

Electronic Real Estate Recording Task Force
Minutes: 26 September 2002
As recorded by Beth McNerny

Present:

(Members) Jeanine Barker, Julie Bergh, Carmen Bramante (via telephone), Mike Ryan, Representative Al Juhnke, Mike Cunniff, Jeanine Barker, Paul McGinley, Don Goedken, Eileen Roberts, Dennis Unger, Chuck Hoyum, Larry Dalien, Cindy Koosman, Scott Loomer, Marty Henschel, John Jones (via telephone), Secretary of State Mary Kiffmeyer, Gail Miller, Angela Burrs (via telephone), John Richards (via telephone), Joe Witt (via telephone), Leonard Peterson

(Guests) Chris Akers, Paul Backes, Mike Paradis, Joel Beckman, Bert Black, Luci Botzek, Greg Hubinger, Beth McNerny, Molly Terry, Margaret Cook, Mike Moharty, Bob Malecki, Merrill King, John Engerholm, Jim Mulder, Lowell Haagenon

1. Call to Order

Secretary Kiffmeyer called the meeting to order at 9.35.

2. Approval of August 8, 2002 Minutes

Angela Burrs requested a change. She was listed as a guest in the August minutes and she is a member. Minutes were approved with that change

3. Report on Project Status

Beth McNerny reported on project activities over the past month. Much of the work for the month of September was the result of the Pilot Contract Review Committee work. The review committee met 4 times and between those meetings McNerny worked with counties to understand what additional items were needed by the review committee. McNerny worked also with the LCC and Bert on review of the contract to be used between counties and the Task Force and on the Memorandum of Agreement that will be used between Trusted Submitters and counties. Because Larry Dalien had a full report on this process she was brief on this point.

There is a new member of the BenNevis team, John Engerholm, who was brought in to work with pilot counties. John concentrated on working with Lyon and Renville counties driving to those offices to help with work flow and process issues.

On August 21, 2002 McNerny presented at a meeting of M3C. This presentation provided a status update on the EREER Task Force's objectives.

Draft letters to invite MISMO and other potential submitters of real estate documents to attend Task Force meetings were also presented. The Executive Committee has reviewed both letters and their comments have been incorporated. Comments from the Task Force are encouraged as they read these. Input should be sent to Beth McNerny no later than Friday, October 4th. A letter of thanks was sent to

Mark Monacelli after being reviewed by the Executive Committee. That was also provided to the Task Force for their records.

McInerny was asked by the LCC to distribute information to the pilot counties alerting them to the potential issues arising from signing contracts with or having work done by vendors prior to signing contracts with the Task Force. McInerny also reported that Edina Realty Title has removed their name from consideration as a Trusted Submitter. We are currently 65% complete with Planning for Phase 1. The original completion date was September 6th. The delays are due to the proposal review process and funding assessment activities. Until these reviews are complete contracts between counties and the Task Force cannot be signed. Contracts will progress as quickly as possible to enable counties and vendors to continue working.

McInerny reported on the Task Force funding. Fiscal Year 2002 was closed with the help of the LCC's accounting division. Books were closed with a 10 cent differential. Special thanks go out to Sandy and Denise of the LCC for all the assistance they provided.

4. Pilot County Contract Review Committee Status

Larry Dalien reported in some detail on the status of the pilot contract review committee. A copy of the full report will be emailed to the Task Force.

As a reminder, the full committee membership includes Bob Horton, Larry Dalien, Chuck Parsons, Denny Kron and Susan Dioury. Other attendees at these meetings included Greg Hubinger, Luci Botzek, Beth McInerny and Paul Backes.

County project plans were reviewed by the committee and questions were submitted back to the counties to provide more detail and clarification. Counties replied by providing more detailed proposals and further discussion took place. Counties were asked to be more explicit regarding integration, the need for systems to be platform neutral and cost details.

