

NEBRASKA REAL ESTATE COMMISSION

June 20, 2013

Staybridge Suites

Staybridge Room

Lincoln, NE

Opening

Chairperson Gale convened a meeting of the Nebraska Real Estate Commission at 9:02 a.m. on June 20, 2013, in the Staybridge Room of the Staybridge Suites, located at 2701 Fletcher Avenue in Lincoln, Nebraska. All of the members of the Real Estate Commission were present, with the exception of Commissioner Dover, who was absent and excused. Also present were Director Greg Lemon, Deputy Director for Education and Licensing Teresa Hoffman, Deputy Director for Enforcement Terry Mayrose, and Administrative Assistant Monica Rut. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, was present for the Boyd Hearing.

Notice of Meeting (Adopt Agenda)

Director Lemon presented a public notice and proofs of publication thereof relating to this meeting, all of which are attached to and made a part of these minutes. Chairperson Gale reported that all Commissioners had been notified of the meeting simultaneously, by mail and e-mail, and that a proposed tentative agenda accompanied the notification.

Chairperson Gale pointed out to those in attendance that a public copy of the materials being used during the meeting were available to the public on the counsel table in the meeting room; that a copy of the Open Meetings Act was posted on the easel located in the northwest corner of the meeting room by the west entrance; and that the procedures followed were in accordance with the Open Meetings Act. Chairperson Gale asked that guests sign the guest list.

Director Lemon noted that agenda item 13e had been added since the tentative agenda was mailed to the Commissioners.

After review of the final agenda, a motion was made by Ptak and seconded by Freeman to adopt the final agenda as presented. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

Minutes of May 16, 2013

The minutes of the Commission meeting held on May 16, 2013, were considered.

After review, a motion was made by Avery and seconded by Rouch to approve the minutes as presented. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

Public Comment

Chairperson Gale asked the members of the audience if anyone wished to come forward to provide public comment on Commission related business. No audience member indicated a desire to come forward.

Receipts and Expenditures Report for May

Director Lemon presented the Receipts and Expenditures Report for May. A copy of said report is attached to and made a part of these minutes. Director Lemon noted that an explanation page was included on the report.

The cash fund balance as of May 31, 2013, was \$840,620.01, which compared to a cash fund balance of \$920,113.56 on May 31, 2012.

After discussion, a motion was made by Ptak and seconded by Rouch to file the May Receipts and Expenditures Report for audit. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

Specialized Registrations

There were no specialized registrations to be presented at the meeting.

Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report

Deputy Director Hoffman presented for ratification the Nonresident Licenses and Resident Licenses Issued to Persons Holding Licenses in Other Jurisdictions Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Stange and seconded by Avery to ratify issuance of the licenses as set forth in the report. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

Examination Report - May

Deputy Director Hoffman presented for ratification the May Examination Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Ptak and seconded by Avery to ratify the May Examination Report for the purpose of issuing licenses. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

Examination Passing Roster

Deputy Director Hoffman presented the Examination Passing Roster, a copy of which is attached to and made a part of these minutes.

No action was necessary on this report.

Real Estate Education Matters

Continuing Education Activity Approval

Deputy Director Hoffman presented for ratification the Continuing Education Activity Approval Report, a copy of which is attached to and made a part of these minutes.

Continuing Education Instructor Approval

Deputy Director Hoffman presented for ratification the Continuing Education Instructor Approval Report, a copy of which is attached to and made a part of these minutes.

Continuing Education Activity Significant Change

Deputy Director Hoffman presented for ratification the Continuing Education Activity Significant Change Report, a copy of which is attached to and made a part of these minutes.

Broker-Approved Training Recognition

Deputy Director Hoffman presented a Broker-Approved Training Recognition Report, a copy of which is attached to and made a part of these minutes.

After review, a motion was made by Stange and seconded by Ptak to ratify the four reports. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

Continuing Education Activity Rejection

Deputy Director Hoffman presented a Continuing Education Activity Rejection Report, a copy of which is attached to and made a part of these minutes.

No action was necessary on this report.

