

COMMON INTEREST COMMUNITY BOARD

MINUTES OF MEETING

The Common Interest Community Board (Board) met on September 5, 2019, at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2<sup>nd</sup> Floor, Board Room 4, Richmond, Virginia 23233.

The following members were present:

Lucia Anna Trigiani, Chair  
Maureen A. Baker  
Amanda Jonas  
Drew R. Mulhare  
Paul Orlando, Vice-Chair  
Lori Overholt  
Scott Sterling

Board members Tom Burrell, Eugenia Lockett Reese, and Katie Waddell were not in attendance at the meeting.

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

Mary Broz-Vaughan, Acting Director  
Trisha L. Henshaw, Executive Director  
Heather Gillespie, Ombudsman  
Joseph C. Haughwout, Jr., Board and Regulatory Administrator  
Tanya M. Pettus, Administrative Assistant

Joshua Laws, Assistant Attorney General with the Office of the Attorney General, was present.

Finding a quorum of the Board present, Ms. Trigiani, Chair, called the meeting to order at 10:04 a.m. **Call to Order**

Ms. Jonas moved to approve the agenda as presented. Mr. Sterling seconded the motion which was unanimously approved by: Baker, Jonas, Mulhare, Orlando, Overholt, Sterling, and Trigiani. **Approval of Agenda**

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

Ms. Jonas moved to approve the June 6, 2019, Board meeting minutes as presented. Ms. Baker seconded the motion which was unanimously approved by: Baker, Jonas, Mulhare, Orlando, Overholt, Sterling, and **Approval of Minutes**

Trigiani.

Mr. Mulhare moved to approve the June 20, 2019, Reserve Study Guidelines Committee Minutes as presented. Ms. Jonas seconded the motion which was unanimously approved by: Baker, Jonas, Mulhare, Orlando, Overholt, Sterling, and Trigiani.

Michael Blivess, a member of the Potomac Green Community Association, was present to address the Board with his personal thoughts. Mr. Blivess stated he worked as an actuary for many years, and expressed disappointment that the Reserve Study Guidelines Committee did not consider the comments he made at the Reserve Study Guidelines Committee meeting on June 20, 2019, when drafting the Reserve Study Guidelines. Mr. Blivess advised the Board that he has submitted comments in writing on the draft Reserve Study Guidelines that were published for public review, and asked that the Board consider rejecting the draft Reserve Study Guidelines as they are currently written.

**Public Comment**  
**Period**

Cathy Merendino submitted comments in writing expressing her concern over the rising costs for associations and their members. Specifically, Ms. Merendino addressed the cost of service contracts with professional management companies as well as costs associated with disclosure packages.

Terri Hillaert of POA Management Associates LLC submitted comments in writing regarding §§ 55-509.6 D. and 55-509.6 E. of the Property Owners' Association Act. Ms. Hillaert expressed concern that the statute does not allow fees for disclosure packages to be collected in advance of a real estate settlement. Ms. Hillaert stated there is often confusion and lack of communication among real estate agents and title companies regarding the fees for disclosure packages, therefore professional management companies are not being compensated correctly at settlement for providing the disclosure packages. After discussion, the Board agreed by consensus that the topic will be revisited at a future Board meeting for possible inclusion on the list of legislative items to be considered during the 2021 General Assembly session.

Ms. Henshaw presented the Board with an email from Mark Bailey of FirstService Residential requesting interpretive guidance on the disclosure of reserve information required as part of the budget document. After several minutes of discussion, the Board agreed by consensus that they are unable to provide legal advice. The Board thanks Mr. Bailey for his comments and invites him to attend a Board

meeting and make a public comment if he so chooses.

Ms. Baker and Mr. Orlando recused themselves from the meeting for discussion and deliberation of File Number 2019-00817.

**Recusal of Board Members**

Ms. Jonas, Mr. Sterling, and Ms. Trigiani advised that they have worked with various branches of FirstService Residential, but that they had no personal interest in the company and could be fair and impartial when considering the matter before the Board.

