

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

**REAL ESTATE COMMISSION
MEETING MINUTES**

June 17-18, 2010

By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.62, Article 6, a scheduled meeting of the Real Estate Commission was held June 17& 18, 2010, at the Springhill Suites by Marriott, Discovery Room, 575 First Avenue, Fairbanks, Alaska.

Thursday, June 17, 2010

Call To Order, Agenda Item 1

Chairman Brad Cole called the meeting to order at 9:00 a.m.

Roll Call, Agenda 1(a)

Members present:

Brad Cole, Associate Broker, 3rd Judicial District, Chairman
David B. Somers, Broker, Broker at Large, Vice Chairman
Gene DuVal, Associate Broker, 4th Judicial District,
Chris Swires, Associate Broker, Broker at Large
Marianne Burke, Public Member

Staff Present:

Sharon Walsh, Executive Administrator

Excused Member:

Nancy Davis, Broker, 1st Judicial District

Staff present via teleconference:

Margo Mandel, Division Investigator
Michele Wall-Rood, REC Investigator
Nancy Harris, Project Assistant

Guests Present:

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Peggy Ann McConnochie, Broker & AK Assoc. of Realtors Liaison
Lori Schooley, Broker, Fairbanks
Jason Gazewood, Attorney for Ms. Schooley, Fairbanks
Henry Bartos, Broker, Fairbanks
Jerry Royse, Broker, Fairbanks

Approval of Agenda, Agenda Item 1(b)

The Chairman moved agenda item 10(e) to hear after item 2 and agenda item 11 (c) & (d) will be addressed after item 3. The Commission members reviewed the order of the revised agenda.

On a motion duly made by Somers, seconded by Swires , it was

RESOLVED to approve the agenda as revised.

All in favor; Motion passed.

Public Comment, Agenda Item 2

Peggy Ann McConnochie addressed the Commission as the Liaison for AK Association of Realtors. She presented the Commission with information from the National Association of Realtors and their pursuit of an accredited Realtor program/degree through a university either in Texas or Chicago. She will continue to provide the Commission with updates on this new education program being explored by NAR.

Record reflects Commission member Gene DuVal's arrived at 9:11 am.

License Surrender of S. Nunes, Agenda Item 10(e)

On a motion duly made by Burke, seconded by Swires, it was

RESOLVED to go into Executive Session to discuss surrender of Sandra Nunes license per AS 44.62.310 (c)(2).

All in favor; Motion passed.

Into Executive Session

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Out of Executive Session.

The Commission called Investigator Ms. Mandel regarding the license surrender of Sandra Nunes. Ms. Mandel stated Ms. Nunes was disciplined in a 2005 case where she admitted to committing loan fraud. During her license suspension, she completed another real estate transaction. In a lawsuit recently filed she is alleged to have committed loan fraud in another real estate transaction.

On a motion duly made by DuVal, seconded by Somers, it was

RESOLVED to accept the license surrender of Sandra Nunes.

All in favor; Motion passed.

Lori Schooley, Agenda Item 3

The Commission goes into Executive Session per AS 44.62.310 (d)(1) to discuss OAH 09-0622-REC the Lori Schooley case.

On a motion duly made by Burke, seconded by Swires, it was

RESOLVED to go into Executive Session to review agenda item 3.

All in favor; Motion passed.

Mr. Gazewood requested, on behalf of Ms. Schooley, that the Commission deliberate her issues by staying public.

Judge Kennedy provided input to the Commission and said the Commission could deliberate in public or they are entitled to do so in private. He went on to say there are good reasons for that, you might express your views frankly to each other. One thing a board/commission can do is go into executive session and then determine if they want to hear from the licensee. The process allows for it either to be opened or closed.

Chairman Cole tells audience the Commission will go into executive session and discuss Mr. Gazewood's request.

Into Executive Session

On a motion duly made by DuVal, seconded by Swires, it was

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RESOLVED to come out of Executive Session

All in favor; Motion passed.