Pending Sworn Complaints and Investigative Matters

Deputy Director Mayrose presented a summary report of the pending complaints, which included a list of licensees presently under disciplinary action or on appeal. A copy of said report is attached to and made a part of these minutes.

No action was necessary on this report.

The following sworn complaints and investigative matters were presented to the Commission:

Item A Complaint 2013-002 – Eric Steven Vana vs. Robert Lee Pelshaw

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Avery and seconded by Rouch that the complaint be dismissed without prejudice. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, and with Dover not participating or voting, being absent and excused.

Item B Complaint 2013-012 – Kent and Susan Brunckhorst vs. Joe W. Schluckebier

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Stange and seconded by Ptak that the complaint be dismissed without prejudice. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, and with Dover not participating or voting, being absent and excused.

Item C Complaint 2013-014 – Eric and Bridget Larson vs. Kelly Ann Hatfield

Deputy Director Mayrose presented the alleged violations and investigative report to the Commission and, when necessary, answered questions on this matter.

After being advised of the results of the investigation and discussion, a motion was made by Ptak and seconded by Avery that the complaint be dismissed without prejudice. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, and with Dover not participating or voting, being absent and excused.

Item D Investigative Matter

Deputy Director Mayrose presented an investigative report to the Commission for discussion purposes only.

No action was necessary on this report.

Item E Complaint 2012-038 – Karen A. Wathen vs. Andrew Donald Bock

Prior to discussion of this matter, Commissioner Rouch recused herself, thereby nullifying any potential conflict of interest.

Deputy Director Mayrose requested Complaint 2012-038 be dismissed. Deputy Director Mayrose explained that Complaint 2012-038 was presented to the Commission as an investigative matter. The Commission had voted to file a new complaint on its own motion and to hold Complaint 2012-038 in abeyance until the new complaint had been adjudicated. Complaint 2013-017 was the new complaint.

A motion was made by Freeman and seconded by Avery to dismiss Complaint 2012-038, since the Commission accepted a Stipulation and Consent Order for Complaint 2013-017 at this meeting. Motion carried with Avery, Freeman, Ptak, Stange and Gale voting aye, with Rouch not participating or voting, having recused herself, thereby nullifying any potential conflict of interest, and with Dover not participating or voting, being absent and excused.

Presentation of Stipulation and Consent Orders

**Complaint 2013-005,
Commission vs. Darwin K. Boyd**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2013-005, Commission vs. Darwin K. Boyd. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Stange and seconded by Freeman to enter into the Order as presented. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

**Complaint 2013-013,
Commission vs. William Robert Milczski**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2013-013, Commission vs. William Robert Milczski. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Avery and seconded by Rouch to enter into the Order as presented. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

**Complaint 2013-015,
Commission vs. John E. Wiedel**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2013-015, Commission vs. John E. Wiedel. A copy of said Order is attached to and made a part of these minutes.

After discussion, a motion was made by Avery and seconded by Ptak to enter into the Order as presented. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

**Complaint 2013-017,
Commission vs. Andrew Donald Bock**

Deputy Director Mayrose presented a Stipulation and Consent Order in the matter of Complaint 2013-017, Commission vs. Andrew Donald Bock. A copy of said Order is attached to and made a part of these minutes. Doug Ruge, Legal Counsel for Mr. Bock was present to discuss the Order.

Prior to discussion of this matter, Commissioner Rouch recused herself, thereby nullifying any potential conflict of interest.

After discussion, a motion was made by Freeman and seconded by Stange to enter into the Order as presented. Motion carried with Freeman, Ptak, Stange and Gale voting aye, with Avery voting nay, with Rouch not participating or voting, having recused herself, thereby nullifying any potential conflict of interest, and with Dover not participating or voting, being absent and excused.

Disciplinary Hearings

Complaint 2013-004 - Commission vs. Michael Patrick Boyd

A Hearing was held on June 20, at 10:16 a.m., in the matter of Complaint 2013-004, Commission vs. Michael Patrick Boyd. Greg Barton, Special Assistant Attorney General and Counsel to the Commission, appeared for the Complainant. Respondent Michael Patrick Boyd was not present.