In the matter of **File Number 2019-00817, FirstService Residential DC Metro LLC.**, the Board members reviewed the Consent Order.

**File Number 2019-00817, FirstService Residential DC Metro LLC**

Alan Trachtenberg, counsel for FirstService Residential, was present to address the Board. Mr. Trachtenberg stated he believes that investigator Robert Franchok conducted a fair investigation and agrees with the terms of the Consent Order.

FirstService Residential DC Metro LLC admits to violations of 18 VAC 48-50-190.7 as outlined in Count 1, and agrees to the imposition of monetary penalties in the amount of \$3,750.00, and Board costs of \$150.00. In addition, FirstService Residential DC Metro LLC agrees to a sixty (60) day probation of its license beginning the effective date of the Consent Order. During the probation period, FirstService Residential DC Metro LLC shall provide the Board with written certification to the Board that it has (i) performed a review of all contracts, (ii) performed a review of transition protocol with its staff, and (iii) that it will perform a review of all contracts and review of transition protocol with its staff every year thereafter.

Mr. Sterling moved to accept the Consent Order as presented. Ms. Overholt seconded the motion which was unanimously approved by: Jonas, Mulhare, Overholt, Sterling, and Trigiani.

Ms. Baker and Mr. Orlando returned to the meeting.

**Return of Board Members**

Ms. Henshaw asked the Board to vacate the order in **File Number 2018-02143, Dominion Properties Virginia LLC**, adopted at the June 6, 2019, Board meeting, and remand the file back to Compliance and Investigations as a Real Estate Board matter pursuant to § 54.1-2349.B.2 of the Code of Virginia. Ms. Jonas moved to vacate the order and remand the file back to Compliance and Investigations. Mr. Mulhare seconded the motion which was unanimously approved by: Baker, Jonas, Mulhare, Orlando, Overholt, Sterling, and Trigiani.

**Motion to Vacate Order in File Number 2018-02143, Dominion Properties Virginia LLC**

Mr. Haughwout advised the Board that there are no new temporary cease and desist order actions to be considered at this time.

**Update on  
Temporary Cease  
and Desist Order  
Actions from June  
6, 2019**

Mr. Haughwout provided the Board with an update of the cease and desist action from June 6, 2019.

The Board recessed from 10:30 a.m. to 10:58 a.m.

**Recess**

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

**Update on  
Regulatory Actions**

An exempt action to amend the CIC Manager Regulations to eliminate annual assessments was published in the Virginia Register on May 13, 2019, and became effective on July 1, 2019.

Exempt actions to amend the CIC Management Information Fund Regulations to eliminate annual assessments and to extend the current temporary application fee reduction were published in the Virginia Register on May 13, 2019, and became effective on July 1, 2019.

Submission of exempt actions to amend chapters 30, 45, 50, 60, and 70 of the Board's regulations in connection with the recodification of Title 55 of the Code of Virginia as outlined in SB 1080, are pending. The amendments will be published in the Virginia Register, and will become effective 30 days after the date of publication.

The Board's general review of the CIC Management Information Fund Regulations is at the proposed stage and is currently undergoing Executive Branch review.

A Periodic Review Notice was filed on May 17, 2019 for the periodic review of the Condominium Regulations. A public comment period was held from June 10, 2019, to July 1, 2019. Ms. Henshaw advised the periodic review of Condominium Regulations will be discussed later in the meeting.

A Periodic Review Notice will be filed by September 11, 2019, for the periodic review of Public Participation Guidelines, Time-Share Regulations, Common Interest Community Manager Regulations, Common Interest Community Management Fund Regulations, and Common Interest Community Ombudsman Regulations. A public comment period will be held from September 30, 2019, to October 21, 2019. Public comments received during the public comment period will be presented to the Board at its December 5, 2019, meeting.