Funding recommendations by this committee were defined using the following process:

- Reserve approximately 10% of the \$500,000 as a contingency fund.
- The AMC proposal was considered a good alternative for many counties. Reimburse Roseau County 100% of requested funds, assuming an appropriate agreement can be reached with AMC regarding the cost of the software for other Minnesota counties.
- Reimburse the other 4 counties for out-of-pocket one-time costs for training, installation and conversion.
- Reimburse the other 4 counties for contract labor costs at 50%.
- Reimburse the other 4 counties for the "lease cost" of the software. Lease cost was calculated by the committee assuming that the software has a 3 year life, and basing the lease time as being from October, 2002 thru June, 2004 (the remaining

life of the Task Force). This results in a formula of 21/36 times the price of the software.

- Reimburse the other 4 counties for the "lease cost" of the hardware. The same approach was used to determine the hardware formula, except that it is assumed that the hardware will be acquired in January, 2003. Thus a "lease" of 18 months.

Pilot counties are asked to review the proposed funding allocations and send any reallocations within the total dollars proposed to be allocated to their county to McInerny by Friday, October 4th. The pilot county contract review committee is scheduled to meet that next Monday, October 7th.

Bert Black added that the legal document, actually a joint powers agreement between county and task force has been drafted and reviewed by attorneys, the Pilot Contract Review Committee, and the LCC. The county project plan for that county will be an attachment to the Joint Powers Agreement. Secretary Kiffmeyer noted that the draft project plans look thorough and seem to cover all areas. The goal of these plans is to have a clear understanding of each person's role, all necessary commitments and that expectations are set properly. Bert asked that members of the Task Force review this contract and have recommendations back by October 4, 2002.

John Richards asked Bert for an electronic copy of this contract and Bert agreed that that would be mailed out to the group.

Mike Cunniff asked for additional clarification on the allocations. He asked if counties had latitude and flexibility to allocate where they felt they most needed to. Larry answered yes, but that would all be under the sum total that was currently allocated.

5. Report on Executive Committee

Secretary Kiffmeyer reported on the discussions at the Executive Committee meeting on September 20th. The issue of synchronization with the PRIA and MISMO standards was discussed. The text of the copyright language was distributed to the Task Force. The MISMO copyright is not a problem at this time. The PRIA copyright language is restricting and BenNevis is working with PRIA to get consent to utilize their standards in Minnesota's work. Secretary Kiffmeyer asked if there was anyone who could speak to the PRIA issue at this time.

Carmen Bramante noted that John Jones and Mark Monacelli have both spoken with PRIA. Mark will forward our letter to PRIA and they will respond to it early next week.

Secretary Kiffmeyer asked Beth to read the BenNevis letter that was sent to PRIA. A copy of that letter will be sent out to the full Task Force. She also noted that the Attorney General's office has indicated that any standards, once enacted into law, are free from copyright issues for quotations from or citations to the law. The revised Article 9 and UCC also went through this same issue.

Mike Cunniff asked if the copyright language of MISMO and PRIA could be sent with the letter to the Task Force. McInerny will do that.

Secretary Kiffmeyer discussed the payment of the BenNevis work on the standards review for areas of synchronization. This work included an assessment of the current national group's standards, alignment issues and gaps that existed. The Executive Committee asked Beth to get a cap on the cost of this work since the estimate was in a range of 80 to 120 hours, resulting in a billable range of \$10,800 to \$16,200. Beth succeeded in negotiating a cap of 80 hours with BenNevis. There was also discussion at this meeting to split the cost between the Pilot Fund of \$500,000 and the Task Force expense fund of \$650,000. A motion was needed to approve the cap resulting in a cost of \$10,800 and a division of this cost equally between the two funds. Mike Cunniff moved and Chuck Hoyum seconded this motion. The motion was approved unanimously.

Mike Cunniff asked for clarification, did this expansion of the standards also include allowing the use of DTD? Paul Backus replied that yes it did.

Bert Black added that there should be a motion to accept the report given by the Technology Subcommittee at the last Task Force meeting where the recommendation to synchronize and utilize DTD was given. Leonard Peterson moved and Dennis Unger seconded approval of the Technology Subcommittee report. The motion was approved unanimously.