After opening statements, Counsels Barton offered 18 Exhibits, all of which were received by Chairperson Gale.

Counsel Barton called Terry Mayrose as a witness.

After closing arguments had been presented, Chairperson Gale declared the Hearing concluded and gathered the original exhibits.

The Commission deliberated on the matters adduced at hearing.

A motion was made by Ptak and seconded by Freeman in Complaint 2013-004, that Michael Patrick Boyd violated both counts as alleged in the Complaint. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating being absent and excused.

Chairperson Gale opened the past disciplinary action envelope. It showed no prior disciplinary action against the Respondent.

The Commissioners then discussed the penalty to be assessed.

A motion was made by Freeman and seconded by Avery in Complaint 2013-004, that Michael Patrick Boyd's license be revoked. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating being absent and excused.

Chairperson Gale directed Counsel Barton to prepare the Order.

Chairperson Gale ordered that the costs incurred for the court reporter and any witness fees would be billed to the Respondent, as provided for in 305 NAC Chapter 4, and that the Respondent would have thirty days from the date of the Order to reimburse the Commission for said costs.

Chairperson Gale announced that all exhibits related to this hearing would be retained in the Commission office.

The Hearing was adjourned at 11:40 a.m.

Informal Special Appearances

Heather Dawn Brantley, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Ms. Brantley's special appearance; a letter of explanation from Ms. Brantley; character reference letters for Ms. Brantley; Ms. Brantley's felony case summary from the State of Nebraska criminal justice system, complaint, amendment, order of probation and probation release; Ms. Brantley's criminal history report; and her salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Ms. Brantley was present.

An additional character reference letter was distributed prior to discussion. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13a1.

Chairperson Gale reviewed the procedure for informal special appearances.

Ms. Brantley explained the situations regarding his past criminal history.

After discussion, a motion was made by Rouch and seconded by Stange to allow Ms. Brantley to sit for the salesperson examination after making proper application and to have a license issued upon passing.

Chairperson Gale offered a friendly amendment to include that Ms. Brantley notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time for a period of two years, which was accepted by the mover and second.

Commission Stange offered a friendly amendment to include that Ms. Brantley must notify any anticipated employing broker of the criminal convictions and the circumstances of the convictions and said broker shall confirm said notification in writing to the Commission prior to the license being placed with said broker. The friendly amendment was accepted by the mover and second.

Motion carried with Avery, Freeman, Rouch, Stange and Gale voting aye, with Ptak voting nay, and with Dover not participating or voting, being absent and excused.

Eric Cano, Broker Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Cano's special appearance; a letter of explanation from Mr. Cano; character reference letters for Mr. Cano; Mr. Cano's criminal history report; and his broker application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Cano was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Cano explained the situations regarding his past criminal history.

After discussion, a motion was made by Stange and seconded by Avery to allow Mr. Cano to sit for the salesperson examination after making proper application and to have a license issued upon passing. Mr. Cano must notify any anticipated employing broker of the criminal convictions and the circumstances of the convictions and said broker shall confirm said notification in writing to the Commission prior to the license being placed with said broker. Mr. Cano must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time for a period of two years. Motion carried with Avery, Freeman, Rouch, and Stange voting aye, with Ptak and Gale voting nay, and with Dover not participating or voting, being absent and excused.

Brian Eric Kays, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Kays' special appearance; a letter of explanation from Mr. Kays; character reference letters for Mr. Kays; Mr. Kays' criminal history report; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Kays was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Kays distributed an additional letter of reference, Institute of Real Estate Management-Code of Professional Ethics, and a certificate of Accredited Residential Manager. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13c1. Mr. Kays explained the situations regarding his past criminal history.

After discussion, a motion was made by Rouch and seconded by Stange to allow Mr. Kays to sit for the salesperson examination after making proper application and to have a license issued upon passing. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

Timothy Francis Kenkel, Broker Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Kenkel's special appearance; a letter requesting the informal special appearance from Mr. Kenkel; and character reference letters for Mr. Kenkel; and information regarding Mr. Kenkel's previous special appearances held in April 2013. A copy of said exhibit is attached to and made a part of these minutes. Mr. Kenkel was present.