Ms. Henshaw advised that a periodic review was conducted on the Condominium Regulations in accordance with Executive Order 14, and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia. A public comment period was held and no public comments were received.

**Periodic Review**

Ms. Jonas moved to retain the current Condominium Regulations as is. Ms. Overholt seconded the motion which was unanimously approved by: Baker, Jonas, Mulhare, Orlando, Overholt, Sterling, and Trigiani.

Mr. Haughwout asked the Board to consider a replacement assessment letter of credit from The Bank of Nova Scotia submitted by Avalon Columbia Pike, LLC as part of the registration for Columbia Center Condominium. In accordance with a guidance document adopted by the Board on June 27, 2013, the Board must review for approval any assessment letter of credit that is not from an FDIC insured institution. After discussion, Mr. Orlando moved the Board not accept the assessment letter of credit from The Bank of Nova Scotia, as it was not issued by an FDIC insured financial institution as required by the Board's policy. Ms. Jonas seconded the motion which was unanimously approved by: Baker, Jonas, Mulhare, Orlando, Overholt, Sterling, and Trigiani.

**Review of Nova Scotia Letter of Credit**

The Board recessed from 11:25 a.m. to 11:41 a.m.

**Recess**

At 11:42 a.m., Mr. Orlando moved that the Board meeting be recessed and that the Board immediately reconvene in closed meeting for the purpose of consultation with legal counsel pertaining to legal matters within the jurisdiction of the Board as permitted by § 2.2-3711.A.7 of the Code of Virginia. The following non-members were in attendance to reasonably aid the consideration of the topic: Joshua Laws, Trisha Henshaw, Heather Gillespie, Joseph Haughwout, and Mary Broz-Vaughan. The motion to convene in closed meeting was with respect to the matter identified as agenda item VII.e. Closed Meeting for the Purpose of Consultation of Legal Counsel Pursuant to 2.2-3711.A.7 of the Code of Virginia. Ms. Baker seconded the motion which was unanimously approved by: Baker, Jonas, Mulhare, Orlando, Overholt, Sterling, and Trigiani.

**Closed Meeting for the Purpose of Consultation of Legal Counsel Pursuant to 2.2-3711.A.7 of the Code of Virginia**

At 12:19 p.m., Mr. Orlando moved that the Board adjourn the closed meeting and immediately reconvene in open session. Ms. Jonas seconded the motion which was unanimously approved by: Baker, Jonas, Mulhare, Orlando, Overholt, Sterling, and Trigiani.

**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

AYES: Baker, Jonas, Mulhare, Orlando, Overholt, Sterling, and Trigiani.

NAYS: None.

ABSENT DURING THE VOTE: None.

ABSENT DURING THE MEETING: Burrell, Locket Reese, and Waddell

Ms. Jonas moved to request that the Attorney General provide written advice on the Virginia Real Estate Time-Share Act as it pertains to points-based trust backed program offers to consumers, and direct Board staff to review active time-share registrations to identify those exclusively offering points-based trust backed options. Ms. Baker seconded the motion which was unanimously approved by: Baker, Jonas, Mulhare, Orlando, Overholt, Sterling, and Trigiani.

Mr. Mulhare, Chair of the Reserve Study Guidelines Committee, expressed his gratitude for the time and work put in by those who served on the Committee.

The Board reviewed for approval draft Reserve Study Guidelines required by legislation passed during the 2019 General Assembly Session directing the Board to develop guidelines for the development

**Consideration and  
Approval of Draft  
Reserve Study  
Guidelines**



of reserve studies of capital components.

The Board discussed preliminary reserve studies for developments in progress and the timeframe in which an initial reserve study must be completed by a developer, declarant, or association.

Mr. Sterling departed the meeting at 1:00 p.m.

**Departure of Board Member**

The Board reviewed comments on the draft Reserve Study Guidelines received from eight public commenters. Mark Blivess, who addressed the Board during the public comment period was also present and available to answer questions regarding his written comments submitted to the Board prior to the meeting.

