

MINUTES OF MEETING

Kansas Real Estate Commission

April 18, 2013

The Kansas Real Estate Commission held its regular meeting on Thursday, April 18, 2013 at 9:00 a.m. at Three Townsite Plaza, Suite 200, 120 S.E. 6th Avenue, Topeka, Kansas.

Commissioners Present:

Kathy Copeland, Chair
Tim Holt, Vice Chair
Marilyn Bittenbender, Member
Errol Wuertz, Member by telephone
Shirley Cook, Member

Staff Present:

Sherry Diel, Executive Director
Kelly White, Director of Licensing & Education
David Pierce, Director of Enforcement
Alexandra Blasi, Attorney
Laurel McGinnis, Legal Assistant

Kansas Real Estate Commission Legal Counsel Present:

Sarah Fertig, Assistant Attorney General

Members of the Public Present:

Tara Maxell
Jim Maxwell

Call to Order

Ms. Copeland called the meeting to order at 9:08 a.m.

Additions and Changes to the Agenda

The Public Comments portion of the Agenda was changed to add a 10 minute maximum.

Approval of Minutes

Motion was made by Mr. Holt, seconded by Ms. Bittenbender to approve the minutes of the February 14, 2013 meeting. Motion carried unanimously.

Applications for Salesperson's License

Andrew Deck

Applicant answered "Yes" to Question No. 5 on his application and self-reported a criminal offense for which he is currently serving probation. After review and discussion regarding Applicant currently serving probation, motion was made by Ms. Bittenbender, seconded by Mr. Holt to deny Applicant's application for a salesperson's license for failure to show proof of rehabilitation. Motion carried unanimously.

Tara Maxwell

Applicant answered "Yes" to Question No. 5 on her application and partially self-reported criminal offenses. After review and discussion regarding the nature of the offenses, the passage of time and Applicant's explanation, motion was made by Ms. Bittenbender, seconded by Mr. Holt to approve Applicant's application for a salesperson's license. Mr. Wuertz nay. Motion carried.

Applications for Broker's License

James Hazlett

The application of Mr. Hazlett was presented for review by the Commission. After review and discussion regarding the number of years Mr. Hazlett had been licensed, his transaction experience, and related experience, motion was made by Ms. Bittenbender, seconded by Mr. Wuertz, to approve Mr. Hazlett's application for a broker's license. After review and discussion regarding Mr. Hazlett's proposed company name, motion was made by Mr. Holt, seconded by Mr. Wuertz to approve the name "Hazlett Farm Realty." Motion carried unanimously.

Nyamekyce Cayce

The application of Ms. Cayce was presented for review by the Commission. After review and discussion regarding the number of years Ms. Cayce had been licensed, her transaction experience, practicing while inactive, practicing in an unlicensed company without a supervising broker and competency, motion was made by Mr. Holt, seconded by Ms. Bittenbender, to deny Ms. Cayce's application for a broker's license. Motion carried unanimously.

Carol Ferguson

The application of Ms. Ferguson was presented for review by the Commission. After review and discussion regarding the number of years Ms. Ferguson had been licensed, her transaction experience, related experience and lack of knowledge of Kansas brokerage relationships, motion was made by Mr. Holt, seconded by Ms. Bittenbender, to approve Ms. Ferguson's application for a broker's license conditioned upon her completion of a Kansas brokerage relationships course in person within 90 days, failure to complete the course will result in denial. Motion carried unanimously.

Tim Ferguson

The application of Mr. Ferguson was presented for review by the Commission. After review and discussion regarding the number of years Mr. Ferguson had been licensed, his transaction experience, related experience and lack of knowledge of Kansas brokerage relationship, motion was made by Mr. Holt, seconded by Ms. Bittenbender, to approve Mr. Ferguson's application for a broker's license conditioned upon his completion of a Kansas brokerage relationships course in person within 90 days, failure to complete the course will result in denial. Motion carried unanimously.

Jennifer Stein

The application of Ms. Stein was presented for review by the Commission. After review and discussion regarding the number of years Ms. Stein had been licensed, her education, and related experience, motion was made by Ms. Bittenbender, seconded by Mr. Wuertz, to approve Ms. Stein's application for a broker's license. Motion carried unanimously.

