Electronic Real Estate Recording Task Force
Minutes: 14 February 2002
As recorded by Bob Horton

Present: (Members) David Arbeit, Stephen Baker, Julie Bergh, Angela Burrs, Jeff Carlson, David Claypool, Michael Cunniff, Larry Dalien, Marty Henschel, Bob Horton, Chuck Hoyum, Secretary Kiffmeyer, Paul Kiltinen, Cindy Koosman, Denny Kron, Richard Little, Paul McGinley, Gail Miller, Mark Monacelli, Bill Mori, Chuck Parsons, Leonard Peterson, Eileen Roberts. (Guests) Bert Black, Luci Botzek, Perry Canton, Warren Davis, Jeff Elstad, Merrill King, Beth McInerny.

1. Call to Order

Secretary of State Mary Kiffmeyer called the meeting to order at 9.35 AM.

2. Approval of minutes

The minutes of the 10 January 2002 meeting were approved as distributed.

3. Introduction of new task force members

Secretary Kiffmeyer introduced a new member of the task force, Julie Bergh, an attorney in private practice. James Lawlor, of the MN Department of Natural Resources, was also appointed, but unable to be present. Perry Canton appeared in his place.

4. Review of ERERTF budget

Merrill King reported on the revenue forecast. Revenues are up, but this is still a conservative forecast, based on averages of the last two years. The FY02 projected revenue is $413, 387, a calculation based on the actual revenue for seven months of this FY totaling $224, 697, plus an additional amount as a percentage of the average for the last two years. Given a change in one variable from $4.50 to $4.00, King will adjust the projection for the next five months of the FY. This will add some additional income to the forecast.

Mark Monacelli noted that these conservative projections make it difficult to plan for the task force's efforts. He said that we needed better and more definite figures in order to facilitate the task force's work. Cindy Koosman asked for a basic spreadsheet - numbers on what's spent, encumbered, available etc. Secretary Kiffmeyer said that the LCC handles the task force's accounting and she will ask it to provide a differently formatted report that will provide a better picture of what funds are at hand.

With the new projections of revenues, the task force has approximately an additional $50,000, at least, to allocate for FY02.

Monacelli moved that the state provide a breakdown by county of revenues received from August through December 2001, with a quarterly report on moneys spent, available and encumbered. Koosman seconded and the motion passed.

5. Report on meetings with Rep. Juhnke and Sen. Kelley

Beth McInerny reported on HF 2573, which was heard in the Commerce, Jobs and Economic Development Committee and approved unanimously. It was forwarded to the State Government Finance Committee. The equivalent Senate file will be heard on Tuesday and McInerny is looking for volunteers to testify before the committee.

6. Report on legal issues sub-committee findings

Chuck Parsons distributed a report from the legal issues sub-committee, along with a copy of proposed legislation. The Attorney General's Office will not issue an advisory opinion on the relations of E-Sign and UETA, as this is considered a federal issue and the Office will not interpret federal law. Parsons thanked Luci Botzek for her role in working with the Attorney General's Office. John Richards, from Fannie Mae, believes that county recorders, as government authorities, have the power to refuse electronic submissions, but this is not in any sense a binding opinion. The general sense in the sub-committee is that counties do have that power, but that is only an opinion. The State Bar Association and this sub-committee have agreed to serve as a resource to any county officers looking for guidance. Luci Botzek will distribute information on this to the MN Association of County Officers.

The sub-committee did draft some recommendations for changes in the statutes. It met with Sen. Kelley and a senate counsel to assist in the drafting. The result was submitted to the Revisor's Office on 12 February and the plan is to submit it on Tuesday the 19th to the Senate Judiciary Committee. At this point, it is making some limited changes in the law to facilitate the pilots, rather than running a risk of making more sweeping changes prematurely.

The sub-committee also recommended that the task force extend its deadline to 2004. The limitations of current technology standards make it unlikely that a pilot this fall could test level 3 (smart) documents. Parsons noted that a real estate transaction encompasses an entire package of documents that should be submitted at once, so that a partial pilot, with a mortgage submitted without a deed or vice versa, would not be a useful or worthwhile demonstration for the task force. He suggested that the goal is to automate a closing completely.

