of Realtors  
Dave Weir, Associate Broker, RE/MAX Properties, Inc  
Helen Jarratt, Salesperson, RE/MAX Properties, Inc  
Edward Jacobson, Salesperson, Prudential Jack White Vista RE  
Dan Zantek, Broker, Bankers Realty Corp  
Chuck Booher, Broker, Booher Real Estate  
Don McKenzie, Associate Broker, RE/MAX Properties, Inc.  
Diane Stefan, Salesperson, RE/MAX Properties, Inc

Al Romaszewski, Broker, RE/MAX of Eagle River  
Dwight Bowden, Associate Broker, Prudential Jack White Vista RE  
Michelle DelleCroce, Salesperson, Prudential Jack White Vista RE  
Elise Buchholz, Prudential Jack White Vista RE

Guests Present via teleconference:

Dave Somers, Legislative Liaison for AAR  
Mimi Rothchild, Southeast Alaska Board of Realtors, Juneau  
Errol Champion, Southeast Alaska Board of Realtors, Juneau

Chairman Cole said that the purpose of this work session was to invite Mr. Habeger here to discuss the increase of the real estate licensing fee. All licensees received a letter with the proposed licensing increase for 2012 – 2014. The intention for this meeting is to discuss the reason for that increase and we have asked Mr. Habeger to explain how they arrived at that number and anything else he would like to interject.

Mr. Cole turned the floor over to Mr. Habeger, the Director of Corporations, Business and Professional Licensing.

Mr. Habeger introduced himself and said he has been at his post for 14 months. He then began to address the Commission and those individuals present.

Mr. Habeger said “Why are we here?” He said he wanted to give the Commission the thirty thousand view/point to begin with and that starts with our response to statute. In Title 8, which governs all the professional licenses, 08.08.065(c), Mr. Habeger read a subsection (c) of that statute, “ the department shall establish fee levels under(a) of this section so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation.” There is more to that but that is the general point of that particular statute. There were other sign posts. Those other sign posts that they used were recent audits. These audits looked at our Division and those audits had a number of things to say about how we conduct business. Mr. Habeger said for those who do not know the audit process, the Legislature controls statute and they control funding. Every so often they will ask the members of their team to come in and take a look at our operation and then after their audit they come out with a report of their conclusions. They did this for our Division in 2011 with a special audit that looked at a number of our operations and made a couple of recommendations, which Mr. Habeger spoke to. The first one was that CBPL had not completed all the recommended fee changes from the most recent fee analysis. He said they went on to say that we ought to do an annual analysis as required by statute. The analysis is to look at all professions, there are 40 in all, and to be sure to look at the revenue and expenses and all those activities and come out with an annual report. Mr. Habeger said that they were attempting to do this and that this has not been a part of CBPL’s history. In fact, they have noted a number of times that we missed those.

Mr. Habeger said the second part of the report said that we did not adjust costs quite appropriately. Recommendation #2 stated that the CBPL Director should improve the method for allocating the Division’s indirect costs for tracking occupational direct costs.

This was another major sign post. What does this mean? It means how did we get to where we are at today? As we were going through the audit process, gearing up for the REC renewal cycle, as we were dealing with these issues, we were closing out FY11 (Closing out FY11: previously (historically) when going through the analysis, the system had been that no matter where they were at in a fiscal year they looked at a partial year and the next full fiscal year. They thought if they looked at partial year, revenues and expenses, they may have to make assumptions or adjustments to capture that full year. We came to the conclusions within our shop, that those assumptions and adjustments may not always reflect reality so we made a decision, this go around, to go back and collect two actual fiscal years. Then we would look at the actual two fiscal years as the sign post or trail marker to project the next fiscal year.). So with that, knowing that they had this December renewal they were waiting for FY11 to officially close. Even though FY11 closed at the end of June it usually takes a full month to make sure that all the bills are in, all the adjustments are made and you finally get a close of those books. So somewhere in the August timeframe they were beginning to close those books as well as go through, what they considered Phase I, the cost pool adjustment. The cost pool adjustment really is the indirect costs. There are a number of activities that don't directly accrue or pertain to any professional license. For example, a director, deals with all the programs, therefore you should not be, as real estate professionals, picking up my costs in its entirety but it's reasonable to pick up a portion of that. Well anything like that goes into that indirect pool. Unfortunately, rephrased, historically, they took that cost pool and divided amongst the all the professionals, but solely amongst the professionals. They realized and actually knew that this was going on and were heading down this road anyhow but when Legislative Audit pointed it out we decided to put it out, somewhat of an interim step. They were already proceeding through the process to bring in a specialist in government accounting. A RFP will be out on the streets soon and that specialist will be brought in to actually break down our books very carefully to make sure that if someone, like a Director, belongs in that central pool then they should. If someone, like a Jun Maiquis, belongs partly in that pool but has some positive timekeeping and can be assigned to a specific project, they do so. That effort is ongoing. However, going back to Phase I, they felt that wasn't good enough, so with the help of our accounting team, that oversees our department, we used their expertise and looked at all our PCN's or personnel assignments and we adjusted those. We realized that a portion of those belonged to business licensing and that adjustment has taken place and we used it prior to an announcement of regulation.