Acting Chairperson Ptak reviewed the procedure for informal special appearances.

Mr. Kenkel distributed continuing education completion certificates. A copy of said exhibit is attached to and made a part of these minutes, denoted as exhibit 13d1.

Mr. Kenkel explained the situations regarding his past criminal history along with additional information he wished to share with the Commission.

After discussion, a motion was made by Stange and seconded by Freeman to allow Mr. Kenkel to have a broker license issued after making proper application. Mr. Kenkel must notify any anticipated employing broker of the criminal convictions and the circumstances of the convictions and said broker shall confirm said notification in writing to the Commission prior to the license being placed with said broker. Mr. Kenkel must also notify the Commission staff of any criminal charge, except those charges where there is no possible sentence of jail time for a period of five years. Motion failed with Stange, Freeman and Rouch voting aye, with Avery, Ptak, and Gale voting nay, and with Dover not participating or voting, being absent and excused.

Jeffrey Keith Rothlisberger, Salesperson Applicant

Director Lemon presented exhibits which included: correspondence regarding Mr. Rothlisberger's special appearance; a stipulation and consent order issued by the Commission in 2011 to Mr. Rothlisberger; character reference letters for Mr. Rothlisberger; and his salesperson application form. A copy of said exhibit is attached to and made a part of these minutes. Mr. Rothlisberger was present.

Chairperson Gale reviewed the procedure for informal special appearances.

Mr. Rothlisberger explained the situation regarding the Commission issued Stipulation and Consent Order.

After discussion, a motion was made by Avery and seconded by Rouch to allow Mr. Rothlisberger to sit for the salesperson examination after making proper application and to have a license issued upon passing. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

Personnel Matter – Closed Session

At 11:57 a.m., a motion was made by Ptak and seconded by Freeman to go into closed session for discussion of personnel matters. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

Chairperson Gale indicated, prior to the closed session beginning, that the reason for the closed session was to discuss personnel matters.

At 12:42 p.m., a motion was made by Ptak and seconded by Avery to reconvene in open session. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

After reconvening in open, public session, a motion was made by Ptak and seconded by Freeman to increase Deputy Director Hoffman's and Director Lemon's salary by 2.25% beginning July 1, 2013. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

Discussion on Acceptable Use of Broker Price Opinions and Comparative Market Analysis

Director Lemon presented a copy of an article published in the Spring 2013 issue of the Commission Comment Newsletter entitled "No BPOs and CMAs for Property Tax Appeal Purposes". A copy of said exhibit is attached to and made a part of these minutes.

Henry Kammandel, representing the Nebraska REALTORS® Association; John Waldbaum representing Colliers; Mike Blackmon representing Prudential Ambassador; and Gary Petersen representing NP Dodge Company were present for the discussion.

There was discussion regarding the potential for violations if the Broker Price Opinions and Comparative Market Analysis were not completed as set forth in the article. Such violations would fall under the Appraiser Act and any disciplinary action taken by the Appraiser Board could result in an investigation by the Commission.

There was discussion regarding the difference in BPO's and CMA's when compiled for commercial purposes rather than residential purposes.

The practice of providing comparable sales, but not providing an opinion as to value was discussed, director Lemon indicated that in his opinion such activity would be allowable under the Appraiser Act, but that the Nebraska Real Estate Commission did not administer the Appraiser Act, and the ultimate interpretation of appraisal activity questions would be up to the Appraiser Board.

It was suggested that any suggestion of change should be directed to Appraiser's Board for review.

No action was necessary on this discussion.

2012-2013 Objectives – Final Report

Director Lemon presented an exhibit regarding the 2012-2013 objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained the changes and improvements for the objectives listed.

No action was necessary on this discussion.

Consider 2013-2014 Objectives

Director Lemon presented an exhibit regarding the proposed 2013-2014 Objectives of the Commission. A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon explained each of the new objectives and those which had been carried over from the 2012-2013 Objectives. He welcomed any additions the Commissioners may have for the proposed objectives.

