

COMMON INTEREST COMMUNITY BOARD

MINUTES OF MEETING

The Common Interest Community Board (Board) met on December 10, 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:

Lucia Anna Trigiani, Chair
Kristie Helmick
Kimberly Kacani
Paul Orlando
Scott Sterling
Katherine Waddell (arrived at 10:04 a.m.)
David Watts

Board members Mary Elizabeth Johnson and Thomas Mazzei were not in attendance.

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

Jay W. DeBoer, Director
Mark N. Courtney, Senior Director for Regulatory and Public Affairs
Nick Christner, Deputy Director for Licensing, Investigations and Compliance
Trisha L. Henshaw, Executive Director
Jill R. Hrynciw, Board Administrator
Kristin M. Clay, Board Administrator
Heather Gillespie, Ombudsman
Tanya M. Pettus, Administrative Assistant

Joshua E. Laws, Assistant Attorney General, 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 9:39 a.m. **Call to Order**

Ms. Trigiani advised the Board of the resignation of Board members Christiaan Melson and Jacquelyn Riggs, and staff member Jill R. Hrynciw. **Notice of Board Member and Staff Changes**

Ms. Henshaw introduced Kristin M. Clay, Board Administrator.

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

Procedures

Mr. Orlando moved to approve the agenda as amended. Mr. Sterling seconded the motion which was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, and Watts.

Approval of Agenda

Mr. Orlando moved that the Board approve the minutes of the September 10, 2015, Training Program Review Committee meeting. Ms. Kacani seconded the motion which was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, and Watts.

Approval of Minutes

Mr. Orlando moved to approve the minutes of the September 10, 2015, Board meeting. Ms. Helmick seconded the motion. After discussing a possible amendment to the minutes, Mr. Orlando withdrew his motion to approve the minutes as presented. The withdrawal was accepted by Board consensus. Mr. Orlando then made a motion to approve the minutes as amended. Ms. Helmick seconded the motion which was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, and Watts.

Mr. Sterling moved to approve the minutes of the September 24, 2015, HB 1632 Stakeholder Committee meeting. Ms. Kacani seconded the motion which was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, and Watts.

Mr. Orlando moved to approve the minutes of the October 19, 2015, HB 1632 Stakeholder Committee meeting. Ms. Kacani seconded the motion which was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, and Watts.

Ms. Trigiani opened the floor for public comment.

Public Comment Period

Matthew Green, State Affairs Director of the Community Associations Institute, was present to address the Board regarding the draft of Best Practices for the Content of Property Owners Associations' Declarations. Mr. Green commended the Board on the contents of the draft and provided two brochures to be considered by the Board for inclusion in the Best Practices document as reference material for potential home owners and community association board members.

Ms. Trigiani advised Mr. Green that the Board would review the brochures and discuss his suggestion later in the meeting.

In the matter of **File Number 2016-00840, William Kinnard, Sr.**, the Board members reviewed the record which consisted of the application

File Number 2016-00840, William

file, transcript, and exhibits from the Informal Fact-Finding Conference, and the Presiding Officer's Summary and Recommendation. Ms. Kacani moved to accept the recommendation of the Presiding Officer and approve Mr. Kinnard's application for a principal or supervisory manager certificate. Mr. Watts seconded the motion. After discussion, the motion was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, and Watts.

Kinnard, Sr.

In the matter of **File Number 2014-0283, Lake Princess Anne Condominium Association**, the Board members reviewed the Consent Order, which imposed a monetary penalty of \$1,000.00 and Board costs in the amount of \$150.00. In addition Lake Princess Anne Condominium Association agrees to provide evidence of a complaint procedure in place within 90 days, with \$900.00 of the monetary penalty to be waived if such evidence of a complaint procedure is provided within that timeframe. Ms. Kacani moved to accept the terms of the Consent Order as presented. Mr. Orlando seconded the motion. After discussion, the motion was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, and Watts.

File Number 2014-0283, Lake Princess Anne Condominium Association

Ms. Waddell arrived at 10:04 a.m.

Arrival of Board Member

The Board reviewed a memorandum from staff dated November 30, 2015, to consider issuance of temporary cease and desist orders against the following condominium project registrations where the declarants failed to submit annual reports and bond/letters of credit verification forms:

Consideration of Temporary Cease and Desist Orders Regarding Condominium Registrations

1. R.J.P., LLC., declarant of Seahorse Cove Condominium, Registration Number 0517080162
2. Crosscreek, LLC, declarant of Crosscreek Condominium, Registration Number 0517080166

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

Ms. Kacani made a motion to issue Temporary Cease and Desist Orders in accordance with § 55-79.100(b) of the Code of Virginia as the public interest will be irreparably harmed by delay in issuing the orders. 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, Kacani, Orlando, Sterling, Trigiani, Waddell, and Watts.