Out of Executive Session

On a motion duly made by Swires, seconded by DuVal, it was

RESOLVED to accept Judge Kennedy's proposed decision, case OAH 09-0622-REC Lori Schooley, and the \$4,000 fine as written.

All in favor; Motion passed.

Old Business, Agenda Item 11(c) & (d)

The Chairman elected to move on with other agenda items and not review item 11(c), motion for reconsideration in the J. Bevington case and 11(d) Investigative Procedures.

Approval of Minutes, Agenda Item 5

December 10, 2009, March 17-18, 2010, April 22, 2010 Teleconference and May 27, 2010, Teleconference, Agenda Item 5(a-d).

Mr. DuVal requested that the approval take place tomorrow, June 18th, when he has had more time to review. Mr. Somers and the Chair, Mr. Cole, discussed the verbatim meeting minutes and the necessity of certain things requiring verbatim notes while the bulk of the meeting isn't necessary to record verbatim. Mr. Somers indicated that this is a ridiculous thing to do because we have a staff person that can't handle that part of their job properly. Mr. Duval asked, "what would happen if the Commission refused to accept the minutes from that person?" Ms. Walsh said that she would have to do them. The Chairman said the Commission can refuse to work with that person. He also said that additional issues were changed in the reimbursement of expenses without going back and getting authorization from the member. Mr. DuVal also stated that bad information has been given to the public and licensees. Mr. Somers said when someone can't operate as a licensee because bad information comes across the desk until they come and find us, it's managing people and we can't do that. Chairman Cole suggested writing a letter to the Commissioner/Director on behalf of the Commission indicating that the Commission refuses to work with her any further. Is everyone in agreement that the Chairman do this? Then it will happen.

Mr. Somers: We can't deal with this (verbatim meeting minutes) in a timely manner.

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Mr. DuVal: we have not been able to approve the meeting minutes for over 7 months now. There is no public record.

Chairman, Mr. Cole: The Commission will pass on adopting the meeting minutes for December 10, 2009 and March 17-18, 2010.

Surety Fund Cases, Agenda Item 6

Surety Fund case Humphrey v. Madden, S-10-003, Agenda Item 6(a)

On a motion duly made by DuVal, seconded by Somers, it was

RESOLVED to accept Judge Friedman's proposed decision in surety fund S-10-003 and a finding of no fraud, deceit or misrepresentation by licensee Wes Madden.

All in favor; Motion passed.

Surety Fund case Keirn v. Giddings S-10-004, Agenda Item 6(b)

On a motion duly made by DuVal, seconded by Somers, it was

RESOLVED to accept Judge Friedman's proposed decision in surety fund S-10-004 and a finding of no misrepresentation by licensee Connie Giddings.

All in favor; Motion passed.

Surety Fund case Oden v. Garrison S-10-005, Agenda Item 6(c)

On a motion duly made by Somers, seconded by Swires, it was

RESOLVED to accept Judge Friedman's proposed decision in surety fund S-10-005 and a finding of no fraud, deceit or misrepresentation by licensee Linda Garrison.

All in favor; Motion passed.

Surety Fund case Mungle v. Paul S-10-001, Agenda Item 6(d)

On a motion duly made by Somers, seconded by DuVal, it was

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RESOLVED to accept Judge Hemenway's proposed decision in surety fund S-10-001 and a finding of no misrepresentation by licensee Shawn Paul.

All in favor; Motion passed.

Investigative Procedures

The Chief of the Investigative Unit for the Division, Brian Howes, addressed the Commission.

Mr. Howes requested that the Commission go into executive session to discuss investigations per AS 44.62.310 (c)(2).

On a motion duly made by Swires, seconded by Somers, it was

RESOLVED to go into Executive Session per AS 44.62.310 (c)(2).

All in favor; Motion passed.

Into Executive Session

On a motion duly made by Swires, seconded by Duval, it was

RESOLVED to come out of Executive Session.