Mr. Habeger said those were the settings or trail markers that they used to get out. However, there were some tradeoffs in going through that process. One of the tradeoffs that we had to determine is how do we communicate with our Boards. Going back to the statute we know that we "shall" communicate with our Board members. Their dilemma, they know that the regulation process takes "X" amount of time. It is somewhat fixed, 30 day comment period, it will go through another scrubbing at the Department of Law, go through the Lt. Governor's office which is another 30 days, because it does not become effective until 30 days after the Lt. Governor signs it. Given that timeframe, knowing that we needed to have a regulation in hand before we were going to change, if we were going to change, the application and fee process, we were up against a fixed time. As they were approaching that time and adjusting things, they made the decision. Mr. Habeger said he made the decision that a proposal would go out. The thing that happened is that Mr.

Habeger said he could not talk with the Commission prior to that. He did not have time to get a full blown meeting going and so he made the decision to talk to the Commission some time later. Mr. Habeger said he had asked the Commission to suggest what they thought and they did give their fee recommendation on record at their September meeting, so he knew what they are thinking. Mr. Habeger said he put together a regulation based on an analysis. The regulation goes out, there is the public comment and then the Division has a number of options. They can adopt the regulation as proposed, adjust it as needed based on public comment or they can withdraw it. Mr. Habeger said that he has received a pile of public comments from the real estate community. He said he just wanted to set the stage for why we were here today.

Recessed at 10:18 a.m.  
Reconvened at 10:25 a.m.

Mr., Habeger went over the documents that he would be discussing: Indirect Expenses - 3 pages, Personal Services Expenditure Detail- 4 pages, and Direct Costs/Summary sheet- 9 pages. He said he will be going over personnel services first, direct costs second and indirect costs last.

#### Personal Services Expenditure Detail

Mr. Habeger first addressed the Personal Services Expenditure Detail. The scenario is FY 2012 Governor's Budget and this is the piece that in detail is on the OMB website, it is part of the Governor's Budget that was recently enacted by the Legislature. He identified the REC PCN's that he wanted the Commission to concentrate on. They were; 08-2050, 08-2082, 08-2087, and 08-2105. He wanted to point out to the members that one of the questions from the Commission was the personnel costs. He wanted to address that a couple of ways. First, Mr. Habeger wanted to point out the FY 2011 budget as enacted by the legislature and the PCNs that are assigned to various units. Also, the other PCNs that he did not point out but were highlighted on his copy, is the Guide Board. He wanted to let the Commission know that the guiding profession is also in a renewal period, the Department is also suggesting an increase for them and they also have written saying "What are you doing?" He just wanted to walk the Commission through this to show them some of the things that he is dealing with to get the fees out.

Commission member, Marianne Burke, asked Mr. Habeger since the recovery fund picks up five percent of the total costs is that reduced for that amount?

Mr. Habeger said it is in other places but for my illustration here it is not. He said that Ms. Burke was way ahead of him.

Mr. Habeger directed the Commission members to those PCNs, 08-2050-, Executive Administrator REC, 08-2082- Investigator III, 08-2087- Occupational Licensing Examiner and 08-2015- Project Assistant found on page 1 through 15 that are related to real estate and the total costs for each position.

Mr. Habeger said that he was mostly walking them through that document to help them understand how he got those numbers.

Personal Services – FY2012 Budget Enacted

The next document that Mr. Habeger spoke to was a summary document. The document is Personal Services – FY2012 Budget Enacted. He said that he identified the PCN's and the board and totaled all in costs/positions. The real estate has a total of 4 positions at \$376,254. He said he took the time to put down the Guide Board to show the comparison with another board. This document shows that the Guide Board has two licensing examiners, and one investigator with a total of \$257,796. Again he said the only reason he did this is to show that they are comparable positions, with one additional employee, Real Estate costs are slightly higher than the Guide Board with one less employee. You will see slight differences between Investigators and Licensing Examiners due to longevity. The State of Alaska has a step system as an individual gains experience there are slight increases on an annual basis usually as part of a labor agreement, so you will see those slight differences.

