

COMMON INTEREST COMMUNITY BOARD

MINUTES OF MEETING

The Common Interest Community Board met on Thursday, September 11, 2014, at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2nd Floor, Board Room 1, Richmond, Virginia 23233.

The following members were present:

Enrico Cecchi
Kristie Helmick
Mary Elizabeth Johnson
Kimberly Kacani
Thomas Mazzei
Christiaan Melson, Vice-Chair
Lucia Anna Trigiani, Chair
David Watts (arrived at 12:06 p.m.)

Board members Elena Ferranti, Jacquelyn Riggs, and Katherine Waddell were not in attendance.

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

Nick Christner, Deputy Director for Licensing, Investigations and Compliance
Mark N. Courtney, Senior Director for Regulatory and Public Affairs
Trisha L. Henshaw, Executive Director
Heather Gillespie, Ombudsman
Betty C. Jones, 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 9:38 a.m. Ms. Trigiani asked that a moment of silence be given to honor and remember all of those who lost their lives on 9/11.

Call to Order

Ms. Trigiani advised the Board of the emergency evacuation procedures.

Emergency Evacuation Procedures

Ms. Trigiani welcomed Mr. Christner, who was attending on behalf of Mr. DeBoer. She also introduced the newest Board members: David Watts, who was appointed to serve as a citizen member; Mary Elizabeth Johnson, who was appointed to serve as a certified public accountant;

Introduction of New Members

and returning Board member Katherine Waddell, was appointed to serve as a citizen member.

Ms. Henshaw noted that agenda item VII. a. Consideration of Temporary Cease and Desist Orders Regarding Condominium Registrations has been removed from the agenda because the declarant has complied. Mr. Melson moved to approve the revised agenda. Mr. Cecchi seconded the motion which was unanimously approved by: Cecchi, Helmick, Johnson, Kacani, Mazzei, Melson, and Trigiani.

Approval of Agenda

Ms. Kacani moved that the Board approve the minutes of the June 26, 2014, Board meeting. Mr. Mazzei seconded the motion which was unanimously approved by: Cecchi, Helmick, Johnson, Kacani, Mazzei, Melson, and Trigiani.

Approval of Minutes

Ms. Trigiani opened the floor for public comment. Mr. Eric Page, attorney with LeClairRyan, addressed the Board during the Public Comment Period. Mr. Page thanked the Board for giving him the opportunity to speak. Mr. Page represents ProCAM, LLC and stated he wanted to clear up some misunderstandings and amicably resolve this situation.

Public Comment Period

Mr. Mike Holm, attorney with LeClairRyan, addressed the Board during the Public Comment Period. Mr. Holm thanked the Board for giving him the opportunity to speak. Mr. Holm also represents ProCAM, LLC and expressed his concern that substantive charges were not separated from procedural charges. He indicated that ProCAM, LLC has learned its lesson. He expressed concern that the penalty is too excessive for the violations cited.

The Board reviewed a memorandum from staff dated August 1, 2014, to consider issuance of a temporary cease and desist order against Gills Gate Homeowners Association, Inc.

File Number 2014-01961, Gills Gate Homeowners Association, Inc.

After reviewing the facts and information, the Board determined that the association has failed to adopt a complaint procedure as required by § 55-530.E of the *Code of Virginia*. The association's failure to comply with § 55-530.E of the *Code of Virginia* does not assure the public that the association is in compliance with the Property Owners' Association Act and the Board's Common Interest Community Ombudsman Regulations.

After discussion, Ms. Kacani made a motion that, in the interest of protecting the public from harm, the Board enter a temporary cease and desist order in accordance with § 55-530.E of the *Code of Virginia*. The

Board ordered Gills Gate Homeowners Association to cease and desist from portraying itself as a registered property owners association until the association submits a complaint procedure in compliance with § 55-530.E of the *Code of Virginia* and the complaint procedure is determined to be acceptable by the Board. If Gills Gate Homeowners Association fails to cease and desist the unlawful practice after entry of the Order, the Board may refer the matter for enforcement, and/or impose sanctions. The order will remain in effect until the association submits acceptable documentation to the Board that it has taken the affirmative actions necessary to correct the deficiencies or the matter is adjudicated, whichever is later. Mr. Melson seconded the motion which was unanimously approved by: Cecchi, Helmick, Johnson, Kacani, Mazzei, Melson, and Trigiani.

At 10:05 a.m., Ms. Kacani moved that the Board meeting be recessed and that the Board immediately reconvene in closed meeting for the purpose of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation as permitted by § 2.2-3711.A.7 of the *Code of Virginia*. The following non-members will be in attendance to reasonably aid the consideration of the topic: James Flaherty, Trisha Henshaw, and Nick Christner. The motion to convene in closed meeting was with respect to the matter identified as agenda item VIII. a. Discuss Legal Advice Pertaining to Actual or Probable Litigation. Mr. Cecchi seconded the motion which was unanimously approved by: Cecchi, Helmick, Johnson, Kacani, Mazzei, Melson, and Trigiani.

