

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

**REAL ESTATE COMMISSION
TELECONFERENCE MEETING MINUTES**

July 23, 2012

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 July 23, 2012 at the Atwood Building, Room 1500, Anchorage, Alaska.

Monday, July 23, 2012

Chairman Brad Cole called the meeting to order at 10:00 a.m. at which time a quorum was established.

Agenda Item 1a

Roll Call

Members present via teleconference, were:

Brad Cole, Associate Broker/3rd Judicial District

Nancy Davis, Broker/ 1st Judicial District

Stacy Risner, Associate Broker, 4th Judicial District

Marianne Burke, Public Member

Christina Swires, Associate Broker/Broker at Large

Members Absent

Charlene Flyum, Public Member

Anita Bates, Broker/Broker at Large

Staff Present:

Beata Smith, Licensing Examiner

Guests Present:

Quinten Warren, Chief Investigator

Don Habeger, Director of Corporation, Business and Professional Licensing

Agenda Item 1b

Approval of Agenda

The Commission members reviewed the meeting agenda as presented.

On a motion duly made by Ms. Davis, seconded by Ms. Burke, it was

RESOLVED to approve the meeting agenda as presented.

All in favor; Motion passed.

Agenda Item 2

3rd Quarter Revenue & Expenditure Report

The Commission members reviewed, discussed and directed questions to Don Habeger, Director of CBPL, regarding a letter dated July 10, 2012, that outlined the recently completed Boards

and Commissions revenue and expenditure reconciliation project, per SB 160, and the future reporting process for CBPL.

Mr. Cole asked Ms. Burke if she would lead in the discussion for the Commission of the 3rd quarter revenue and expenditure report.

Ms. Burke said that Mr. Habeger provided the cover letter with the schedule of revenue and expenditures that was addressed to the Commission and she had a couple of points she would like to address.

Ms. Burke's first question for Mr. Habeger was that in the second paragraph of the letter, he said that the "Boards and Commission's carry forward balances will be made whole as of June 30, 2012". She said she was not sure if that was intended to mean made whole now or it will be made whole at some later time, because he refers to "will serve as"? Ms. Burke asked if Mr. Habeger could clarify that for the Commission.

Mr. Habeger said that this year's SB 160, page 171, the legislature, through intent language, appropriated 3,439,800 million dollars. The intent language required that the Division take that 3.4 million dollars, and proportionally distribute to each of the licensees, essentially, as an acknowledgement that they overpaid their fair share of the general account pool fund that they *had been distributing to. In making some of these corrections and now distributing that to all programs within the Division, which is business licensing and corporations, and making those corrections and going back and reconciling all this data, we finally got to the point where we could take that 3.4 million and look to each license program over a ten year period, figure out what their portion was and put that back into the programs. Using that terminology "made whole", in compliance with the intent language, is a signal that the Division has done that work and that the 3.4 million has been distributed and the programs, as of June 30, 2012, have that money distributed to them.

Ms. Burke asked that when you say "Each licensee into the program", by this you mean it would go into the cumulative surplus or deficit of June 30?

Mr. Habeger said that was correct.

Ms. Burke spoke to the Commission regarding the contents of the letter and presented her understanding of the revenue and expenditure report.

1. The Division has standardized the process for review and reconciliation and this will take extra time (an additional 3 months after the close of the fiscal year).
2. Based on this new standardized process, the Division may have more meaningful data as a basis for financial decisions. The decisions to be made by the Division, she assumes, would mean the indirect allocations.
3. In this review, we had no control over what was going on for fiscal years 2010, 2011 and 2012. In FY 2010, there was an unexplained decrease in fees by \$100 per licensee. The Commission has been unable to find out why this happened. As a result, there was approximately a \$200,000 loss out of the fund balance just from that decision.
4. There was a significant increase in the contractual amount, which doubled. Ms. Burke went back over the past nine years and averaged out what the contractual expenses had been and it came to about \$91,000. One explanation of this increase was investigations. In Ms. Burke's opinion, there were inappropriate investigations that were not under the

guidance or consult of the Commission. Ms. Burke said she has asked over two years for an AG's opinion to determine (a misunderstanding/different of opinion) who can initiate an investigation

5. In Fiscal year 2011, there were two accounts that were significant. An increase of well over \$100,000 in personal services and contractual (investigations).

Ms. Burke stated that the problems with the Commission's financial position, as the members have discussed many times, is outside of their control. The Commission must move forward to gain control over these issues; especially investigations, exercising control via a budget in which the Commission has input and comply with the statutory requirements with regards to investigations.