All in favor; Motion passed.

Out of Executive Session

Motion for Reconsideration: J. Bevington , Agenda Item 11(c)

On a motion duly made by Burke, seconded by Swires, it was

RESOLVED to go back into Executive Session to discuss item 11(c) per AS 44.62.310 (d)(1)

All in favor; Motion passed

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Into Executive Session.

On a motion duly made by Swires, seconded by Somers, it was

RESOLVED to come out of Executive Session.

All in favor; Motion passed.

Out of Executive Session

The Assistant Attorney General, Robert Auth, addressed the Commission by summarizing the motion that he submitted to the Office of Administrative Hearings. The Commission will review and consider his motion for reconsideration in the Bevington decision. He stated that he thought the Division was given clear direction and authority at the February meeting from the Commission to suspend Bevington's license.

On a motion duly made by Swires, seconded by Burke, it was

RESOLVED to not reconsider the Motion to Reconsider the J. Bevington decision.

**All in favor: Swires, DuVal, Burke. Those opposed: Somers.
Motion passed.**

Mr. Somers: Point of order, will this motion hold up if the motion was made not in the affirmative or can it be challenged? We might need to call this motion out of order and have a new motion made.

Chair: Call the motion out of order and provide for a new motion.

On a motion duly made by Somers, seconded by DuVal, it was

RESOLVED to reconsider the decision in OAH 10-0110 J. Bevington.

**All in favor of adopting the motion: Somers.
All those opposed: Swires, Burke, DuVal.
Motion did not pass.**

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Licensing Report, Agenda Item 9

Licensing Statistics, Agenda Item 9(a)

Mr. DuVal asked the Chair if the Commission needed to contact Ms. Smith or if they could address the issue and have Ms. Walsh answer any questions from the members regarding the licensing report.

Commission members reviewed the licensing statistic report as submitted.

Ms. Burke asked why the numbers don't foot? Ms. Walsh also had the same question for Ms. Smith. In addition, why is there information for inactive licensees with a 1-31-2010 expiration date listed on the statistical report? Why do we need that "old" information on the report? Ms. Burke questioned the Licensing Examiner's abilities to obtain accurate numbers from the database and enter them on her statistics report correctly. Ms. Walsh indicated that she feels comfortable with the numbers presented and that she will ask Ms. Smith for an explanation.

Regulation Tracker, Agenda Item 9(b)

Mr. DuVal asked about 12 AAC 64.073, the Recovery fund fee increase regulation project. Mr. DuVal stated that regulation project 12 AAC 64.570 is still out there and questioned 12 AAC 64.112 (c) registration of business name. Mr. DuVal was reminded that the Commission dismissed proposed changes for 12 AAC 64.112(c).

Executive Administrator's Report, Agenda Item 8

Surety Fund Tracker FY09 & FY10, Agenda Item 8(a)

Ms. Walsh presented the Commission with her report on the Surety fund tracker. Questions were answered on claims filed in FY2010 and FY2009. As of July 1, 2010 the claims will fall under FY11.

Revenue & Expenditure Report, Agenda Item 8(b)

Revenue & Expenditure report was reviewed. Ms. Burke requested the details on the indirect (90.2K) expenses for "Contractual Services" account 73000. Ms. Walsh will email that information when she receives it from the Division accounting staff in Juneau. Ms. Walsh posed a question for the Commission, do fines that are paid by licensees go into the General Fund or do they come back to the Commission as revenue? Ms. Burke answered that fines paid go into the General Fund.

Recovery Fund (Surety Fund) Balance 3rd Qtr, Agenda Item 8(c)

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The Commission reviewed the Surety Fund balance report for the 3rd quarter in FY10. They will wait for the distribution of the 4th quarter report as soon as the Juneau Administrative Services accounting staff completes the report.