**Consideration and Approval of Draft Reserve Study Guidelines Continued**

Discussion was held on the following topics:

- Terminology used in the guidelines, including the terms replacement cost, effective age, and remaining useful life;
- inflation;
- types of funding models; and,
- the readability of the Reserve Study Guidelines.

The Board also agreed by consensus that staff will further review Mr. Bleviss' comments to determine whether technical or mathematical corrections are needed.

After discussion, Ms. Jonas moved to approve as final the draft Reserve Study Guidelines as amended by the Board and to incorporate final edits provided by the Chair. Mr. Mulhare seconded the motion which was unanimously approved by: Baker, Jonas, Mulhare, Orlando, Overholt, and Trigiani.

The Board recessed from 2:18 p.m. to 2:26 p.m.

**Recess**

Ms. Gillespie provided the Board with a summary of current complaint and file statistics as of August 30, 2019.

**Ombudsman Report**

Ms. Gillespie also advised that a new staff member will be assisting the Ombudsman's office in fielding inquiries and phone calls.

Ms. Henshaw provided the Board with the most recent financial statements. There have been no claims from the Recovery Fund.

**Board Financial Statements**

Ms. Henshaw provided an overview of recent events attended by Board

**Staff Event**

staff and the Ombudsman.

Calendar

Ms. Henshaw advised the Board of the upcoming Board Member Training Conference scheduled for October 3-4, 2019.

Other Business

There being no further business, the meeting was adjourned at 2:30 p.m.

Adjourn



~~Lucia Anna Trigliani, Chair~~

PAUL L. ORLANDO



Mary Broz-Vaughan, Acting Secretary



**STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTERESTS ACT**

TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government

1. Name: Lucia Anna Trigiani
2. Title: Board Member
3. Agency: Common Interest Community Board
4. Meeting/IFF Date: Board Meeting September 5, 2019

5. I have a personal interest in the following transaction:

\_\_\_\_\_

\_\_\_\_\_

Nature of Personal Interest Affected by Transaction:

\_\_\_\_\_

\_\_\_\_\_

I declare that I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

\_\_\_\_\_

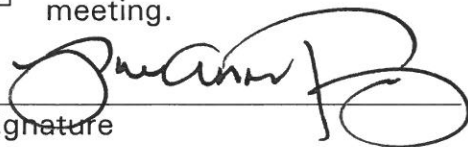
I am able to participate in this transaction fairly, objectively, and in the public interest.

or

I did not participate in the transaction.

6.  I do not have a personal interest in any transactions taken at this meeting.

Signature



Date

9/5/2019

**STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTERESTS ACT**

TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government

1. Name: Maureen A. Baker
2. Title: Board Member
3. Agency: Common Interest Community Board
4. Meeting/IFF Date: Board Meeting September 5, 2019

5. I have a personal interest in the following transaction:

\_\_\_\_\_  
\_\_\_\_\_

Nature of Personal Interest Affected by Transaction:

\_\_\_\_\_  
\_\_\_\_\_

I declare that I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

\_\_\_\_\_

I am able to participate in this transaction fairly, objectively, and in the public interest.

or

I did not participate in the transaction.

6.  I do not have a personal interest in any transactions taken at this meeting.

Maureen A. Baker  
Signature

9/5/19  
Date

**STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTERESTS ACT**

TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government

1. Name: Amanda Jonas
2. Title: Board Member
3. Agency: Common Interest Community Board
4. Meeting/IFF Date: Board Meeting September 5, 2019

5. I have a personal interest in the following transaction:

\_\_\_\_\_  
\_\_\_\_\_

Nature of Personal Interest Affected by Transaction:

\_\_\_\_\_  
\_\_\_\_\_

I declare that I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

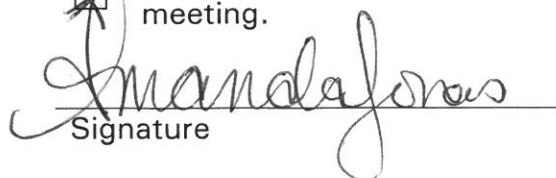
\_\_\_\_\_

I am able to participate in this transaction fairly, objectively, and in the public interest.

or

I did not participate in the transaction.