Monacelli said that the smart documents are categorized as model 3 documents. Standards are not in place to bundle all the documents in a closing, but the technology itself is proven. Some education efforts are necessary and there are plans for it underway. But given the complexity of the real estate recording process, automation needs to develop incrementally. The task force could concentrate on a limited number of documents – e.g., satisfactions. It needs either to narrow the scope or extend the schedule.

Parsons said there is a need to justify the investment in the task force by aiming at automation of the entire package from a closing. The task force shouldn't close down after having only completed a limited pilot.

Bill Mori said that the standards for all the documents in the whole package wouldn't be done within a year. The task force needs to define its scope and, for example, define success in terms of demonstrating

that XML works with some documents and so can be extended to encompass others. The task force should define the pilots accordingly. Beth McInerny said that extending the timeline means changing the work plan; the task force can't just stretch things out.

Mori asked if there were any risk in prematurely declaring we have a problem. Would it be better to come back next year and make a report that we need to do more to move forward? Bert Black noted that we have been urged by our legislators to move as quickly as possible – even more quickly than the task force reported. As well, 2003 is a budgeting year: if we request additional funds for implementation or further study, then we may be more likely to get them that year. Luci Botzek said that requesting an extension next year means being involved in the budget discussion and that raises the risk of losing everything. This might be the best year to ask for an extension.

Leonard Peterson said that expectations are already set among his constituents. In order to meet those, the task force has to provide some deliverables this year. One example would be the certificate of real estate value.

Parsons said it might make sense to consider this an ongoing process, with a consequent need to envision some mechanism in place over a long term to guide the development and extension of the electronic real estate recording process, as well as the challenges produced by changing technology and the ongoing negotiations with all the concerned constituencies.

Secretary Kiffmeyer said that, along with an extension, we should also request a rider to carry unexpended funds into the next FY and to extend the surcharge through 2004.

Parsons moved for approval of drafted legislation with the extension of the task force to 2004. Mike Cunniff seconded the motion. Secretary Kiffmeyer said that if the legislature doesn't approve the extension, that should not be allowed to have any negative impact on the task force's other recommendations. If it does approve the extension, the task force will have to re-negotiate Beth McInerny's contract, as well as the work plan. The task force may need to form a new sub-committee to review the original work plan, its implications and our expectations. Denny Kron offered a friendly amendment to the motion, to extend the surcharge along with the task force into 2004 and to allow for carrying over unexpended funds from one FY to the next. The motion carried unanimously.

7. Report on project status and work with BenNevis

McInerny reported that BenNevis is wrapping up meetings with the survey participants. It will then arrange for meetings with the task force and its sub-committees for further discussion on progress and results. It will provide general access to its work products before the final versions are submitted.

So far, one intern has joined the project. A stipend would attract more. McInerny wants to survey all counties and private organizations by phone, using interns, with an instrument designed by BenNevis. Cunniff moved and Larry Dalien seconded paying two interns $1000 each. The motion carried unanimously.

8. New business

Monacelli asked about what links and reports should go on the task force's web site. He suggested some educational section with information and links. He also asked if the task force should see if vendors would pay to advertise on these pages. This could raise some revenue. The task force should also start an education committee, to provide speakers to various associations as the opportunity arises. This should involve participation from all constituencies. The committee would define a common message, with a train the trainer session to develop a basic presentation. Secretary Kiffmeyer suggested he bring sample presentations for review to the next meeting.

As to the web site, Secretary Kiffmeyer said we could provide links to other sites without making any selections that may seem preferential. That would be a first start and the task force can explore other steps in time to come. Parsons moved that we create the links, with some disclaimer to the effect that the task force makes no warrant to the value of the information, nor does a link indicate a recommendation or approval of any kind. Bob Horton seconded the motion. It prevailed unanimously. McInerny will check with the LCC to see what the legislature's policies are about links to other sites and advertising.

9. Adjournment

The meeting adjourned at 11.55.