

COMMON INTEREST COMMUNITY BOARD

MINUTES OF MEETING

The Common Interest Community Board met on March 26, 2015, at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2nd Floor, Board Room 4, Richmond, Virginia 23233.

The following members were present:

Kristie Helmick
Mary Elizabeth Johnson
Kimberly Kacani
Thomas Mazzei
Christiaan Melson, Vice-Chair
Paul Orlando
Jacquelyn Riggs
Lucia Anna Trigiani, Chair
Katherine Waddell
David Watts

Board member Enrico Cecchi was not in attendance.

DPOR staff present for all or part of the meeting included:

Jay W. DeBoer, Director
Nick Christner, Deputy Director for Regulatory Programs and Compliance
Mark N. Courtney, Senior Director for Regulatory and Public Affairs
Trisha L. Henshaw, Executive Director
Jill Hrynciw, Board Administrator
Heather Gillespie, Ombudsman
Amy Goobic, Administrative Assistant

James Flaherty from the Office of the Attorney General was present.

Finding a quorum of the Board present, Ms. Trigiani, Chair, called the meeting to order at 9:36 a.m. **Call to Order**

Ms. Trigiani advised the Board of the emergency evacuation procedures. **Emergency Evacuation Procedures**

Mr. Mazzei moved to approve the agenda as amended. Ms. Riggs seconded the motion which was unanimously approved by: Helmick, **Approval of Agenda**

Johnson, Kacani, Mazzei, Melson, Orlando, Riggs, Trigiani, Waddell, and Watts.

Ms. Trigiani welcomed and introduced new board member Paul Orlando.

**Welcome &
Introduction of New
Board Member**

Ms. Henshaw informed the Board that Jim Flaherty, board counsel, was leaving the Office of the Attorney General and going into private practice.

Ms. Henshaw further informed the Board that Betty Jones, Administrative Assistant, would be retiring soon. Board members requested resolutions be prepared for Ms. Jones and Mr. Flaherty to be considered at a future meeting.

Mr. Melson moved that the Board approve the minutes of the December 3, 2014, Board meeting. Ms. Kacani seconded the motion which was unanimously approved by: Helmick, Johnson, Kacani, Mazzei, Melson, Riggs, Trigiani, Waddell, and Watts. Mr. Orlando abstained as he was not present for the December meeting. Ms. Henshaw explained that all board members present and eligible voted on minutes of Board and Committee meetings even if they were not in attendance.

**Approval of
Minutes**

Mr. Melson moved that the Board approve the minutes of the February 11, 2015, Ombudsman Committee meeting. Ms. Johnson seconded the motion which was unanimously approved by: Helmick, Johnson, Kacani, Mazzei, Melson, Orlando, Riggs, Trigiani, Waddell, and Watts.

Ms. Trigiani opened the floor for public comment. No members of the public present requested to speak.

**Public Comment
Period**

As the presiding Board member Mr. Melson was recused and not present for the discussion or vote. Ms. Waddell also recused herself from the discussion and vote due to a professional relationship with the regulant.

**File Number 2014-
00502, Association
Community
Services West, Inc.**

In the matter of **File Number 2014-00502, Association Community Services West, Inc.**, the Board members reviewed the Consent Order as seen and agreed to by Association Community Services West, Inc. After discussion, Ms. Kacani moved to accept the Consent Order which cites the following violation of the Board's regulations 18VAC48-50-190.1(Count 1). For this violation, Association Community Services West, Inc. agrees to pay the following monetary penalties: \$100.00 for the violation contained in Count 1 and \$150.00 in Board costs, for a total monetary penalty of \$250.00.

Further, Association Community Services West Inc agrees that Martha Yeager, the “Responsible Person, Qualifying Individual, and a Certified Principal or Supervisory Employee for ACS” shall, within ninety (90) days of entry of this Order, complete a two (2) hour Common Interest Community law and regulation course approved by the Board, and provide the Board with satisfactory proof thereof.

Mr. Mazzei seconded the motion which was approved by members: Helmick, Johnson, Kacani, Mazzei, Orlando, Riggs and Trigiani. Mr. Watts was opposed.