New Business, Agenda Item 12

Subdivision Advertising Question, Agenda Item 12(a)

On a request from a Broker via email a question was asked regarding the advertising for subdivided land. State of Alaska does not allow for it. This activity depends on the borough or municipal government where you reside. If it allows you to enter into contracts then it's okay, if they have not then it's illegal for them to enter into contracts. Municipality of Anchorage allows licensees to take reservations if it's an approved preliminary plat and it would be entered in as proposed legal description and therefore can take reservations only. Wasilla doesn't allow for this to take place. Reservation money would go into the Broker's trust account. Fairbanks North Star Borough allows for final plat approval to enter into contracts. If the municipality or borough doesn't allow for that then you can't enter into a contract or take reservations.

Chairman, Mr. Cole indicated that they challenged this issue in Wasilla and they were told if the State says you can't then the municipality or borough can't legislate over that.

Question on Brokerage Signage, Red Bell, Agenda Item 12(b)

Mr. DuVal discussed item 12 (b) Red Bell real estate brokerage. Mr. DuVal stated that an out of state broker is renting an office space and appears to have never set foot in the office. It appears that it is currently used as storage space. A license is hanging in the storage space. Mr. DuVal sent the Broker a certified letter because one of the requirements is that you have to receive mail at your place of business, 12 AAC 64.110g(2) and 12 AAC 64.127. The broker of Red Bell Real Estate is trying to open a virtual office web site with Alaska MLS. This may need to be passed on to the investigator.

Mr. DuVal will follow-up with more information.

Jerry Royse interjected and indicated that the Commission should review land registration, in particular the Uniform Land Sales Practices Act 34.55.06-42. Mr. DuVal asked Royse to bring it with him tomorrow. Ms. Burke indicated that state law cannot be trumped by any means. Mr. DuVal then stated that what Fairbanks and Anchorage are practicing may be wrong. Chairman, Cole, asked that Mr. DuVal and Mr. Somers research it tonight and bring the information back to the meeting tomorrow.

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Email from Director, Lynne Smith, Agenda Item 12(c)

Travel reimbursement receipts must be the original receipts submitted. The IRS requires that Commission members and state employees submit originals. Thus, avoiding any “double dipping” for reimbursement of expenses and deducting them as a business expense.

Listing Agreement Definition, Agenda Item 12 (d)

Mr. DuVal addressed this issue. Mr. DuVal stated that there is no real definition of a listing agreement. He said the Commission should probably look at other states to see what they have as a starting point. Mr. DuVal drafted some language for the Commission to consider:

A listing is a personal services contract or agreement signed by real estate brokerages and property owners, whereby the listing licensee agrees to secure a buyer or tenant for a specific property at a certain price and terms.

Advertising a property in a publication or web site does not constitute a listing unless the person doing the advertising engages in any of the activities listed in AS 08.88.161, for which a license is required, except as otherwise specifically provided in this chapter (08.88.900) To hold out to the public that an advertisement of real estate is a listing constitutes a licensed activity. 08.88.341

Mr. DuVal asked Peggy Ann McConnochie for her input on this issue. She suggested this language be reviewed by Investigator Michele Wall-Rood for consideration and input since she requested a definition from the Commission. Mr. DuVal will email drafted language to Wall-Rood after the meeting today.

On a motion duly made by Burke, seconded by Swires, it was

RESOLVED to reconvene until tomorrow morning.

All in favor; Motion passed.

Friday, June 18, 2010

Call to Order, Agenda Item 4

Chairman Brad Cole called the meeting to order at 9:07 a.m.

Roll call, Agenda Item 4(a)

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Members Present:

Brad Cole, Associate Broker, 3rd Judicial District, Chairman
David B. Somers, Broker at Large, Vice Chairman
Gene DuVal, Associate Broker, 4th Judicial District,
Chris Swires, Associate Broker, Broker at Large
Marianne Burke, Public Member

Staff Present:

Sharon Walsh, Executive Administrator

Excused Member:

Nancy Davis, Broker, 1st Judicial District

Staff present via teleconference:

Michele Wall-Rood, REC Investigator
Nancy Harris, Project Assistant

Guests Present:

Peggy Ann McConnochie, Broker & AK Assoc. of Realtors Liaison

Education Report , Agenda Item 7

Education Statistics, Agenda Item 7(a)

Review of statistics report provided by Ms Harris. Currently there are 6 pre-licensing & broker upgrade courses; 191 ECE courses; 23 DCE and 36 Post licensing courses; there are currently 252 courses and 9 new courses. There are 42 sponsors and 64 instructors.