6.  I **do not** have a personal interest in any transactions taken at this meeting.

  
Signature

Date 9/5/19

**CONFLICT OF INTERESTS ACT**

**TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government**

- 1. Name: Drew R. Mulhare
- 2. Title: Board Member
- 3. Agency: Common Interest Community Board
- 4. Meeting/IFF Date: Board Meeting September 5, 2019

5. I have a personal interest in the following transaction:

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Nature of Personal Interest Affected by Transaction:

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I declare that I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

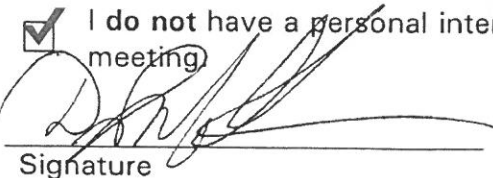
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I am able to participate in this transaction fairly, objectively, and in the public interest.

or

I did not participate in the transaction.

6.  I do not have a personal interest in any transactions taken at this meeting

  
Signature

9/5/19  
Date

**STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTERESTS ACT**

TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government

1. Name: Paul Orlando
2. Title: Board Member
3. Agency: Common Interest Community Board
4. Meeting/IFF Date: Board Meeting September 5, 2019

5. I have a personal interest in the following transaction:

\_\_\_\_\_

\_\_\_\_\_

Nature of Personal Interest Affected by Transaction:

\_\_\_\_\_

\_\_\_\_\_

I declare that I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

\_\_\_\_\_

I am able to participate in this transaction fairly, objectively, and in the public interest.

or

I did not participate in the transaction.

6.  I **do not** have a personal interest in any transactions taken at this meeting.

Paul Orlando  
Signature

9/5/19  
Date

**STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTERESTS ACT**

TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government

1. Name: Lori Overholt
2. Title: Board Member
3. Agency: Common Interest Community Board
4. Meeting/IFF Date: Board Meeting September 5, 2019

5. I have a personal interest in the following transaction:

\_\_\_\_\_

\_\_\_\_\_

Nature of Personal Interest Affected by Transaction:

\_\_\_\_\_

\_\_\_\_\_

I declare that I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

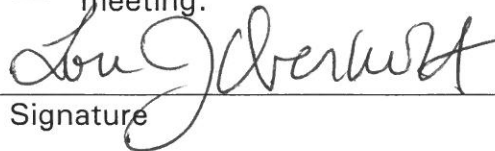
\_\_\_\_\_

I am able to participate in this transaction fairly, objectively, and in the public interest.

or

I did not participate in the transaction.

6.  I **do not** have a personal interest in any transactions taken at this meeting.

  
Signature

9/5/19  
Date

**STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTERESTS ACT**

TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government

1. Name: Scott E. Sterling
2. Title: Board Member
3. Agency: Common Interest Community Board
4. Meeting/IFF Date: Board Meeting September 5, 2019
5. I have a personal interest in the following transaction:

\_\_\_\_\_

\_\_\_\_\_

Nature of Personal Interest Affected by Transaction:

\_\_\_\_\_

\_\_\_\_\_

I declare that I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

*IDI Group Companies. One of our condominium committees - now in owners' association control, has a business relationship with First Service Residential management.*

I am able to participate in this transaction fairly, objectively, and in the public interest.

or

I did not participate in the transaction.

6.  I **do not** have a personal interest in any transactions taken at this meeting.

Scott E. Sterling  
Signature

5 Sept. 2019  
Date