Real Estate Commission Schedule of Revenues and Expenditures as of August 24, 2011

Mr. Habeger said that the thing he wanted to note here is the personal services on this particular document. In FY 10 the personal services that they have identified as a direct expense is \$283,865. There was a fairly significant increase in FY11 identified as \$392,394. Mr. Habeger said that based on a budget like the Governor's just looking at those personnel costs they are comparable. He handed off that sheet but he believes that it was \$357,000, so it falls somewhat between those two numbers. Finally, to direct one of the questions from the Commission members, "Is the budget document necessarily the way it works?" The answer to that is "No". All he was trying to establish was that there are full time personnel committed to your program and you are covering those costs. "How does it actually work?" We have a positive timekeeping mandate within our group. If Sharon, for example, is working 100% of her time on any given day, week or month for the Real Estate Commission, she marks her time 100% down for that. If she works for the (recovery) fund, she marks her time down for that. They realize that making Sharon keep track of all her time like that is an administrative burden. What they have done is, we said Sharon, we have gone through the process through our Administrative Services Division, how much time do you really spend, and she has told them and they use that as the time. Every time she sends in a timesheet they keep track of it with that. If there are any anomalies, hopefully they adjust themselves over time. So to make life easier for her, we do make assumptions. However, someone like a Regulation Specialist, he is not on this list per se, but Jun Maiquis, our Regulation Specialist, anytime he is developing a regulation for the Commission he is keeping his positive timekeeping. He is going to work part of his day for the Real Estate Commission, the Guide Board, and the Psychologists and he is required to mark down that time. So in reality this schedule of Revenue and Expenditures as of August 24, 2011 really reflects a certain amount of assumptions like for an executive, as well as it includes all of the positive timekeeping for anybody that works on a project. That might be an investigator and right now, because of case load we have an investigator, Ms. Wall-Rood, that works for the Real Estate Commission full time. That is why they are included in that. There may be time when another investigator is called in to assist. Normally they are not part of REC activities, but if they are then it is positive timekeeping. There is quite a list of individuals that might spend a half hour or week here and there in these numbers.

Commission member Marianne Burke asked Mr. Habeger that under Personal Services that is direct time that someone who is not necessarily assigned to us but directly works for us. It doesn't go down to contractual it stays in personal. Is that correct?

Mr. Habeger said that is correct.

Mr. Habeger told the listening audience that he will have staff scan these documents that he is speaking to and will place them on the REC website as soon as possible for their review.

2011 CC (Collocation Code) 8535145 Real Estate (Contractual)

Mr. Habeger said that the collocation code is a way for them to roll up all these other expenses to one organization. Mr. Habeger said he was going to take some time to go through these documents because even though it is going into the weeds he thinks it is important to understand. He said that for this collocation code you have to look at a certain amount of the subgroups. However, what you need to understand is that everything rolls up, so that the bottom numbers support the top numbers. If you look at the very top number, the total expenditures were \$605,000 you will see that same number on the schedule as printed on August 24, 2011 under Total Direct Expenditures. That is where those numbers are coming from. Where do we get that number \$605,000? This is how we do that. Under Personal Services is the number \$392,000 and you will also see that number on the August 24<sup>th</sup> schedule under personal services. What makes up that \$392,000? It doesn't go down into the details of the positions but does talk about the various components. You can, through this document, see that regular duty is a certain set of numbers. Any time someone is there 35.5 (37.5) hours committing time to the real estate Commission that's regular duty. It also goes in to premium pay and overtime. Anytime someone has to work overtime to get something accomplished it goes there. It is further broken down into subsets into the various holiday pay, benefits and leave taken and so forth. He said that he did not believe that he needed to spend a great deal of time going through this because it is fairly intuitive and once you read the item you know what it is. The next entity number he discussed was 72000, travel. The travel is \$15,000 and again you can see that \$15,600 on the schedule. That is the travel that gets the board members to and from the meetings; they are recompensed for that travel.

Ms. Burke asked Mr. Habeger what was non employee travel?

Mr. Habeger said that it was travel for the Commission members.

Ms. Burke said well what about entity number above it that is the one that ties in, 72000 and when you go down a few lines to 72120 a subset, non employee travel?

Mr. Habeger said that from his understanding, that without asking the accounting experts, that is for Commission members.

Ms. Burke said then we are counted twice.

Mr. Habeger said then they are counted twice. He sees her point because we get non-tax

reimbursements and non employee travel. He said he did not have answer for that today.

Both Ms. Burke and Mr. Habeger put a question mark by this item so as to remember to get that question answered at a later date.