Mike Cunniff suggested that we add to this motion that synchronization is conditional upon agreement with PRIA. This was seen as a friendly amendment and the motion prevailed with the addition.

Secretary Kiffmeyer next spoke of conflict of interest issues that have surfaced in the last several weeks. She noted that this is a large task force where there has been thorough discussion of this topic. One of the allegations involves Task Force member Bill Mori. This issue was formally brought to the LCC. As a software vendor, and to his credit potential conflicts have been well laid out in many discussions at prior Task Force meetings. Bill has always been clear that he is a vendor with a vested interest in the work before the Task Force. Prior to this time his relationship as a vendor with the counties has not been a direct conflict. But as we are moving into the pilot project phase, Bill has resigned because of his potential conflict with county contracts and work. This now removes him from any potential conflicts. No conflicts have taken place to this point because no pilot county contracts have been yet considered. Larry Dalien moved and Chuck Hoyum seconded Bill's resignation. The motion prevailed unanimously.

The second area of conflict of interest reported to the LCC has involved BenNevis and US Recording. Jeff Carlson of US Recording could not be at this Task Force meeting because of a funeral he needed to attend, and Mike Moharty from US Recording spoke for Jeff. Mike Moharty stated that this issue was investigated by legal counsel at the State and it was decided there is no legal conflict. BenNevis has also proposed a change to their group's structure to assist in this. Mike Paradis from BenNevis spoke. He agreed that although there is no legal conflict the perception of a conflict is there. BenNevis then presented John Engerholm as a potentially new Project Manager for this group. Paul Backes would be moved to work on other projects, including the US Recording project. Individuals that were involved in the State work would be available for consultation to John Engerholm any time.

Bert Black described the review process followed internally. He and the LCC, along with Mark Shepard, counsel to LCC reviewed this situation. In reviewing the facts it was noted that US Recordings wishes to engage with BenNevis to create software. The BenNevis contract does not prohibit them from working in the private sector while engaged with the State. It was concluded that there is no legal conflict. It is also helpful that BenNevis has taken steps to remove itself and make internal separations.

Carmen Bramante asked, under the agreement with BenNevis, is there a separation between public and private activities at BenNevis?

Bert Black stated that under the data practices act, any material in an agreed-to contract, (which will, in this case include the project plans) is public, unless labeled as a trade secret and meeting the definition of trade secret under Minnesota Statutes, chapter 13, even if the vendor has labeled the materials as confidential and proprietary under Minnesota law (13.591, subd. 3(b)). When vendors have sent such material as part of project plans we have returned such material to vendors. We neither need nor want to see data at that level of detail.

Carmen asked again, during data collection at pilots, would a BenNevis fire wall be in place to prevent commingling of information. Mike responded that there would be.

Bert noted that the question revolved around a contract amendment. The language “evaluate” was used, perhaps incorrectly, in the provision (2.2.1.5.3) regarding pilot Phase I activities. This is a function actually to be carried out by the Task Force and the Pilot Committee. A revised contract would be in order to make that clear and to restrict Ben Nevis activities in this area to data-gathering as directed by the Project Coordinator.

Secretary Kiffmeyer clarified that BenNevis would collect data and the Task Force would evaluate. Beth McNerny provided a draft of re-written language. Secretary Kiffmeyer read the corrections, which are:

2.2.1.5.3 Conduct Phase 1 Pilot Testing

Tasks: Throughout this phase Contractor will **collect data regarding the** testing activity at pilot county sites. Contractor will prepare status reports and identify risks to pilot testing.

Deliverables: Contractor will schedule regular reviews with each pilot county, Project Coordinator and county vendor to provide assistance. Contractor will **collect data and document testing activity and document results relative to ERER standards as adopted by the Task Force during Phase 1 pilot testing activity and report findings to the Project Coordinator.**

Julie Bergh asked if she could see the original BenNevis contract. Bert stated that he would send that out.

Cindy Koosman stated that “there is still perception that this wouldn’t be fair to other vendors, the private sector, if we don’t do something more. I would not like to see the Task Force get a black eye for this. “

Julie Bergh agreed that legally the contract allows this relationship. But perception is there and it's a good thing to be more open.