The Board reviewed a memorandum from staff dated January 22, 2015, to consider issuance of a temporary cease and desist order against Wynfield Two, a community association. Wynfield Two is not registered with the Board pursuant to §55-79.93:1 and 18 VAC 48-60-80. In addition Wynfield Two does not have a complaint procedure in place as required by Board regulation 18VAC48-70-30 and § 55-530.E of the Code of Virginia.

**Consideration of
Temporary Cease
and Desist Order
Regarding
File Number 2014-
00995, Wynfield
Two**

After discussion, Mr. Melson made a motion to issue Temporary Cease and Desist Orders in accordance with § 54.1-2352 (b) of the Code of Virginia which states:

“If the agency makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the agency shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.”

Wynfield Two must provide documentation of compliance within 30 days of the execution of the order. Ms. Waddell seconded the motion which was unanimously approved by: Helmick, Johnson, Kacani, Mazzei, Melson, Orlando, Riggs, Trigiani, Waddell, and Watts.

The Board reviewed a revised memorandum from staff dated March 24, 2015, to consider issuance of temporary cease and desist orders against

**Consideration of
Temporary Cease**

the following condominium project registrations where the declarant failed to submit an annual report and bond/letter of credit verification form:

**and Desist Orders
Regarding
Condominium
Registrations**

Registration Number	Name of Condominium Project	Declarant
0517050212	Linden Town Lofts Condominium	Linden Town Lofts, LLC
0517070199	Coastal Condominium	Coastal Investments, LLC
0517050249	Fairfax Condominium	Westwin of Roanoke, LLC
0517130124	Graichen Building Condominiums	Boscawen Properties, LLC
0517050286	White Gables, a Condominium	White Gables Charlottesville, LC
0517060230	Marshall Street Condominium	Marshall Street Condos, LLC
0517070212	Windy Knolls, a Condominium	Tri-City Management, Inc.
0517080184	12 th Street Flats Condominium	Urban Development Associates, LLC

After reviewing the facts and information presented in the memorandum at the Board meeting, the Board determined that the declarants failed to file an annual report within thirty (30) days of the anniversary date of the condominium project registration as required by § 55-79.93 of the Code of Virginia.

After discussion, Ms. Kacani made a motion to issue Temporary Cease and Desist Orders in accordance with § 55-79.100(b) of the Code of Virginia which states:

“If the agency makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the agency shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.”

The declarants of the registrants must cease and desist from the sale of units in the condominium project until annual reports and assessment bond or letter of credit verification forms, as applicable, are submitted and determined to be acceptable by the Board. If the declarants fail to cease and desist the unlawful practice after entry of the Order, the Board may refer the matters for enforcement pursuant to § 54.1-306 of the Code of Virginia, and/or impose sanctions and take other actions

permitted by Chapter 4.2 of Title 55 (§§ 55-79.39 et seq.) of the Code of Virginia. The orders remain in effect until the declarants submit acceptable documentation to the Board that the necessary affirmative actions have been taken to correct the deficiencies or the matters are adjudicated, whichever is later. Mr. Orlando seconded the motion which was unanimously approved by: Helmick, Johnson, Kacani, Mazzei, Melson, Orlando, Riggs, Trigiani, Waddell, and Watts.

The Board reviewed a memorandum from staff dated March 18, 2015, to consider issuance of temporary cease and desist orders against the following time-share project registrations where the project developer failed to submit the 2014 annual reports:

**Consideration of
Temporary Cease
and Desist Orders
Regarding Time-
Share Registrations**

Registration Number	Name of Time-Share Project	Developer
0515070007	The Phillips Club II at the Grand Millennium Condominium Time-Share	Phillips Club II Holdings, LLC
0515950007	The Owners Club at The Homestead, a Vacation Ownership Plan	The Homestead, LP

After reviewing the facts and information presented in the memorandum at the Board meeting, the Board determined that the project developers failed to file annual reports by June 30, 2014 as required by § 55-394.1 of the Code of Virginia.