Mr. Habeger said that the area that he wanted to spend some time on (entity number) 73000, contractual services, which is one of the items that the Commission was asking about in one of the letters to him. He said he wanted to go by line item by line item to talk about these. You have offsets that are generally the furthest to the right rolled up to the next offset which is a little to the left. Again, just for point, total Services are \$197,000, again you can find that on the schedule. What makes up Services? Non-Interagency Services. What makes up Non-Interagency Services? Now he is talking about subsets. This is not a complete add up. You can't add up everyone but roll up into the numbers to equal the 197,000.

- 73025 Education Services - \$2,095.00
  - (Subsets) 73026 Training/conference - \$1,425.00 - (staff or Commission members attend conferences or for education, registration fee, etc.)
  - 73029 Memberships – 670.00- (fees to belong to trade organizations such as the Association)
- 73050 Financial Services – \$923.41- (Mr. Habeger could not speak to this area because he was not 100% sure what it was. He put a question mark next to it to get clarification)
  - 73051 Accounting/Auditing
- 73075 Legal & Judicial Svc – \$8,562.00 - Mr. Habeger wanted to speak to this because one of the cost drivers is expert witness.
  - 73079 Expert Witness- \$7,590.00 -
  - 73082 Transcription/Record-
- 73156 Telecommunications - self explanatory
  - 73401 Long Distance-
- 73225 Delivery Services
  - 73227 Courier
- 73450 Advertising & Promos
  - 73451 Advertising
- 73650 Structure/Infra/Land
  - 73665 Rentals/Leases
  - 73668 Room/Space
- 73750 Other Services
  - 73756 Print/Copy/Graphics

Mr. Habeger's documents were mixed up during copying; therefore, he used a different cost detail sheet from fiscal year 2010 to pick up the conversion. He started with Interagency Services.

- 73002 Interagency Services- \$207,568.57-certain contractual agreements with other agencies
  - 73812 I/A Legal- \$1,514,826.14 – this is an amalgamation of all the times

Department of Law (DOL) has rendered services to us in getting a case before the Office of Administrative Hearing and advisement. This is a sum total of that activity. The way it works is that at the beginning of the year DOL through history and Corporations Business and Professional Licensing (CBPL) say we have so much activity, we sign a service agreement. They are going to service us when we ask them to help and they are going to bill us for that. That is what that activity is doing. They are required to help us meet our mandate and are required to keep exact billing notes so when an attorney general/part of their team works on a certain board they will make a note in their tracking system what hours they worked and what board that would go to. They will also do that for any case or opinion that they are working on for the Real Estate Commission. At the end of the month they will send us a huge billing summary and detail. Our accounting staff will go through to make sure it is allocated in the correct place. When the attorney general office is fully staffed there are four attorneys that assist us with all our activities. We have 55,000 professional licensees and there is a lot of activity going on and it takes a four member team to keep those investigations going, if required.

Ms. Burke asked when the AAG is fully staffed do we have an AAG that is specifically assigned to the Real Estate Commission so that they can become experts in real estate law?

Mr. Habeger said yes and no. He said that the way the system works is that he works with his counterpart at the AAG office and he will ask for assistance. He said one of the things that he is trying to do as a cost control measure because when he came on board he looked at this activity and he realized that his legal bills were a million dollars across the board. He did not want all of his people picking up the phone and calling our attorneys unless they have gone through a clearing with senior staff so that we could help control that activity. Going back to the question asked, he said if something is new (this was the policy that was set internally) and it comes through the system, he sends it over and asks for help from the senior attorney. There are occasions when senior staff can do this but at this point in time, the junior staff cannot. A new case will develop, after that case is developed if junior staff needs help (investigations should have the same protocol but he is a little bit more lenient with them because there are times they are working an investigation and they need that legal help) they can pick up the phone and speak to that attorney. The attorneys are assigned on the AG side based on availability. However, there are specialists. One AAG, Gayle Horetski, became a specialist on a number of professions and she was the go to person for those. Due to her retirement, that is why they are not fully staffed yet. As he understands they are to bringing somebody onboard but no confirmation that her replacement has been found. Once that gets established maybe that replacement person will become a specialist in real estate or another profession and then they become that go to person. So that is why it is yes and no.

Mr. Habeger went on to speak to Hearing/Mediation – 73821 for FY 2010.

73819 I/A Commission Sales

73821 I/A Hearing/ Mediation - \$55,589.31 – when a case matures and it has gone from the complaint side of things and cannot get an agreement between a



Commission or Board and the licensee, it matures to the point where it goes before a hearing officer. The Commission pays for that time for that officer to hear that case. In this case it is the same system, we have a reciprocal agreement, they tell us how much it will cost and we ask them for their services, they bill us for those services, we watch the billing sheet and assign that out to the various/appropriate board activities.