Secretary Kiffmeyer stated that it has been put through the paces of the attorneys, the perception is now the concern. The legality has been well covered. The next question is, are the BenNevis actions sufficient to allow for this?

John Jones suggested that there may be another issue. He asked how this differed from TriMin stepping aside.

Secretary Kiffmeyer stated that Bill has an actual vote on this Task Force, Bill has a contract with a county and it would be a direct financial gain for him. That is very different from what we have here.

Carmen asked if we could get a simple chart to compare TriMin and Bill's relationship and compare that to the BenNevis relationship. What makes one company resign and another not. We would benefit from seeing this on paper.

Bert stated that it would be difficult on this phone call to produce such a visual but expressed that the essential difference is that BenNevis is not a member of this Task Force. Bill Mori is a voting member that could influence decisions to benefit his own company and who would be voting on allocations that would be made to counties and passed through to his own company. No individual employed by BenNevis or owning Ben Nevis shares is a member of the Task force, to the best of our knowledge. Ben Nevis, by contract, is permitted to work in the private sector. Both BenNevis and US Recording are private sector parties.

Mike from BenNevis added that they don't have a decision making component to their work for the Task Force, they simply collect and assess data at counties. Any evaluation or decision making happens at the Task Force level.

Eileen Roberts expressed that what seems different is the team that worked with us to-date, is the team that is leaving and will work on US Recording.

Mike from BenNevis added that John Engerholm has worked with two counties and will continue on with this project, and reiterated that no evaluation will be done by this team.

Eileen asked if Paul Backes would still come to meetings. Paul will be a resource to the Task Force and an advisor to John as needed.

Chris Akers from Fidlar Software stated that "what we submitted to BenNevis we did, knowing that they are a contracting company. So we submitted information that was not sensitive or would hurt our company. They even told me when stuff was too detailed and not to send it. I would not have a problem working with them. They have been professional all along."

Molly Terry from Ingeo added that things have been discussed well. She noted that BenNevis would be developing a product to test against their own standards.

Bert Black responded stating that data collection is not anticipated to be confidential or proprietary information. It will focus on the performance of the pilot and that would be management information, not of an overly technical nature and therefore not at issue.

Mike Moharty added that data collection does not include assessing a submitter's software or its ability.

Cindy Koosman asked, who evaluates if a software works right with a county?

Bert Black noted that we are working to evaluate only the back-office operations at the county and then only against the adopted standards.

Carmen asked how we were going to memorialize the conflict of interest question. Is there going to be something that will memorialize this issue? Bert keeps saying "as I understand the facts" but what is the task force's official policy on conflicts of interest.

Bert Black responded that he is saying "as I understand the facts" because he is not a judge, jury or other finder of fact.

Lowell Haagenson stated that we are within legal confines but that he was concerned with perception.

Joel Beckman stated that "as a pilot county, I have a concern regarding members of the Task Force who are making funding decisions. People could be voting on that issue that have a conflict and that is a perception you may have a problem with also. Maybe we do need a document that states what a conflict officially is."

Bert noted that the Department of Administration has a policy on conflict of interest. That policy was used to assess this issue. That policy is thorough but does not go through every possible situation. Analysis needs to go on in each case. He suggests as a possible process, for any allegation of conflict, that those be brought to the Executive Committee for independent review with the LCC. The LCC is an objective 3rd party. They have their own counsel. That would provide a thorough review and then a recommendation could be brought to the Task Force for disposition of the matter.

Secretary Kiffmeyer stated that there are always concerns when you have knowledgeable people. The legislature deals with this also. For example, you see legislators who are teachers voting on education bills. Everyone around this table may have some conflict in all of this. Private submitters have asked for no money and have been an active part of this process. We don't want to make this so burdensome that Trusted Submitters are turned away. Simply because you have a concern, you don't walk away; you do as BenNevis has and take steps to deal with this. We are in a specialized field of knowledge; it will be hard to separate ourselves from people who add real value. This is a very active task force and we need to take it within context.