After discussion, Ms. Riggs made a motion to issue Temporary Cease and Desist Orders in accordance with § 55-396.D.2 of the Code of Virginia which states:

“If the Board makes a finding of fact at a hearing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. With the issuance of a temporary cease and desist order, the Board, by registered mail or other personal written service, shall give notice of the issuance to the Developer.”

The project developers must cease and desist from the sale of time-share units until annual reports are submitted and determined to be acceptable by the Board. If the project developers fail to cease and desist the unlawful practice after entry of the Order, the Board may refer the matters for enforcement pursuant to § 54.1-306 of the Code of Virginia,

and/or impose sanctions and take other actions permitted by Chapter 21 of Title 55 (§§ 55-360 et seq.) of the Code of Virginia. The orders remain in effect until the developers submit acceptable documentation to the Board that the necessary affirmative actions have been taken to correct the deficiencies or the matters are adjudicated, whichever is later. Mr. Melson seconded the motion which was unanimously approved by: Helmick, Johnson, Kacani, Mazzei, Melson, Orlando, Riggs, Trigiani, Waddell, and Watts.

Board members reviewed a request for interpretation regarding the disclosure requirements contained in §55-374.A.1 of the Virginia Real Estate Time-Share Act.

Request for Interpretation of §55-374.A.1 of the Virginia Real Estate Time-Share Act

After discussion, the Board declined to provide an interpretation as it is outside the Board's authority in that it goes beyond an interpretation necessary to administer its programs, enforce the regulations, or make case decisions. The Board further stated that it urges the developer and its counsel to seek full disclosure consistent with the Code of Virginia and Board's regulations.

The Board recessed from 10:48 a.m. until 11:05 a.m.

Recess

Board members reviewed a memorandum from staff regarding guidance with a condominium registration wherein a declarant asks to voluntarily terminate the condominium registration and the registration does not meet the requirements for termination pursuant to § 55-79.93:2.A of the *Code of Virginia*, and staff cannot administratively terminate the registration pursuant to § 55-79.93:2.B, however the declarant has indicated there are no plans to sell additional units. In reviewing the Condominium Act (Title 55, Chapter 4.2 of the *Code of Virginia*), other than the provisions for termination contained in § 55-79.93:2, there are no other provisions for terminating or inactivating a registration (other than Board revocation pursuant to § 55-79.101).

Consideration of Request for Guidance Regarding Condominium Registrations

After discussion, the Board confirmed by consensus that the declarant is not obligated to maintain the condominium project registration, and may withdraw the registration, if the declarant is not selling units. As part of withdrawing the registration, the declarant will be required to certify that he has no plans to sell units, will continue to pay assessments on units owned by the declarant, and that he will re-register the condominium project and meet all current entry requirements of the Code of Virginia and Board's regulations should the declarant decide to sell units in the future. Release of the assessment bond or letter of credit is possible with withdrawing the registration with confirmation

from the unit owners association that the declarant is current in the payment of assessments.

Mr. Melson provided a brief report from the February 11, 2015, Ombudsman Committee meeting. Mr. Melson informed the Board that the Committee discussed ideas and actions for outreach and education for those involved in community associations. Mr. Melson reported that Ms. Henshaw, Ms. Hrynciw and Ms. Gillespie attended the Community Associations Institute (CAI) Expo in Washington, DC, providing information on the Board and Ombudsman office. He further reported that Ms. Johnson is exploring ways to incorporate education opportunities through CPA audits, and Ms. Gillespie has developed a survey draft that will be sent to various stakeholders when finalized.

**Ombudsman
Committee Meeting
Report**

Ms. Henshaw discussed opportunities for collaboration with the Virginia Association of Realtors (VAR), as many CIC license holders also have real estate or broker licenses. Ms. Henshaw further reported that the Board will host a summer intern through the agency intern program and that the intern will work on education and outreach opportunities. Mr. Watts thanked Board staff for their hard work and dedication on the outreach campaign.

Board members were provided a draft of Ms. Gillespie's survey. Ms. Henshaw requested Board members provide feedback on the draft survey within two weeks.

Ms. Henshaw reported that due to the resignation of Elena Ferranti, there was a vacancy on the Training Program Review Committee. Ms. Trigiani asked Mr. Orlando if he would be available to serve on the Committee. Mr. Orlando accepted.