Closed Meeting

Mr. Watts arrived at 12:06 p.m.

Arrival of Board Member

At 1:34 p.m., Ms. Kacani moved that the Board adjourn the closed meeting and immediately reconvene in open session. Mr. Cecchi seconded the motion which was unanimously approved by: Cecchi, Helmick, Johnson, Kacani, Mazzei, Melson, Trigiani, and Watts.

Open Meeting

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Common Interest Community Board has convened a closed meeting on this date pursuant to an affirmative recorded vote in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712 of the *Code of Virginia* requires a certification by this Common Interest Community Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Common Interest Community Board hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Common Interest Community Board.

VOTE: 8-0-3

AYES: Cecchi, Helmick, Johnson, Kacani, Mazzei, Melson, Trigiani, and Watts.

NAYS: None.

ABSENT: Ferranti, Riggs, and Waddell

Ms. Henshaw gave 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 Condominium Regulations action to incorporate amendments resulting from House Bill 899 are in the exempt action final stage and have been published, with an expected effective date of October 9, 2014.

Ms. Henshaw advised the Board that amendment to the Time-Share Regulations is necessary as a result of changes to the Time-Share Act pursuant to Chapter 623 of the 2014 Virginia Acts of Assembly (Senate Bill 348). Because the amendments to the regulations are necessitated by a statutory change, Ms. Henshaw indicated the change could be accomplished through a fast-track action in accordance with regulatory review guidelines. After review, Mr. Melson moved to authorize staff to proceed with filing a fast-track action to amend the Common Interest Community Time-Share Regulations as necessary to comply with the referenced statutory change and to authorize staff, in consultation with the Board chair, to make any minor changes necessary to gain approval

**Consider
Fast-Track Action
to Amend Time-
Share
Regulations to
Incorporate
Amendments
Resulting from
Senate Bill 348**

during the executive branch review. Mr. Mazzei seconded the motion which was unanimously approved by: Cecchi, Helmick, Johnson, Kacani, Mazzei, Melson, Trigiani, and Watts.

Ms. Henshaw discussed the Training Program Review Committee membership. The Board agreed by consensus to select Ms. Kacani to serve as Chair of the Committee and to add Mr. Watts as a member. Both Ms. Kacani and Mr. Watts accepted their selections to the Committee.

**Discussion of
Training Program
Review Committee
Membership**

Ms. Henshaw discussed the Ombudsman Committee membership. The Board agreed by consensus to add Ms. Johnson as a member. Ms. Johnson accepted her selection to the Committee.

**Discussion of
Ombudsman
Committee
Membership**

The following resolution was presented for consideration by the Board.

**Consideration of
Resolution for
Service**

Resolution for

Douglas Rogers

WHEREAS, **Douglas Rogers**, did faithfully and diligently serve as a member of the Virginia Common Interest Community Board from 2010 to 2014;

WHEREAS, **Douglas Rogers**, did devote generously of his time, talent and leadership to the Board;

WHEREAS, **Douglas Rogers**, 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 eleventh day of September 2014 that **Douglas Rogers**, 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.

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

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

**Reschedule June
2015 Meeting Dates**

June 3, 2015 - Training Program Review Committee meeting (previously scheduled for June 24, 2015)

June 4, 2015 - CIC Board meeting (previously scheduled for June 25, 2015)

Ms. Gillespie provided a handout on the activities of the Office of the Common Interest Community Ombudsman, including statistical information on complaints filed with the Ombudsman's office. Specific information included:

**Ombudsman's
Report**

- The number of phone calls received;
- The number of emails received;
- The number of complaints filed; and
- The types of complaints received, including 68 Notices of Final Adverse Decision since September 13, 2012

Ms. Henshaw provided an update on the Ombudsman Committee. The Committee met on September 10, 2014 with Mr. Melson as Chair and discussed issues related to unregistered common interest community associations, associations with no complaint procedures, how to handle registration issues for associations with defunct/dysfunctional boards, and recommendations regarding Senate Bill 332 as directed by the Board. After discussing options, resources, and ideas for addressing the first three issues, the Committee determined that the most effective method for addressing these issues, given the nature of the issues and resource availability, will be increased education and outreach. This will include creating videos and vignettes; print publications including brochures, newsletters, and articles for various outlets; and other tangible education tools. The Committee agreed to further discuss resources, methods, and potential industry collaborations at the next meeting. Staff will work on developing a list of priorities, audiences, methods of delivery, and resources to achieve maximum benefit from resources available.

**Report from
Ombudsman
Committee**

Regarding Senate Bill 332, Mr. Melson made a motion, in accordance with the Committee recommendation, to advise the Common Interest Communities Workgroup of the Virginia Housing Commission that a Committee to improve education and outreach from the Board and Office of the CIC Ombudsman has been established. The Ombudsman Committee will oversee the education and outreach initiative in order to maximize such efforts in line with current resource availability. Further, the Committee will use the “bill of rights” in SB 332 as part of the foundation for educational resources to be developed. The Board indicates that the requirements imposed in the proposed legislation may be far-reaching in terms of codification in the law, but believes that the impetus for the bill – educating owners about their rights – can be achieved through non-legislatively mandated education and outreach methods. Ms. Kacani seconded the motion which was unanimously approved by: Cecchi, Helmick, Johnson, Kacani, Mazzei, Melson, Trigiani, and Watts.