Mr. Cole wanted to reiterate that obviously the Commission is concerned about some of the issues in the past but made the comment that these issues are in the past. He wanted to acknowledge that there have been questions about some of the expenditures and investigations that have been done. However, it is in his personal opinion that Quinten Warren has taken this entire situation, evaluated it, and based on the things he has seen today has it well under control and he is making a concerted effort to make sure that the Division is not wasting money and that investigations will come under a Commissioner's review prior to any intensive investigation being launched.

Mr. Cole asked if any of the Commission members had any other questions or comments regarding the report or Mr. Habeger's letter.

Ms. Davis asked if it was a plus \$832,833 for FY 12 and where the Commission is as far as the proper accounting and read only access.

Ms. Burke said yes it was a plus of \$832,833 for FY12 and we have no explanation or additional support for accounting and read only access.

Mr. Habeger commented on Ms. Davis' question. Mr. Habeger said that the Division is committed to making sure that Boards and Commissions get accurate and timely information. The process in the past seemed to be when a board or commission asked for information a report was generated at the time of the request. For whatever reason, over time, errors entered into the financials. Data was pulled at the end of the fiscal year, and given to the Board or Commission. As the state system undergoes its finalization, there are adjustments added to final balances and for whatever reason, those adjustments were not reflected and the balance may have been inappropriately recorded.

Mr. Habeger said the Division has gone back and looked at each of the years in the state accounts and taken all the reports and reconciled them, through the state system. The Division now believes they have the reports that truly reflect what happened.

Mr. Habeger addressed the question from the Commission as to where did the decision come from to reduce the fees in FY10?

Mr. Habeger said he suspects, because he was not there at that time, or he was too new, that what happened was:

- The analysis took place in early 2010

- It was determined that the balance was too high in the fund
- There was a decision to credit back through licensing fees or to reduce the balance through the decrease of licensing fees
- That decision was given to the Commission and they said it looked good
- The fees were decreased
- Was it the right decision? That is for others to decide.

Mr. Habeger went on to speak to the new Division processes for the first 3 quarterly reports:

- On a quarterly basis (end of fiscal quarter) gather all quarterly information from our complete 40 programs. This will give the Division the opportunity to see what actual revenue and expenditures there are.
- Reconcile our reports with the state system and give the Boards and Commissions their program specific information at the same time.
- This will allow the Division, within 30 days of close of the quarter, to go through processes.
- Entered into cooperative relationships with the fiscal side of the house, accountants, etc. Double check each other's work before it is sent out.

Mr. Habeger then addressed why it takes 3 months after the close of the State's fiscal year to receive the final year-end reports?

- July-August - waiting for last month's information to come in to close up.
 - Direct and indirect expenses
 - Supplemental, adjustments, etc.
 - Double check work and close program books
- September – give Boards and Commissions their final reports.

Mr. Habeger said that the Division believes that this system will give the Boards and Commissions more information to help them gain control over their programs.

Ms. Burke asked Mr. Habeger what the reason was not to give the Real Estate Commission read only access.

Mr. Habeger said he did not understand the system well enough at this time to answer that question.

Mr. Cole stated that the Commission members are frustrated because they have been asking for basic information for several years now and nobody seems to be able to answer any questions as to why the information is not available to the Commission members.

Mr. Habeger agreed that he will look into receiving read only access and start the process for the AG opinion for Ms. Burke question regarding how investigations are initiated. He said he will provide the information on read only access to the Commission members at the September 5, 2012 Real Estate meeting but does not promise that he will have any information from the Attorney General's office at that time.

Agenda Item 2

Investigative Issue

In Executive session at 10:35 a.m.

On a motion duly made by Ms. Davis, seconded by Ms. Swires, it was

RESOLVED to move into executive session Per AS 44.62.310(c) (2) to discuss case #2011-000689.

All in favor; Motion passed.

Out of Executive session at 10:44 a.m.

On a motion duly made by Ms. Davis, seconded by Ms. Swires, it was

RESOLVED to come out of executive session.

All in favor; Motion passed.

On a motion duly made by Ms. Davis, seconded by Ms. Swires, it was,

RESOLVED to accept the Consent Agreement for Dennis Warren, case #2011-000689.

All in favor; Motion passed.

On a motion duly made by Ms. Davis seconded by Ms. Swires, it was,

RESOLVED to adjourn the meeting.

All in favor; Motion passed.

Meeting adjourned at 11:47 a.m.

The Commission adjourned until the September 5-6, 2012 meeting to be held in Anchorage.

Prepared and submitted by Nancy Harris.

Approved: 

Bradford Cole, Chairman
Alaska Real Estate Commission

Date: 4/1/13