Ms. Henshaw advised that temporary cease and desist orders may only be issued to time-shares after a finding of fact at a hearing in accordance with § 55-396 of the Code of Virginia. Ms. Henshaw explained that after a temporary cease and desist order is issued to a time-share as a result of a hearing, and if the time-share has not come into compliance, another hearing must be scheduled in 15 days to issue a permanent cease and desist order. Due to the time constraints in scheduling hearings, discussion was held on changing the statute in regards to temporary cease and desist orders to mirror that of the Condominium Act. The Board agreed by consensus to add this matter to the list of possible statutory changes to be requested for inclusion in the administrative package for consideration in the 2017 General Assembly session.

**Discussion of
Temporary Cease
and Desist Orders
for Time-Shares**

Ms. Henshaw provided the Board with a report from the HB 1632 Stakeholder Committee meeting held October 19, 2015. She advised the Board that the Committee had finalized a draft of Best Practices for Property Owners' Associations' Declarations, and the draft was made available for comments from the public via the DPOR and Town Hall websites. Ms. Henshaw stated 10 comments were received from members of the public. The draft Best Practices document and the comments were provided for review by the Board.

**Report from HB
1632 Stakeholder
Committee Meeting**

The Board recessed from 10:45 a.m. to 11:04 a.m.

Recess

The Board continued review of the comments received on the draft of Best Practices for Property Owners' Associations' Declarations. After discussion, Mr. Watts moved to adopt the Best Practices for Property Owners' Associations' Declarations as amended. Ms. Kacani seconded the motion which was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, Waddell, and Watts.

**Consider Adoption
of Best Practices
Document**

Ms. Henshaw provided an update on the current status of the regulatory

Update on

review processes for the Board's regulatory packages.

**Regulatory Review
Process**

The Time-Share Regulations undergoing general review have been approved by the Governor and will be submitted for publication. The regulations will become effective at the end of a 30 day public comment period. The projected effective date is March 1, 2016.

The public comment period on the NOIRA to amend the Ombudsman Regulations ends on December 30, 2015. Language changes to the regulations will be proposed to the Board at its next meeting in March 2016.

Ms. Henshaw advised the Board that the temporary reduction in annual association renewal fees to \$10.00, regardless of the number of lots or units, expired on June 30, 2015. As the temporary reduction did not lower the excess cash balance sufficiently to come into compliance with the Callahan Act, staff recommends that the Board extend the fee reduction until June 30, 2016. After discussion, Mr. Watts moved to authorize staff to proceed with filing an exempt action to extend the temporary fee reduction until June 30, 2016. Ms. Kacani seconded the motion which was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, Waddell, and Watts.

**Consider Exempt
Regulatory Action
for Association
Renewal Fees**

Mr. Watts discussed his concern that smaller associations are paying more in fees per unit and or lot than larger associations. The Board agreed by consensus that staff would review the current fee structure and the matter will be taken up for discussion by the Board at a later date.

Ms. Henshaw advised that a periodic review was conducted on all of the Board's regulations in accordance with Executive Order 17, and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia. A public comment period was held and two comments were received. Ms. Henshaw presented public comment received during the public comment period on the Ombudsman regulations. The Board agreed by consensus to accept the draft response to the public comment as proposed by staff.

**Consider Public
Comments on
Periodic Review**

Ms. Henshaw advised the Board there was one comment received during the public comment period on the Common Interest Community Manager regulations. After discussion, the Board agreed by consensus to accept the draft response to the public comment proposed by staff as amended.

After the Board reviewed comments, Ms. Helmick moved to retain the current Board regulations and not commence a regulatory review

process to amend the regulations. Ms. Waddell seconded the motion which was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, Waddell, and Watts.

Ms. Henshaw requested that the Board consider a NOIRA to amend Common Interest Community Manager Regulation's training program provisions. After discussion, Ms. Kacani moved to proceed with the NOIRA to amend the Common Interest Community Manager regulations. Ms. Waddell seconded the motion which was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, Waddell, and Watts.

**Consider NOIRA
for Common
Interest Community
Manager
Regulations to
Amend Training
Program Provisions**

The Board recessed from 12:14 p.m. to 12:37 p.m.

Recess

Ms. Henshaw advised the Board that former Board members may be needed on occasion to serve as presiding officers at informal fact-finding conferences. Former Board members that agree to serve in that capacity will be presented to the Board for approval and, if approved, the selected individual will be asked to sign a contract with the Department.