Ms. Harris proceeded to advise the Commission of the CE audit conducted. 216 licensees were audited after they renewed by 1/31/2010. 210 have responded. 6 have not and 3 of the 216 were not in compliance with the continuing education requirements for renewal.

Instructor Certification, Agenda Item 7(b)

Ms. Harris presented a instructor certification issue. She said that instructor Roger Morris taught two classes in 2008. He taught when he was not certified at the time. Mr. DuVal asked Ms. Harris how many licensees were affected by his non-renewal of the course

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taught? Ms. Harris indicated 5 licensees are impacted. Mr. DuVal asked if Mr. Morris is now current on his instructor license. Ms. Harris said that Mr. Morris is now current instructor.

Web site Update, Agenda Item 11(b)

Ms. Harris explained to the Commission that the Best Practices and AREC current policies have been added to the REC web site and are listed under "Commission Information". Items directed by the Commission will be placed there after every meeting.

Renewal Form Changes Update, Agenda Item 7(c)

Ms. Harris discussed renewal form changes with the Commission. She indicated some of the changes to the renewal form include the word "application" because it was an issue in the last renewal. Ms. Harris also changed the fee, which she said may change before the next renewal. She also stated that there were some changes to the wording in the professional fitness questions and that the Commission will need to review, which they can certainly do at the September meeting. Ms. Swires asked Ms. Harris to explain an instructor that is permanent verses temporary. Ms. Harris said that temporary instructors are approved to teach for a 5 day period and then they expire. Many instructors that travel to Alaska ask for this type of status.

On a motion duly made by DuVal, seconded by Swires, it was

RESOLVED to approve courses taught by Roger Morris on 4/30/2008 and 6/17/2008, course #2410 be valid for credit for any licensee that took it.

All in favor; Motion passed.

Investigator's Report, Agenda Item 10

Statistics Report, Agenda Item 10(a)

Ms. Wall-Rood stated that during the reporting period 2/23/10 through 5/26/10 there are 59 cases opened and 30 cases were closed. Currently there are 139 opened cases and 32 closed cases. Two cases are presently at the Attorney General's office for pending litigation and three cases are being prepared for accusations by the Assistant AG. Ms. Wall-Rood stated that issues with renewals caused a huge jump in the Investigator's case load.

Phone Log, Agenda Item 10(b)

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The Commission members reviewed the investigator phone log as presented. The Commission members noticed that the number one call into Investigator Wall-Rood's office continues to be Landlord-Tenant disputes. Mr. DuVal asked Ms. Wall-Rood about the jump in calls regarding "failure to present offers". Ms. Wall-Rood explained that this was related to a couple different cases and the volume was the result. Ms. Burke asked the question about late renewal and the increase in the Investigator's case load. Ms. Wall-Rood indicated that it was approximately 40-45 cases she also told the Commission some boards impose a late fee. She said that she only considered opening cases on those licensees that didn't renew in a timely manner and were still listing property on MLS.

Consider Reinstatement of License for Jan Hood, Agenda Item 10(c)

On a motion duly made by DuVal, seconded by Swires, it was

RESOLVED to go into executive session to discuss investigations per AS 44.62.310(c)(2).

All in favor; Motion passed.

Into Executive Session

On a motion duly made by Somers, seconded by Burke, it was

RESOLVED to come out of executive session.

All in favor; Motion passed.

Out of Executive Session

On a motion duly made by Somers, seconded by DuVal, it was

RESOLVED to deny the application for Change of License Status for Jan Hood.