Consider request of Larry Riggs to open a company named Kansasland Realty and Auction

After review and discussion regarding potential confusion to the public regarding the use of the proposed name and the existing name, motion was made by Ms. Bittenbender, seconded by Mr. Wuertz to table the request pending receipt of additional information from Mr. Riggs on how he plans to use the company names in advertising and why it is important to have two company names. Motion carried unanimously.

Consider request of Thomas Lankford to open a company named Mogan Real Estate

After review and discussion, motion was by Ms. Bittenbender, second by Mr. Wuertz to approve the company name "Mogan Real Estate." Motion carried unanimously.

Consider Commission's 2013 Legislative Agenda

Ms. Diel reported that HB 2122-KREC Technical Amendment and HB 2125-KREC Fee Increase had passed out of the Senate Committee but were being held below the line in the Senate. It appears that the bills will not be considered by the Senate this session.

Ms. Diel noted that she attempted to obtain a sunset on the fee increase to improve its chances of passage and had someone to carry the amendment, but the bill was not put on the Senate calendar for debate. This will affect the budget through FY 2015, because even if a fee increase is passed next session the timing would not bring any relief to the budget situation until the fee increase could be implemented on July 1, 2015. It will take time to build the fee fund back to a sustainable level.

Ms. Diel reported that the failure of the technical bill to pass this session will cause difficulties regarding some continuing education course approval. The Kansas Board of Regents will not assume jurisdiction to approve providers that only provide continuing education. The Commission will send out a notice to providers with options to address this issue.

Ms. Diel discussed the veto of the Home Inspector's bill. As of July 1 home inspectors will no longer be required to be registered. The Commissioners discussed the history of the bill and its effect on the real estate industry.

Ms. Diel informed the Commissioners that HB 2077 - Military Bill was amended in Conference Committee to return to the original language and may result in the Commission having to draft regulations to implement the bill.

I-Team Stats

The I-Team statistics were received by the Commissioners.

Ms. Diel informed the Commissioners that significant efficiencies have resulted from implementation of the discipline related Guidance Documents. The use of warning letters along with concise, standardized orders has reduced staff time and has been helpful for licensees and applicants.

Education Report

The Education Report was received by the Commissioners.

Ms. Diel discussed the request for proposals (RFP) process for exam providers and indicated that she and Ms. White met with a purchasing officer to learn more about the RFP process. Ms. Diel asked the Commissioners to make determinations for the RFP regarding required vs. preferred specifications.

The Commissioners discussed testing methods. The Commission agreed to draft the RFP with the preferred testing method while reserving the right to evaluate the testing method in the evaluation process. Ms. Diel asked the Commissioners to appoint a Commissioner to review the RFP specifications and technical proposals, as needed, and to serve as Ms. Diel's liaison when authority is needed for responses during the RFP process. Mr. Wuertz agreed to act as the liaison.

Ms. Diel asked for guidance from the Commissioners regarding the use of Live Scan technology at the testing facilities and advised the Commissioners that Live Scan technology could be subcontracted by any provider from a vendor that already has a contract with the KBI.

Mr. Holt asked how Live Scan would benefit the Commission and applicants. Ms. Diel noted that the Commission receives fingerprint cards, waiver forms and fees, mails the fingerprint cards to the KBI and tracks and responds to inquiries regarding the status of criminal background checks. Using Live Scan would result in a significant reduction in staff time. Mr. Holt commented that applicants in his area have difficulty having their prints taken. He stated they must go to the police station, which has limited hours. The Commissioners agreed that it appeared Live Scan technology would save the Commission time and money and would be more convenient for all applicants; therefore, Live Scan should be a required element.

Ms. Diel informed the Commissioners that she plans to have the RFP specifications completed by June 1.

Budget Report

A. Staff report regarding FY 2013 – FY 2015 Budget.

Ms. Diel noted that the Commission did not receive a fee increase this session; however, the Senate had originally given the Commission more money for FY 2013 through FY 2015 and tied it to a fiscal audit. The audit would determine whether the Commission needed a fee increase or efficiencies. The House did not see the need for additional expenditure authority and made a motion that the Commission should pay for the audit. However, in Conference Committee the House concurred with the Senate and granted additional expenditure authority.