**Administrative
Hearing Process
Changes Resulting
from SB 927**

Ms. Henshaw advised the Board that, due to changes in the Administrative Processes Act as a result of the 2015 General Assembly session, the names of the Presiding Officer at informal fact-finding conferences will now appear on conference notices sent to respondents. As a result, respondents in cases may contact selected Presiding Officers to discuss their cases or circumstances. Ms. Henshaw advised the Board to direct any inquiries received from respondents to Board staff as any communication regarding the case by a Board member with a respondent outside of the informal fact-finding conference would be inappropriate and would result in such Board member being recused from participation in the adjudication of the case.

After discussion, Ms. Kacani made a motion to consider Christiaan Melson to serve as a Presiding Officer at informal fact-finding conferences for the Board as applicable to his profession. Ms. Waddell seconded the motion which was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, Waddell, and Watts.

Board members considered the following resolution for former Board staff member Jill R. Hrynciw:

**Consideration of
Resolution for
Service**

Jill R. Hrynciw

WHEREAS, **Jill R. Hrynciw**, has faithfully and diligently served the

Department of Professional and Occupational Regulation since 2008, and the Common Interest Community Board since 2013;

WHEREAS, **Jill R. Hrynciw**, did devote generously of her time, talent and leadership to the Board;

WHEREAS, **Jill R. Hrynciw**, 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 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 Common Interest Community Board this tenth day of December 2015, that **Jill R. Hrynciw** 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.

Board members considered the following resolution for former Board member Jacquelyn C. Riggs:

Jacquelyn C. Riggs

WHEREAS, **Jacquelyn Riggs**, did faithfully and diligently serve as a member of the Virginia Common Interest Community Board from 2012 to 2015;

WHEREAS, **Jacquelyn Riggs**, did devote generously of her time, talent and leadership to the Board;

WHEREAS, **Jacquelyn Riggs**, 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 tenth day of December 2015, that **Jacquelyn Riggs** 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.

Mr. Orlando moved to adopt both resolutions as presented. Ms. Waddell seconded the motion which was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, Waddell, and Watts.

Ms. Gillespie provided the Board with the annual report on the Office of the Common Interest Community Ombudsman. A handout of the report was provided. The report contained statistics on complaints received by the Ombudsman's office, as well as compliance and enforcement statistics. Ms. Gillespie advised the Board the report is also available on the DPOR and General Assembly websites.

Ombudsman's Report

Ms. Henshaw provided a copy of the most recent financial statements and advised the Board that there have been no claims from the Recovery Fund.

Board Financial Statements

Ms. Henshaw provided a schedule of upcoming events to be attended by Board staff and the Ombudsman.

Staff Event Calendar

Ms. Henshaw opened the floor for annual nominations of the Board Chair. Ms. Kacani nominated Ms. Trigiani and moved to close the nominations for Board Chair. Mr. Orlando seconded the motion which was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, Waddell, and Watts. By acclamation, Ms. Trigiani was named Board Chair.

Election of Officers

Ms. Trigiani opened the floor for annual nominations of Board Vice-Chair. There being no nominations, Ms. Kacani volunteered for the position. Mr. Orlando moved to accept Ms. Kacani as Board Vice-Chair and close the nominations. Ms. Helmick seconded the motion which was unanimously approved by: Helmick, Kacani, Orlando, Sterling, Trigiani, Waddell, and Watts. By acclamation, Ms. Kacani was named Board Vice-Chair.

Ms. Henshaw reminded the Board that staff actively monitors legislation throughout General Assembly session and provides data and information regarding the Board and Department relevant to legislative proposals affecting the Board.

Other Board Business

Discussion was held on disclosure packet fees for professionally-managed and self-managed associations at the request of Mr. Watts. Ms. Henshaw and Mr. DeBoer advised the Board that a running list of proposed legislative suggestions is kept by staff, and that this topic could be added to the list to be reviewed for inclusion in the 2017 General Assembly session. The Board agreed by consensus to revisit the topic for inclusion on the list at its June 2016 meeting.

The Board reviewed the brochures provided by Mr. Green of the Community Associations Institute during the Public Comment Period. After discussion, the Board agreed that it would be best to consider including the brochures with the list of resources available on the Ombudsman's website. The Board agreed by consensus to have the brochures included on the Ombudsman's list of resources.

Ms. Henshaw reminded the Board that their individual financial disclosure statements are due by end of day on December 15, 2015, and that biennial conflict of interest training for each Board member must be completed by end of day on December 31, 2015.

There being no further business, the meeting was adjourned at 1:37 p.m. **Adjourn**

Lucia Anna Trigiani, Chair

Jay W. DeBoer, Secretary