

COMMON INTEREST COMMUNITY BOARD

MINUTES OF MEETING

The Common Interest Community Board met on Tuesday, October 26, 2009 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:

F. James Ahlberg
Pamela Coerse
Ronda S. DeSplinter
Kimberly B. Kacani, Vice Chair
Douglas Kleine
Barry S. Lineback
Milton W. Matthews
R. Lee Merritt
Lucia Anna Trigiani, Chair
Katherine Waddell

Board member Scott Sterling was not in attendance.

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

Jay W. DeBoer, Director
Mark N. Courtney, Deputy Director of LRD
Heather Gillespie, Ombudsman
Trisha L. Henshaw, Executive Director
Thomas K. Perry, Property Registration Administrator
Betty C. Jones, Administrative Assistant
Earlyne Perkins, Legal Analyst

Steven Jack 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 9:05 a.m. **Call to Order**

Ms. DeSplinter moved to approve the agenda. Mr. Ahlberg seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Kleine, Lineback, Matthews, Merritt, Trigiani, and Waddell. **Approval of Agenda**

Ms. Waddell moved that the Board approve the minutes of the July 21, 2009, meeting. Ms. Coerse seconded the motion which was **Approval of Minutes**

unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Kleine, Lineback, Matthews, Merritt, Trigiani, and Waddell.

Ms. Waddell moved that the Board approve the minutes for the following Ombudsman Regulatory Review Committee Meetings:

- July 27, 2009, Ombudsman Regulatory Review Committee Meeting
- August 17, 2009, Ombudsman Regulatory Review Committee Meeting
- September 16, 2009, Ombudsman Regulatory Review Committee Meeting

Mr. Matthews seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Kleine, Lineback, Matthews, Merritt, Trigiani, and Waddell.

Ms. Coerse moved that the Board approve the minutes of the August 25, 2009, Informal Consultation Proceeding. Mr. Lineback seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Kleine, Lineback, Matthews, Merritt, Trigiani, and Waddell.

Mr. Kleine moved that the Board approve the minutes of the October 13, 2009, meeting. Mr. Merritt seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Kleine, Lineback, Matthews, Merritt, Trigiani, and Waddell.

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

**Public Comment
Period**

Regarding File Number 2009-04120, Alexander Properties, Inc., a formal hearing was convened with the Chair serving as presiding officer. Ms. Trigiani provided the procedures for the formal hearing and asked all parties present to offer testimony to step forward. The following person was sworn in and given the opportunity to present testimony:

**Formal Hearing for
File Number 2009-
04120, Alexander
Properties, Inc.**

Jay Fulk for Alexander Properties, Inc.

The Board was provided with the agency record to date, which consisted of the Report for the Informal Consultation Proceeding (ICP), transcript and exhibits, and Summary from the ICP. Mr. Fulk confirmed that he was provided with a copy of the agency record prior to the hearing.

The matter under consideration by the Board concerned whether or not Alexander Properties, Inc., properly handled the deposit made by a purchaser pursuant to a written contract. The contract was subsequently cancelled by the purchaser and Alexander Properties, Inc., failed to return the deposit in accordance with § 55-376 of the Code of Virginia. Mr. Fulk testified that he was aware that the deposit needed to be refunded and was delayed due to cash flow problems, but assured that it would be returned as cash became available. Further, Mr. Fulk indicated that all properties being sold in Chalet High North and Creekside Village did not need to be registered as they were resales.

During the course of the testimony, the Board asked Mr. Fulk questions and he was given an opportunity to respond. Mr. Fulk was also given the opportunity to provide a closing statement, which he did provide.

After testimony was provided by Mr. Fulk, the Chair closed the formal hearing. Ms. Trigiani stated that the deliberations would be conducted in open session and that a decision from the Board would be forthcoming.

Ms. Coerse recused herself from the formal hearing due to her professional relationship with the respondent.