74000 Commodities

74200 Business

74229 Business Supplies – paper, folders, supplies for the board, etc.

74650 Repair/Maintenance

74693 Signs and Markers

Mr. Habeger went on to the next document, CBPL Expenditure Summary for Fee Setting, which provides detail for the Division's general administrative activities or indirect cost for discussion.

CBPL Expenditure Summary for Fee Setting –

Mr. Habeger said that looking at this sheet we will see again personal costs. Anybody that does not belong specifically to a Board, Commission or business licensing piece gets rolled up in this general pool. That would be himself, the Director, or our accounting team because they are not dealing with one Board or Commission. It is pretty cumbersome to keep track of the bills as they come in and positively account for that time so they do not attempt to do that.

71000- Personal Services – we have 84 folks in our Division and not all for them are positively keeping their timesheets and he is one of them.

72000- Travel- there is a certain amount of travel that the Director does to keep the Division running as well as Sara Chambers, the Program Coordinator and Misty Frawley, the Administrative Officer I. Anytime we travel for business or state purpose and it does not line up with a specific item it goes into this general cost pool.

73000- Services- most are self explanatory

73157- Television-\$424.88- we buy some cable time during the legislative session. That TV is in Mr. Habeger's office during the legislative session when things are happening and there are bills that he has to pay attention to so that he can stay on top of them. That channel is on and we are paying for those cable services. It is only happening during the months of the session then it goes down again but it is in there.

73421- Fuel-\$1,359.43- our investigative team has to get on the road, they have to do interviews. We have a couple of leased cars and this pays for those. We do not try to figure out specific miles for a specific board.

73811- I/A Building Leases- \$336,783.52- we lease our space from the State of

Alaska. So we are paying for the lights, heat, square footage, most of that goes to upkeep, maintenance and all the things that are required to help keep the those buildings viable.

73979- I/A Mgmt/Consulting- \$1,172,795.00- the way the state accounting systems works is that the Department of Administration is responsible for keeping track of all the state money. The Department of Administration have servants, if you will, and they have administrative service groups in each of the Departments that help them keep track of the money, follow the procedures and have pretty tight accounting standards. What this Management and Consulting piece is, it is all that activity, the software, computers, storage systems and personnel. So we are paying a portion of that to support all that accounting activity. Also included in that is the support of our management team. Above him is the Commissioner's office and there is a certain piece of that we pay to support that activity. It is a pretty substantial piece of the pie but it's supporting that branch of government.

Mr. Habeger said to the Chair and Commission that this was his report and his best shot to answering their questions in their letter.

Ms. Burke asked Mr. Habeger a question regarding Management and Consulting. She asked if it is still the case that the Commissioner has no budget that they in fact are revenue and expense neutral because all of their costs are pushed down. Is that still the case?

Mr. Habeger said that he thinks that is the case but he is not a hundred percent sure about that.

Ms. Burke said that would help explain why this is such a large number because we have everything above us.

Mr. Habeger said that Department of Commerce, he was unsure of the exact number, is one of five Divisions and each of those Divisions has a piece of this whole pie.

Ms. Burke asked if the Director's costs were pushed down. Is that correct?

Mr. Habeger said that was correct.

Ms. Burke asked are we as a Commission treated the same way as the Administrative portion of your Division. We are not employees but we do have some employees. Is there a differentiation between how a Board or Commission is treated than any other administrative duty within your Division?

Mr. Habeger said that from the stand point of certain pieces of your service to the state you are considered an employee, for example, travel. You get reimbursement for travel as an employee would. You have a few more options on whether you pay forward and how you get reimbursed but by in large you are treated like a state employee. You also have certain

privileges because of your service. For example, let's suppose that you come to the point where your Executive Administrator decides to move on, we are in a recruitment phase and you want to be at the table. You can be classified as an employee for the interview processes, so on and so forth.

Ms. Burke said that she assumed that each one of the functions within your Division had a budget. We have never been aware of a budget and we have repeatedly asked for it. Are all the Boards and Commissions functioning without a budget?

Mr. Habeger said yes.

Ms. Burke asked could he tell her why?