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 June 30, 2014 was also provided. No claims have been filed.

Recovery Fund Statements

Ms. Henshaw opened the floor for nominations of Chair and Vice Chair. Ms. Kacani made a motion to nominate Ms. Trigiani as Chair. Mr. Mazzei seconded the motion which was unanimously approved by: Cecchi, Helmick, Johnson, Kacani, Mazzei, Melson, Trigiani, and Watts. By acclamation, Ms. Trigiani was elected Chair.

Election of Officers

Mr. Mazzei made a motion to nominate Mr. Melson as Vice Chair. Ms. Kacani seconded the motion which was unanimously approved by: Cecchi, Helmick, Johnson, Kacani, Mazzei, Melson, Trigiani, and Watts. By acclamation, Mr. Melson was elected Vice Chair.

The Board previously requested that staff compile a calendar of the common interest community-related events and dates that staff and the Ombudsman attend. The requested information was provided to the Board with the agenda package for information purposes only.

Staff Event Calendar

At 2:14 p.m., Ms. Kacani moved that the Board meeting be recessed and that the Board immediately reconvene in closed meeting for the purpose of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation as permitted by § 2.2-

Closed Meeting

3711.A.7 of the *Code of Virginia*. The following non-members will be in attendance to reasonably aid the consideration of the topic: James Flaherty, Trisha Henshaw, and Nick Christner. The motion to convene in closed meeting was with respect to the matter identified as agenda item VIII. a. Discuss Legal Advice Pertaining to Actual or Probable Litigation. Mr. Melson seconded the motion which was unanimously approved by: Cecchi, Helmick, Johnson, Kacani, Mazzei, Melson, Trigiani, and Watts.

At 3:24 p.m., Mr. Cecchi moved that the Board adjourn the closed meeting and immediately reconvene in open session. Ms. Kacani seconded the motion which was unanimously approved by: Cecchi, Helmick, Johnson, Kacani, Mazzei, Melson, Trigiani, and Watts.

Open Meeting

CERTIFICATION OF CLOSED MEETING

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WHEREAS, § 2.2-3712 of the *Code of Virginia* requires a certification by this Common Interest Community Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Common Interest Community Board hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Common Interest Community Board.

VOTE: 8-0-3

AYES: Cecchi, Helmick, Johnson, Kacani, Mazzei, Melson, Trigiani, and Watts.

NAYS: None.

ABSENT: Ferranti, Riggs, and Waddell

Mr. Cecchi made a motion to reopen the matter identified as File Number 2014-00466, ProCAM, LLC. Ms. Kacani seconded the motion

**Reopen File
Number 2014-**

which was unanimously approved by: Cecchi, Helmick, Johnson, **00466, ProCAM, LLC**, Kacani, Mazzei, Melson, Trigiani, and Watts.

Mr. Cecchi made a motion to vacate the Final Order entered on June 26, 2014, in the matter identified as File Number 2014-00466, ProCAM, LLC upon entry of a Consent Order in the matter identified as File Number 2014-00466, ProCAM, LLC. ProCAM LLC's Common Interest Community Board manager license will be restored contingent upon the following terms. ProCAM, LLC consents to the following terms:

- As to Count 1, the Board agrees not to proceed on this Count.
- As to Count 2, Board Regulation 18 VAC 48-50-220.B, ProCAM, LLC admits to a violation and agrees to the imposition of a monetary penalty in the amount of \$2,250.00;
- As to Count 3, Board Regulation 18 VAC 48-50-190.9, ProCAM, LLC admits the judgment referenced therein was unpaid from January 7, 2013, to April 29, 2014, and agrees to the imposition of a monetary penalty in the amount of \$2,250.00; and
- Further, ProCAM, LLC agrees to pay Board costs in the amount of \$150.00 for a total of \$4,650.00 in monetary penalties and Board costs.

In addition to the monetary penalties, ProCAM, LLC also agrees:

- that proof of meeting all requirements for Common Interest Community Manager licensing will be provided to the Board within seven (7) days of entry of this Order;
- that Responsible Person Blake Kokus ("Kokus") shall meet all requirements for certification as a principal or supervisory employee and apply for such certification within ninety (90) days of entry of this Order and to maintain such certification so long as ProCAM, LLC holds a license issued by the Board; and Kokus is employed by ProCAM, LLC; and
- that Kokus 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.

Ms. Helmick seconded the motion which was approved by: Cecchi, Helmick, Johnson, Kacani, Melson, and Trigiani. As the reviewing Board member, Mr. Mazzei recused himself from the meeting and was not present during the discussion or vote. Mr. Watts abstained from voting.

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 3:28 p.m.

Adjourn

Lucia Anna Trigiani, Chair

Jay W. DeBoer, Secretary

DRAFT