Regarding File Number 2009-04120, Alexander Properties, Inc., the Board members reviewed the agency record which consisted of the Report for the Informal Consultation Proceeding (ICP), transcript and exhibits, and Summary from the ICP, as well as the testimony from the formal hearing in this matter. After deliberation, Ms. Kacani made a motion that the Board find no violation of § 55-376 of the Code of Virginia as the project, Chalet High North, was not registered with the Board. Ms. DeSplinter seconded the motion which was approved by members: Ahlberg, Kacani, and Lineback. Members voting in opposition to the motion were: DeSplinter, Kleine, Matthews, Merritt, and Waddell. The motion failed.

File Number 2009-04120, Alexander Properties, Inc.

After further discussion, Mr. Matthews made a motion that the Board find no violation of § 55-376 of the Code of Virginia as the project, Chalet High North, was not registered with the Board. Ms. Kacani seconded the motion which was unanimously approved by members: Ahlberg, DeSplinter, Kacani, Kleine, Lineback, Matthews, Merritt, and Trigiani.

Due to her professional relationship with the respondent, Ms. Coerse recused herself and was not present during the discussion or vote.

The Board recessed at 10:32 a.m. and reconvened at 10:51 a.m.

Break

Ms. Coerse recused herself from the meeting due to her professional relationship with the registrant.

**Review of
Determination
Record:**

Considering the matter of **File Number 2010-00201, Jane A. Courtney-Bohrer**, the Board reviewed a request for determination of compliance with § 55-386 of the Code of Virginia.

**File Number 2010-
00201, Jane A.
Courtney-Bohrer**

After review and discussion, Ms. Kacani made a motion that there is insufficient information to support a determination of compliance with § 55-386 of the Code of Virginia. Mr. Kleine seconded the motion which was unanimously approved by: Ahlberg, DeSplinter, Kacani, Kleine, Lineback, Matthews, Merritt, and Trigiani. Ms. Waddell abstained from voting. Ms. Coerse did not participate in the discussion or vote.

Mr. Merritt recused himself from the meeting due to his professional relationship with the registrant.

**Consideration of
Temporary Cease
and Desist Order**

The Board considered a proposal for a temporary cease and desist order pursuant to § 55-79.100.A against Bridgewater Bay Condominium. The Board was provided with a request from the declarant to continue this matter for three months. There was no motion to grant a continuance of this case.

**Regarding
Condominium
Registration
Number 04-0110,
Bridgewater Bay
Condominium**

The two issues being presented to the Board for consideration are:

1. the sale of unregistered units, which is a violation of the Condominium Act and Condominium Regulations and may result in a void or voidable purchase agreement or other possible outcomes; and
2. the sufficiency of an assessment bond or letter of credit, which ensures that any assessments owed by a Declarant to a unit owners' association will be paid.

During discussion and review of the proposal, the Board determined that the declarant was marketing and attempting to sell units that were not properly registered and the declarant does not have an assessment bond or letter of credit sufficient to cover assessments for the currently registered units.

After discussion, Mr. Kleine made a motion to issue a Temporary Cease and Desist Order wherein the Board orders WHM Corporation, the declarant of Bridgewater Bay Condominium to cease and desist from the sale of units in the condominium project until the registration is

amended to register the units that are not currently registered, the public offering statement is amended as appropriate, and an assessment bond or letter of credit is submitted, all in compliance with the requirements of Chapter 4.2 of Title 55 (§ 55-79.39 et seq.) of the Code of Virginia and the Condominium Regulations.

Further, notification should be made to any potential purchasers of the limitations on dispositions of units in accordance with § 55-79.87 of the Code of Virginia.

Ms. Waddell seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Kleine, Lineback, Matthews, Trigiani, and Waddell. Mr. Merritt did not participate in the discussion or vote.