There was discussion regarding possible legislation proposed by the Commission or by the Nebraska REALTORS® Association.

A motion was made by Stange and seconded by Avery to approve the Commission Objectives as presented. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

Consider Renewal of Errors and Omissions Insurance Contract with Rice Insurance Services Company, LLC (RISC) for 2014

Director Lemon presented an exhibit regarding the 2014 Renewal of Contract Quotation from Rice Insurance Services Company, LLC (RISC). A copy of said exhibit is attached to and made a part of these minutes.

Director Lemon indicated that the errors and omissions insurance coverage and underwriter would be the same as the current year. He noted that the terms would remain the same as the current program and the premium amount would not be increased.

After discussion, a motion was made by Freeman and seconded by Ptak to approve the renewal of contract with RISC for 2014. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

Legislative Matters – Final Report

LB 13 - No new information presented.

LB 72 - No new information presented.

LB 120 – No new information presented.

LB 3 (was LB 289) – No new information presented.

LB 427 – No new information presented.

No action was necessary with regard to these matters.

Information Matters

ARELLO District Conference – June 25-27, 2013 - Biloxi, Mississippi - Report of Attendees

Director Lemon noted that Deputy Director Hoffman and he will be attending the ARELLO District Conference.

No action was necessary on this report.

ARELLO Annual Conference – September 18-22, 2013 - Seattle, Washington

Director Lemon explained that the deadline for registration is August 26, 2013.

No action was necessary on this report.

Future Meeting Dates

August 15-16, 2013- Staybridge Suites, Lincoln
September 27, 2013- Staybridge Suites, Lincoln
October 24-25, 2013- Staybridge Suites, Lincoln
November 21-22, 2013- Staybridge Suites, Lincoln

Recesses and Adjournment

At 10:02 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 10:02 a.m.

At 11:40 a.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 11:55 a.m.

At 12:45 p.m., Chairperson Gale declared a recess for lunch, and reconvened the meeting at 1:37 p.m.

At 3:30 p.m., Chairperson Gale declared a brief recess, and reconvened the meeting at 3:35 p.m.

Commissioner Gale was briefly excused from the meeting at 4:30 p.m., and rejoined the meeting at 4:35 p.m.

At 5:03 p.m., there being no further business to come before the Commission, a motion was made by Freeman and seconded by Avery that the meeting adjourn. Motion carried with Avery, Freeman, Ptak, Rouch, Stange and Gale voting aye, with Dover not participating or voting, being absent and excused.

I, Greg Lemon, Director of the Nebraska Real Estate Commission, do hereby certify that the foregoing minutes of the June 20, 2013, meeting of the Nebraska Real Estate Commission were available for inspection on June 24, 2013, in compliance with Section 84-1413(5) R.R.S. 1943, of Nebraska.

Respectfully submitted,


Greg Lemon
Director

Guests Signing the Guest List

Val Kircher, Coldwell Banker Kircher & Assoc., McCook
Jeff Rothlisberger, Omaha
Mark Leaders, CBSHOME Real Estate, Omaha
Rich Greene, CBRE/MEGA, Omaha
Lee Ehlers, Investors Realty Inc., Omaha
Beth Lube, Re/Max Real Estate Group, Omaha
Charlie Concannon, Re/Max Real Estate Group, Omaha
Tom Brantley, Re/Max, Omaha
Heather Brantley, Re/Max, Omaha
Eric Cano, Omaha
Kristen Anderson, Nebraska REALTORS® Association, Lincoln
Brian E. Kays, Omaha
Tim F. Kenkel, Omaha
Lois Kenkel, Omaha
Dean Kenkel, Omaha
Henry Kammandel, Nebraska REALTORS® Association, Omaha
Doug Ruge, CBSHOME, Omaha
Mike Blackmon, Prudential Ambassador, Omaha
John Waldbaum, Colliers, Omaha
Gary Petersen, NP Dodge Company, Omaha