Next session HB 2122 and HB 2125 may be put up for debate in the Senate. If the fee increase bill is passed, the Commission wouldn't have to obtain additional expenditure authority. On average, per month, the Commission has expenditures of \$13,600 more than receipts. Currently, the cuts in the Commission's proposed budget will not make up the difference unless receipts increase due to a fee increase and/or license counts increase substantially. Consequently, the Commission's proposed budget cuts must be implemented as soon as possible. If receipts do not rise, the Commission will have to cut back further to make the budget balance in FY 2015 and FY 2016.

FY 2014, 2015 Budget Planning Proposals.

Staff recommendations for cuts in FY 2014 – FY 2015 includes cutting travel expenditures by 2/3 and eliminating the temporary staff person. This will significantly impact the audit program. The budget also reduces outside counsel fees, which may now be reduced even further with the hiring of in-house disciplinary counsel. IT costs are limited to basic replacement costs based upon need, such as if a server went out. Staff has made suggestions for additional cuts that will have to be made next year if the Commission doesn't receive a fee increase.

Ms. Diel suggested that travel for I-Team could be reduced by utilizing Skype. If the method works well for the I-Team it could also be utilized for Commission meetings.

The Commission discussed the expense of outside counsel vs. the use of in-house disciplinary counsel. Mr. Holt noted that existing appellate level cases should still be handled by outside counsel for efficiency purposes.

At 11:24 a.m. Ms. Copeland declared a 10 minute break. Ms. Copeland reconvened the meeting at 11:34 a.m.

Motion by Mr. Holt, seconded by Ms. Bittenbender to approve the Budget Planning Proposal with outside counsel reduced to be utilized only for existing appellate level cases. Motion carried unanimously.

Ms. Diel informed the Commissioners that the House is pushing for salaries to be a line item for FY 2014 and FY 2015. This issue has not been resolved yet in Conference Committee. This is of significant concern to the Commission because there is no unused salary funding, which leaves the Commission with absolutely no flexibility.

Ms. Diel informed the Commission that she received an inquiry from a real estate brokerage regarding whether the Commission was looking for office space for lease. The Commissioners advised Ms. Diel that the current lease was recently renewed for a 5-year term and the Commission is not currently seeking to renew or locate alternate office space.

B. FY 2013 Year-to-date Expenditures and Receipts Report

The Budget Report was presented including Expenditures and Real Estate Receipts as of March 2013.

KREC's fee fund balance is \$343,670. The available cash balance is \$303,070 which is the Commission's current fee fund balance less encumbrances. Ms. Diel noted we are 75% through the year and expenditures are at 70%.

KREC has transferred 10% of receipts to the State General Fund from July 2012 – March 2013 or \$63,600 and kept 90% or \$572,000 for the KREC fee fund for the current fiscal year.

KREC collected \$69,300 in fines for FY 2013 for the State General Fund. The Revolving Recovery Fund balance is \$305,700.

Ms. Diel reported that 93 brokers and 226 salespersons renewed online.

Director's Report

The Commissioners received the Director's report and Ms. Diel noted that there are currently 13,618 licensees.

Ms. Diel advised the Commissions that they needed to start planning for reorganization at the May meeting. Ms. Copeland will not be in attendance at the May meeting. Ms. Diel also noted that a Commissioner must be appointed for the I-Team. Mr. Wuertz will replace Mr. Holt on the I-Team on a temporary basis. Ms. Diel would like to have a brief Commissioner training in May and expanded training in June. The Commissioner Appreciation luncheon is also scheduled for June.

Public Comment – 10 Minutes

There was no public comment.

Executive Session to discuss an Attorney-Client Privileged Matter

At 12:20 p.m. motion was made by Mr. Holt, second Ms. Bittenbender to enter into an executive session for 15 minutes to discuss an attorney client privileged matter. Motion carried unanimously. Ms. Fertig, Ms. Diel and the Commissioners were present for the executive session.

Ms. Copeland reconvened the meeting at 12:45 p.m.

Ms. Cook left the meeting 12:30 p.m.

Adjournment

Ms. Copeland adjourned the meeting at 12:45 p.m.

ATTEST:

Date: June 13, 2013