The following resolution for service was adopted by consensus for Glenn Silver. **Adoption of Resolution**

**Resolution for
Glenn H. Silver**

WHEREAS, **Glenn H. Silver**, did faithfully and diligently serve as a member of the Virginia Common Interest Community Board from 2008 to 2009;

WHEREAS, **Glenn H. Silver**, did devote generously of his time, talent and leadership to the Board;

WHEREAS, **Glenn H. Silver**, 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 October 2009, that **Glenn H. Silver**, be given all honors and respect due him for his outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to him

and be made a part of the official minutes of the Board so that all may know of the high regard in which he is held by this Board.

The Board approved by consensus Certificates of Appreciation for the public members of the Ombudsman Regulatory Review Committee as listed: Ms. Prudence Bachmann, Ms. Coleen Hillen, Mr. William Marr, Jr. and Mr. William Mason, Jr.

Adoption and Presentation of Certificates of Appreciation

Mr. Matthews as Chair of the Ombudsman Regulatory Review Committee presented the Certificates of Appreciation to Ms. Hillen and Mr. Marr who were present at the meeting. The Certificates of Appreciation for the members who could not attend will be mailed.

Mr. Matthews reported to the Board the process that the regulatory review committee undertook to develop the draft Ombudsman Regulations and accompanying forms for the Board's review.

CIC Ombudsman Regulations/Report from Regulatory Review Committee

Ms. Trigiani commended Mr. Matthews on the draft regulations. Ms. Trigiani stated that the CIC Workgroup of the Virginia Housing Commission reviewed and discussed the Ombudsman Regulations at the Workgroup's October 21st meeting, where several members raised concerns.

The Board reviewed the draft Ombudsman Regulations. Some of the changes were of a grammatical nature, and others to clarify sections of the regulations.

Review Draft CIC Ombudsman Regulations

The Board recessed for lunch from 12:50 p.m. to 2:00 p.m.

Lunch

The Board members participated in the Conflict of Interest Act training as it is required of all board members. Board members signed certificates verifying that they had completed the training course.

Conflict of Interest Training

The Board revisited the draft Common Interest Community Ombudsman Regulations. The Board reviewed the association complaint form, the notice of final adverse decision form, and the waiver of filing fee form. The forms were approved by consensus.

Review Draft CIC Ombudsman Regulations

After further review of the regulations, Mr. Matthews made a motion to adopt the draft of the Ombudsman Regulations as proposed regulations. Ms. DeSplinter seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Kleine, Lineback, Matthews, Merritt, Trigiani, and Waddell.

Review Draft CIC Ombudsman Regulations and Adopt as Proposed

There was a discussion regarding the applicability of the final adverse

Discussion of

decision process to members of associations with no governing boards. This is a concern because there would be no governing board to consider complaints, thus there could be no final adverse decision. The Board determined that these complaints would have to go through the Department's regular complaint process and a remedy to these situations could only be handled by a change in the statute.

Association with No Governing Boards

The Board members were provided with the public comments for the Common Interest Community Manager Regulations, as well as a draft of the Board's response for each comment. The comments were received during the public comment period of June 22, 2009, to August 21, 2009. After review and discussion, Ms. Waddell moved to adopt the draft responses as amended. Mr. Ahlberg seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Kleine, Lineback, Matthews, Merritt, Trigiani, and Waddell.

CIC Manager Regulations/Review Summary of Public Comments and Adopt Board Response

After amending the proposed regulations pursuant to comments received, Ms. Kacani made a motion to approve the Common Interest Community Manager Regulations as final regulations. Mr. Kleine seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Kleine, Lineback, Matthews, Merritt, Trigiani, and Waddell.

Adopt Final CIC Manager Regulations

The Board agreed by consensus that a Committee should be established to develop individual certification provisions for the CIC Manager Regulations. The following individuals were approved by consensus to serve on the Regulatory Review Committee to add individual certification provisions to the CIC Manager Regulations. Ronda DeSplinter will Chair the Committee. The following Board members will serve: Barry Lineback and Kim Kacani. Public members who will be invited to serve are: Paul Orlando, Chris Melson, John Rhodes, Kenneth Chadwick, Edward O'Connell, III, Walter Sasser, Charles Simpson, and Marshall Bowden.