John Jones stated he understands that this is a specialized field but if US Recording votes to hire a vendor for the Task Force and then hires that vendor, which is the perception; this doesn't pass the sniff test. It may be legal for them to hire BenNevis but does it pass that sniff test.

Marty Henschel stated that we have made an analysis and legally we don't see a conflict, do we as a Task Force have the ability to interfere?

Bert Black noted that Ingeo, Fidler and other creators/writers/vendors of trusted submitter software are not members of the Task Force, but are vendors or potential vendors in pilots. If in fact we take John Jones' analysis, all Trusted Submitters on the Task Force would not be able to contract with other vendors because they would be voting on project plans that have as vendors companies that will sell/lease/write the e-submitter software they would use. To be consistent, we would need to apply the rule to all of these companies; that would eliminate many players in this field. He does not advocate this, as he does not believe there is a conflict here, but Ben Nevis is not the only one with a potential conflict under that theory.

John Richard said that he hears a general concern about sharing data that can be used for gain down the road. One way to manage that is to erect a fire wall between people at the BenNevis firm to prevent interaction between these groups. That is what people need to get comfortable with.

Secretary Kiffmeyer asked for a reading of BenNevis proposed structure. McInerny read the proposed restructuring. "Going forward, John Engerholm will deliver on all required tasks detailed in the State contract. A team for US Recording will be assigned by Paul Backes. Any BenNevis resource may be called upon by the Task Force to provide understanding and insight around the standards and work already performed. With your permission, we would like to put this structure in place immediately."

John Richards stated that that sounds like a workable solution. There are really three ways to manage this:

1. Ask vendors to be careful with what they share
2. Have everything that BenNevis collects go through Beth first and,
3. Establish a "Chinese wall" at BenNevis

Maybe the Legal subcommittee should take that on for additional review.

Mike Cunniff wanted to thank everyone for bringing this up and discussing this, he thanked BenNevis for their skill and good work so far. He mentioned that when Jeff first called and discussed this that he had concerns over the sniff test. He thought fully that BenNevis would be a party available during the pilots to help county work in integration or in submitter software. Then we extended the BenNevis contract. Their original contract didn't keep them from private sector work. The amendment included language that allowed private sector work. He was concerned that those that developed the standards would evaluate the standards as they work. He is now comfortable if BenNevis is only collecting data and Beth and the Task Force do the evaluation. The issue of disclosure is important in that it take place early on. The Task Force is not creating standards that compete with PRIA. There are rumors out there on this and we need more disclosure. I think we should sit on this for a few weeks; I am comfortable with the new breakdown structure at BenNevis.

Bert clarified that the BenNevis contract amendment had been approved by the Executive Committee.

Mike Cunniff asked for better notice of Executive Committee meetings and minutes.

The schedule is on the EREER web site, now listed on the Upcoming Meetings page in the lower left hand column for easier identification. A staff report is drafted covering Executive Committee meetings and is read by the Secretary and included in Task Force minutes. There are no Executive Committee minutes, per se.

Chuck Hoyum stated that he met with Jeff in August and Jeff agonized over the decision to contract with BenNevis and how it would be perceived. It was an issue he gave a lot of thought to.

Secretary Kiffmeyer added that the Legal Subcommittee will meet and discuss this further.

6. EREER Standards – Platform Neutral

Secretary Kiffmeyer noted that this was discussed in Larry's report.

Jim Mulder asked to spend a few moments detailing his proposal for Roseau. They are trying to create a "high tech post office." Roseau does not have a home page. There are hundreds of ways to create this. IBM has a web site builder and they will be a partner. Trusted submitters would go to this web site. They will select Roseau and log in. They will then send an XML document to the server. The server will have software that will take the XML and turn it to a tiff and forward it on to Roseau. They will receive it as a file. This decision making process would be controlled by counties. No county will buy a license. They will only purchase maintenance agreement. The controlling group is the CSA including counties and private partners.

Bert Black noted, for full disclosure that AMC represents all counties who, in conjunction with county officers are the government offices that operate the land-recording system.

7. Adjournment

The meeting adjourned at 11.35.