Mr. Habeger said because he has not implemented it yet. He cannot tell you before his time why it is the way it is. He could say that as funding comes down to us from the legislature it is essentially broken down into four components. We will get a large chunk of money; 60 percent of our program costs will be personal services. The legislature recognizes that, they say this is what you are getting for that. This is what this document does it helps us establish those figures. They go into travel, contractual services, equipment/commodities. They will tell us, as a Division, what we can spend. He said the way he understands it, again he said he has not tried to figure out what his predecessors have done, and he said he is trying to take it to where he thinks it needs to go. He said one of his goals is to get your executives educated or a licensing examiner that may have a board educated enough so that they know the impact of their decisions and they know the impact of his decision. So that at some point in time you can say how are we doing, Sharon, on personal costs. He said he has made poor attempts to getting that information to them on travel. Travel was one of the first issues that they all encountered on how to control this. Now the reason for that is in the line item that the legislature has been handing down, we had \$400,000 a few years ago, it went down to \$350,000 and he believes this year it is \$330,000. Trying to manage all your in-state activities and all your out of state activities is a difficult thing to do. Particularly when every year you tell me what you want to spend on travel and if he looks at everyone's request on all 20 of the boards it is \$550,000. He said he has a hard time trying to make the resource match the requests.

Ms. Burke said that she understands and appreciates his dilemma but she said, as he knows and because he has helped them, the Commission had no idea what was going into this line item. They were finally able, with his help, to gain read access for the recovery fund. They still do not have read access to the REC items. She said that they are trying to help. She said that she believes that they have demonstrated that they are trying their best to control costs but she said that they have to know what's going in there. She asked Mr. Habeger if he foresees a time when the Commission will have input into the Division's planning.

Mr. Habeger said that his approach to the Commission or Board is that they are in partnership. In order for us to move the State forward in the direction that they want it to go is that he will need to be more transparent with information and he has to be willing to sit down and dialogue with you. He said this is a step in that direction. He does not believe that the information is at a point where he can get them all the data that you need. He said

that is one of his goals. He said that he had two goals that he stated to his superiors this year; he is working on investigations timeliness and accuracy and getting that group so that they are responsive and closing cases quicker. All those things that legislative audit says are one and two. The second part of that is financial information that is useful for managers and you are managers of your program.

Ms. Burke said thank you for the micro look and this is something that we have never had; this is great. She said now they have to get down to some more detailed work. She said that when her and Sharon first met with the administrative group and were asking questions it became clear to them that there was not a understanding of some of their other functions for example that the fact that the recovery fund had replaced the surety fund. They found that there were a lot of charges going in that were not provided by statute and they were able to get most of those corrected but they still have gross numbers here. Yet there are costs that are being picked up by other functions that we are responsible for and by statute we are responsible for that recovery fund. Maintaining it at the required statutory level and making sure only those things that are appropriate get charged into it. And that was not the case. They also found that the surety fund was continuing on as if there were two funds when we only had one but the role had completely changed. If we don't have access to that information, this misallocation or mischarging will put us in a situation of violating the code and we don't even know its happening. She said she is going into the details just to try to make sure that they don't think the Commission is just being petty about this, this is critical. These numbers that they have here have been grossed up and the recovery fund is picking up some of these costs. She said that this has not been corrected. She said that we need to work together so that the people doing this know what we are doing and know what is in statute that can and cannot be done.

Mr. Cole said that it is important to distinguish that Mr. Habeger has been in his position for 14 months and within the last five years they have been through three Directors and a lot of their complaints and concerns have to do with issues that were in place prior to him taking his position. He would like to thank him for his cooperation that they have experienced with him within the last 14 months and they know it will continue. To Marianne's comment, one of the concerns that the Commission has, their biggest frustration, is that that they know for a fact that over the last six years that the Commission has not been given good information, they have not been given correct information and in many cases they didn't get any information. So what they have asked for repeatedly was a timely accounting of the costs they are responsible for and it appears that they are responsible for a small portion of what total costs are being allocated to us. He said that they want to be sure that the other costs that are being allocated to the Commission are truly theirs. He said that Mr. Habeger believes that the costs being allocated to us are really ours but that has not been the case. There have been other issues that we have not been credited for revenues that we received and did not show up in our coffers. Because of these past issues prior to your tenure we have no confidence in the system and he thinks it is legitimate on their part. That is why the Commission has continually asked for an accounting of exactly where we are, how we got there and how are we going to move forward. He said that he thinks that no one in the room would disagree that if the Commission is carrying more costs because of their industry they will pay their fair share but they want to make sure that it is their fair share. He said it was also

reasonable to say it was a shock to everyone to go from a fee of \$275 to \$685. Shock was a mild term. That is why we are sitting here asking for the numbers. He appreciates Mr. Habeger taking the time to go into this, most of us are business people with accounting systems, charts of accounts and understand how this all transpires. He said the real concern here is we just want to make sure that we are on the right path today to seeing transparency in terms of costs being allocated to us. And based on what Mr. Habeger said, it looks like they will be seeing that hopefully at the December meeting where we can sit down and have a discussion about this which will be open forum for public comment and they will have something for us.