Discussion of CIC Manager Regulatory Review to Add Individual Certification Provisions

The Board reviewed revisions to the procedure used to render time-share determinations in accordance with § 55-382.B. Ms. DeSplinter made a motion to approve the procedure as revised. Ms. Kacani seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Kleine, Lineback, Matthews, Merritt, Trigiani, and Waddell.

Review Revised Determination Procedure

The Board reviewed the revisions to the association disclosure packet notice. Ms. Kacani made a motion to approve the form as revised. Ms. DeSplinter seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Kleine, Lineback, Matthews,

Discussion of Association Disclosure Packet Notice

Merritt, Trigiani, and Waddell.

The Board considered a request to provide an interpretation of the meaning of “substantial completion.” After discussion, the Board agreed by consensus that it could not provide an interpretation on this issue as it is outside the Board’s authority.

**Discussion of
Meaning of
“Substantial
Completion”**

The Board discussed the application review process as it relates to the bond and insurance policy required pursuant to § 54.1-2346(D). The staff supplied the Board with a copy of a draft guidance document prepared at the Board’s request at its July 21, 2009 meeting. The draft guidance document specifies several items that must be submitted in order to comply with § 54.1-2346(D) of the Code of Virginia.

**Discussion of
Application Review
Process as it
Relates to
Bond/Insurance**

Ms. Henshaw discussed one of the proposed items to be required, the “certification statement.” After discussion, staff was directed to determine whether the insurance company can provide such a certification statement.

Ms. Trigiani advised that staff develop a guidance document for all bonds to include condominium assessment bonds and time-share fidelity, performance, and completion bonds.

The Board deferred further discussion until its next meeting.

Ms. Gillespie provided a report on the activities of the Office of the Common Interest Community Ombudsman, including statistical information on complaints filed with the Ombudsman’s office. There is a substantial increase in the number of time-share complaints filed. The complaints primarily concern increases in maintenance fees and individuals trying to get out of their contracts.

**Ombudsman’s
Report**

Ms. Henshaw provided statistical information on common interest community applications and licenses, including the number of new applications filed, percentage of applications received, current regulations, and the regulant population for September 2009. Ms. Henshaw also discussed refunds that are being made of the Recovery Fund Fee, due to confusion regarding when the fee is due. It is a one-time fee for associations and it is being submitted again as new annual reports are received.

**Licensing/
Registration
Statistics**

Ms. Henshaw presented to the Board the most recent financial statement for informational purposes.

**Board Financial
Statements**

The Board previously requested that staff compile a calendar of the

Staff Event

common interest community-related events and dates that staff and the Ombudsman's office attends. The requested information was provided to the Board with the agenda package for information purposes only.

Calendar

Ms. Trigiani discussed increasing outreach to the public.

The Board revisited the scheduling of future Board meeting dates. After discussion, the Board moved to adopt the following meeting dates by consensus:

Reschedule Meeting Dates

September 28, 2010 (previously scheduled for September 8, 2010)
December 2, 2010 (previously scheduled for December 14, 2010)

Election of Officers

Ms. Trigiani opened the floor for nominations of Chair and Vice Chair. Ms. Kacani made a motion to nominate Ms. Trigiani as Chair. Mr. Matthews seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Kleine, Lineback, Matthews, Merritt, Trigiani, and Waddell. By acclamation, Ms. Trigiani was elected Chair.

Ms. DeSplinter made a motion to nominate Ms. Kacani as Vice Chair.

Ms. Coerse seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Kleine, Lineback, Matthews, Merritt, Trigiani, and Waddell. By acclamation, Ms. Kacani was elected Vice-Chair.

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

Conflict of Interest and Travel Voucher Forms

There being no further business, the meeting was adjourned at 4:08 p.m.

Adjourn

Lucia Anna Trigiani, Chair

Jay W. DeBoer, Secretary