All in favor; Motion passed.

Off the record, the Commission members approved that the investigator, Ms. Wall-Rood, be allowed to travel to attend the ARELLO investigator workshop.

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Commission member DuVal stated that he would like the REC investigator to attend all Commission meetings in future.

Old Business, Agenda Item 11

Response to Stuart Bond, Agenda Item 11(a)

Ms. Walsh indicated that she spoke to Mr. Bond about having the Commission consider the use of commercial endorsements in licensure. It was explained that Alaska doesn't have the license population and that the Commission did not want to place limits on licensees in remote locations in Alaska where they may have had a few transactions a year.

Mail Ballots

Another item that staff was asked to look into was the use of mail ballots and if the option to table an action was necessary. Staff reviewed the Division's procedure manual and found that the option to table must be on all mail ballots sent out.

Approval of Minutes, Agenda Item 5, Revisited

Chairman Cole discussed with the Commission on the status of the meeting minutes listed on the agenda for approval. The opinion of the Commission is that they not be approved. The only meeting minutes now to be considered for approval are the April 22 and May 27, 2010 meeting minutes from the Commission's teleconferences.

Mr. DuVal pointed out that on the May 27, 2010 minutes, Chairman Cole is listed in the roll call as a Broker and it should be Associate Broker, and Marianne Burke should be in caps with a "B".

On a motion duly made by DuVal , seconded by Burke, it was

RESOLVED to accept with changes as indicated above the May 27, 2010 teleconference meeting minutes.

All in favor; Motion passed.

On a motion duly made by DuVal , seconded by Swires, it was

RESOLVED to accept the April 22, 2010 teleconference meeting

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minutes.

All in favor; Motion passed.

New Business, Agenda Item 12

Subdivision Advertising Question, Agenda Item 12(a), Revisited

Mr. DuVal and Mr. Somers based their input on experience of this type of activity on what is common practice in the North Star Borough. It varies in each municipality and borough in Alaska. It is therefore advised that a licensee seeking information on how to proceed in advertising subdivisions seek legal advice for their particular area. The licensees should also look at AS 44.55 which has some specific rules. Mr. DuVal suggested that the Commission members review other municipalities for instance, Anchorage, and report back at the next meeting. The Commission reviewed a postcard sent in to see if the advertisement on it was a licensing violation. Mr. DuVal stated he looked at it but wasn't sure what the scheme was. The consensus of the Commission was that there is not a licensing violation as presented. Mr. Somers stated that it could be just selling someone a list.

Approval of Minutes, Agenda Item 5, Revisited

December 10, 2009, Agenda Item 5(a), Revisited

Mr. DuVal asked that the December meeting minutes regarding the discussion on the best practice when completing the Consumer Pamphlet using teams in a brokerage office, be reflected in the minutes. After reading the minutes as presented today, Mr. DuVal indicated that if it weren't for being present at the December meeting he wouldn't know what the best practice was from reading the minutes. Mr. DuVal clarified for the record that his recollection was that the best practice was for every member of the team is to sign on the allowed line. Mr. DuVal pointed out that there are lines for the licensee, for each of members to sign in that space. This is to apply for every member of the team. Every signature is there and every member has the forms and if members change, then the form needs to be updated. Mr. Somers indicated that it was pointed out it would not be advisable to change the State form and sign below. It is a State form that is laid out a certain way. All names would be on the line for a signature. Mr. DuVal wanted to point out for the record that it needed to be clarified.

On a motion duly made by DuVal, seconded by Swires & Burke , it was

RESOLVED to adjourn the meeting.

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All in favor. Motion passed.

Meeting adjourned at 11:48 a.m.

The Commission adjourned until September 9 & 10, 2010 in Anchorage.

Prepared and submitted by Sharon Walsh

Approved:



Bradford Cole, Chairperson
Alaska Real Estate Commission

Date: _____

9/13/10