Mr. Habeger said that one of the things he did within his first year with the organization was change senior management. He said what he means by that is that when he got here he saw a system what contained bottle necks and information hoarding and he didn't like it. So he flattened that line out but it put a burden on him to keep track of that extended management team. He thought it was necessary so that we could begin to break down these barriers to start doing business. He said he considers the Commission members and all the state's 55,000 licensees as business partners. If he can release you to do what you do best, which is employing people and getting the money moving in the economy, he thinks everybody is happy when you are doing what you are supposed to be doing. He does not want to be the stumbling block to that. However, we have a young team. Ms. Frawley, for example, who on the phone responded by getting information to him as quickly as she could down here on the table, is new to her position and he has confidence that she can get the work done but she is growing into that position. Just that the Commission understands that we are in a transition phase, as you require things from us we will work through them and he believes that if we come to the table and keep the issues the issues and work on those we will be successful.

Mr. Cole said that he appreciates that and they agree with him completely.

Ms. Burke said that at least for her and she believes she can speak for the other Commission members; they are more than willing to spend some time with your people to make sure they understand those things which are anomalies to the real estate licensee like the recovery fund, so that we can avoid some of those problems. If they understand what it is upfront, they will do it right and she has confidence in that.

Mr. Habeger said he thinks they did make progress on that once they got JoEllen involved and others. He thinks they are chipping at the iceberg.

Mr. Cole said that based on the numbers they have and questions that have come up, even from Mr. Habeger, is it reasonable that you are going to take another look at this? He said that it was important for everyone to understand that the number that Mr. Habeger proposed he felt initially that it was probably a high number but he felt that he was obligated to propose a higher number because if he proposed a smaller number they would be locked into that number if they had later found out it was erroneous, is that a fair statement?

Mr. Habeger said, not quite. He said when he did the analysis looking at the current

information as they had it, revenue and expense report. Looking at the activity that we had to carry for the next biennial cycle, looking at that expense side trying to project that as lean as they could. It was X amount of dollars. One of the things that he found that the Commission was correct on and he was not, that is why it is important to communicate which they did, was is in the annual report that he received there are licensing statistics and the number on that was 2246. So he through ground truthing that and said are these our licensing numbers and the comment that came back to him, and he didn't ask Sharon specifically and that was his mistake, was yea that is a good number. So in hindsight now that he asked the question a little bit differently based on the public comment he sees that there are inactive licenses and inactive licensees pay the fees and so now that number does need to be bumped up. To get to the point, did he believe that the increase would cover all costs and we can do things, what he has come to call the Cadillac program? The answer to that was he said was that was the number he thought was required. Now, based on comments is there room to move? He said he believes that the real estate industry has spoken well and he has to consider those comments.

Mr. Cole asked a couple of other questions to Mr. Habeger. Mr. Cole said that the Commission had a fee reduction for the last renewal of \$75.00; this was prior to Mr. Habeger taking his position. As we move forward is the Commission going to be queried as to what their thoughts are whether we should have an increase or decrease? They did have a query to the increase this time but they were not sure why they had the decrease the last time.

Mr. Habeger said that he could not speak to his predecessors, he does not know why. He said they probably have their hunches and he probably has his. One of his goals is to get back to 08.01.065 which says we shall consider the boards input. He explained why he didn't do it how he thought it should be done which was to get the board involved into a conversation long before we go out for a regulatory proposal. He said hopefully in a year from now all the boards can say they have been talked to.

Mr. Cole asked that what he sees is that approximately 25 percent of our personal services costs have to do with investigators. We have no control over that obviously and the trend and cost of investigations is going up. Do they have a budget, are there constraints, have they been mandated to cut their budget, to control their costs?

Mr. Habeger said the answer to that is yes and no. Have they been asked to control their costs, yes he has done that. But, the other side of that is what the Department requires of us and that little segment of our responsibility of public protection. If you have listened to Commissioner Bell talk to the legislature, our Division is under that public protection mantra. So there is a certain amount of, can a public member pick up and say I have been harmed and hope to get some kind of response from the state? The answer is yes, we want to preserve that; we want to preserve that. Can we control all of that and yet be responsive to that person that wants to get an issue solved. It is a difficult balancing act, but as best as we can we will work with each of the Boards and Commissions to try to find a system that accomplishes all of our goals.

Ms. Burke said that throughout the country most Boards and Commissions have a

consumer advocate or a consumer services function. You don't call an investigator you call a consumer person. There are many times when someone calls in truly upset but it can be something that we have no control over and if there is a function that they can be routed to the correct person you can cut down on the number of cases dramatically. She said she asked the question early on why there were so many cases and was told that it was a federal law that every time they got a phone call from someone they had to open a case. She asked for the citation for that and it became clear that it had nothing to do with a federal law because federal has no control due to interstate commerce but it was an internal function. Are you open to suggestions on how we can meet our consumer protection in a more efficient way than what we are currently doing?