**Discussion of
Training Program
Review Committee
Membership**

Board members considered the following resolution for former Board member Elena Ferranti:

**Consideration of
Resolution for
Service**

WHEREAS, Elena Ferranti, did faithfully and diligently serve as a member of the Virginia Common Interest Community Board from 2011 to 2014;

WHEREAS, Elena Ferranti, did devote generously of her time, talent and leadership to the Board;

WHEREAS, Elena Ferranti, did endeavor at all times to render decisions with fairness and good judgement in the best interest of the citizens of the Commonwealth and these professions; and

WHEREAS, the Virginia Common Interest Community Board wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;

NOW THEREFORE BE IT RESOLVED, by the Virginia Common Interest Community Board this twenty-sixth day of March 2015 that Elena Ferranti, be given all honors and respect due her for her outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to her and be made a part of the official minutes of the Board so that all may know of the high regard in which she is held by this Board.

Ms. Kacani moved to adopt the resolution. Mr. Mazzei seconded the motion which was unanimously approved by: Helmick, Johnson, Kacani, Mazzei, Melson, Orlando, Riggs, Trigiani, Waddell, and Watts.

Ms. Henshaw provided an update on the current status of the regulatory review processes for the Board's regulatory packages.

**Update on
Regulatory Review
Processes**

The Common Interest Community Board Condominium Regulations are in the final stage currently undergoing review by the Governor's office.

The Common Interest Community Board Time-Share Regulations are in the proposed stage currently undergoing review by the Governor's office.

The Common Interest Community Board Time-Share Regulations action to incorporate an amendment resulting from Senate Bill 348 to incorporate alternative purchase registration provisions are in the fast-track stage and are currently undergoing review by the Governor's office.

The Common Interest Community Board Condominium Management Information Fund Regulations to reduce association renewal fees became effective March 1, 2015.

Board members reviewed a list of the bills from the 2015 General Assembly affecting the CIC Board and common interest communities. Ms. Henshaw stated that staff monitored 14 bills.

**Update on 2015
General Assembly**

Discussion was held on House Bill 1632, passed by the House and Senate during the 2015 General Assembly. The bill requires the

**Discussion of HB
1632 – Declaration**

Common Interest Community Board to develop and publish best practices for the content of declarations consistent with the requirements of the Property Owners' Association Act. The Board agreed by consensus to establish a committee formed of board members and non-board members to craft the best practices. Ms. Kacani, Mr. Orlando and Mr. Watts were selected as the board representatives. Ms. Kacani will serve as Chair of the Committee. Invitations will be extended for non-board members to interested parties in related professions. Ms. Henshaw requested Board members provide suggestions for non-board members who may be interested in serving on the Committee. The Board agreed by consensus to authorize staff in conjunction with the Board and Committee Chairs to determine the final list of invitees.

Best Practices

Ms. Gillespie provided the Board with a report on the Office of the Common Interest Community Ombudsman and provided a handout which contained complaint statistics, information on outreach events attended and collaborative efforts with VAR. Ms. Gillespie also reported that she met with a Commonwealth's Attorney to provide information on the office of the Ombudsman.

Ombudsman's Report

Ms. Henshaw provided the Board a copy of the most recent financial statement for informational purposes.

Board Financial Statements

A copy of the financial statement for the Common Interest Community Management Recovery Fund for the month ended on January 31, 2015 was also provided. No claims have been filed.

Recovery Fund Statements

As requested by the Board, a schedule of recent events attended by staff and upcoming events was provided to the Board with the agenda package for information purposes only.

Staff Event Calendar

Mr. Melson commented on approved training courses, stating that the Northern Virginia Bar Association offers courses that would fulfill requirements. Ms. Kacani added that the Committee responds to submissions for course approval.

Other Board Business

The Board members were reminded to complete their conflict of interest forms and travel vouchers.

Complete Conflict of Interest Forms and Travel Vouchers

There being no further business, the meeting was adjourned at 12:25 p.m.

Adjourn

Lucia Anna Trigiani, Chair

Jay W. DeBoer, Secretary

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