Mr. Habeger said absolutely! As long as we recognized that this is a state agency and there are certain protections we all must abide. Making sure the public has access, making sure we are answering those questions in a timely basis and driving efficiency into an organization like that, he said he is all in favor of that.

Ms. Flyum asked if in the Administrative costs is the cost of overhead for business licensing and corporations included in that and what percentage of the front desk, director's salary and manager's salary are we paying for or is it general staff that supports the entire Division?

Mr. Habeger said that one of the exercises that he was talking about was Phase I where we reallocated a certain percentage of my costs, all those general costs back to business licensing. Phase I was completed and it's included in your current FY10, they didn't go back all the way, FY 10 and 11 revenue and expenditure sheets. That correction was 15.94%, if he remembers right, reduction to those indirect costs.

Ms. Flyum said so the business and corporation programs have been taken out of the equation and are no longer being charged to professional licensing?

Mr. Habeger said that is correct, they have separated those.

Ms. Flyum said so when you are looking at your salary how do you allocate it; how do you account for that? Do you set aside a portion for business licensing? How do you decide what portion the Real Estate Commission would pay?

Mr. Habeger said that his salary goes into that general indirect cost pool. They have taken the time to go through, that is Phase I as he just explained, so 16% of that general cost pool is allocated to business licensing and corporations. The remainder of that general cost pool is further subdivided based on the number of licensees. For example, if there are 50,000 licensees and 10,000 of those are nurses they would have 20% of that remainder and it is broken down to each of the programs, 40 programs, and each is based on a licensing unit, a share of that cost.

Ms. Flyum said do they take into account that some licensing programs, although may have less licensees; they may need more support than other licensing programs? For example, there are 4 personnel spots taking up facility space for the Medical Board versus three for

the Real Estate Commission. Although medical board has fewer licensees, we would pay a greater portion of that.

Mr. Habeger said that is actually in Phase II and they think that thought has merit. He said this is why they are going out with a RFP in the near future to get somebody who is much more of an expert than they are at this and help them figure that out. They will be expected to come in and look at their books, their personnel practices, positive timekeeping and find a reasonable and equitable cost allocation system as they can find. Yes, it is one of the goals.

Ms. Davis asked what the process is at this point, surely you have heard from enough licensees, to come up with another figure that might be more acceptable to the real estate community and what happens to the difference in the deficit?

Mr. Habeger said the process is that he still has to finish looking through all the comments. He said he has a stack that he is sure has grown since he has been here for the remainder of the week. He said he will go through those, as he is required to do, and look for any more nuggets that might help us, when he says us, this decision is now going to be made by himself, the Commissioner's office and also other public officials that want to be somewhat involved. So your comments have generated a wider audience of interest and so they will figure it out. He said he is not sure precisely when they will get there.

Ms. Davis asked if the Real Estate Commission will have any input into it other than the discussions that they've had.

Mr. Habeger said no you are having and have had your opportunity and he has no doubt that the State of Alaska has listened to you but it is closed now.

Mr. Cole asked about the expectations. He said the next REC meeting is December 7, 2011 to be held here at the Atwood Building. Is it reasonable to think that we will have a new number, new and additional information at that time that we can review, talk about and inform our members with?

Mr. Habeger said that it is reasonable to conclude that a decision will have been made by then. The reason for that is because they still have to get you licensed by the end of January, we still have to go through the AG's office on the final product before it goes to the Lt. Governor and we still know that it is 30 days after the Lt. Governor signs it. So they have these time constraints so the decision will have been made by the December 7<sup>th</sup> Commission meeting.

Mr. Cole asked the Commission members if they had any additional questions or thoughts for the Mr. Habeger. There were no additional comments.

Mr. Cole said that he appreciated Mr. Habeger being there due to his busy schedule. He went on to say that this was a very important issue to a lot of people in Alaska, and to the real estate industry. The real estate industry creates a lot of revenue so it brings a lot of attention with this big of an issue. He appreciated his participation, his comments and the



Commission looks forward to what he has to offer with new numbers and new information at the December meeting.

Mr. Habeger said thank you.

**On a motion duly made by Ms. Burke, seconded by Ms. Swires, it was  
RESOLVED to adjourn the meeting.**

**All in favor; Motion passed.**

Meeting adjourned at 11:45 a.m.

Prepared and submitted by Nancy Harris.

Approved:

  
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Bradford Cole, Chairman  
Alaska Real Estate Commission

Date: 12/7/11