

DRAFT MINUTES

VIRGINIA MANUFACTURED HOUSING BOARD MEETING

Department of Housing and Community Development
VHC Conference Center
4224 Cox Road
Henrico Room 2
Glen Allen, VA 23060
January 20, 2011

10:00 A.M.

Board Members Present : James W. Roncaglione, Chairman
Walter K. Hughes, Sr., Vice Chairman
Michael C. Nickell
Earl T. (Tom) Satterwhite
Eric C. Anderson
Gina M. Burgin
Jim Carver
Lorenzo E. Dyer, Secretary to the Board

Board Members Absent : William H. Moody
Ben Flores

Public Representation : Tyler Craddock
Matthew C. Foster

Staff
Clinton Wallace
Larry Brock
Debra Winston-Bowles
Valrae Negley
Jim Davidson
Eric Leatherby
Stephen Jacks

A. Call to Order/Roll/Determination of a Quorum.

The Virginia Manufactured Housing Board meeting was held in Richmond, Virginia, Thursday, January 20, 2011. Chairman Roncaglione called the meeting to order at 10:00 a.m. Lorenzo Dyer, Secretary to the Board, performed the roll call and a quorum was present.

B. Approval of the Minutes.

Eric C. Anderson made a motion for Agenda Item F-2 be moved to Agenda Item F-1 and Agenda Item F-1 be moved to Agenda Item F-2. He also requested to add the Agenda, Item F-3 Process Discussion on Procedures. Walter K. Hughes, Sr. seconded the motion. Chairman Roncaglione called the question and the motion carried by a unanimous vote.

A motion was made by Eric C. Anderson to accept the minutes from the Board's meeting of September 9, 2010 and December 2, 2010. Jim Carver seconded the motion, and the Minutes were accepted as written by a unanimous vote.

Gina M. Burgin: Corrections need to be made to page 10 of the minutes of December 2, 2010, to be revised for Agenda Item F-3. The Minutes need to reflect the discussion of Golden Rule Homes not receiving any type of discipline but simply paid the money back (she requested detail information).

Eric C. Anderson revised the above motion to accept only the Minutes for September 9, 2010 and Jim Carver seconded the motion. The Minutes were accepted as written by a unanimous vote.

Eric C. Anderson made a motion to move the approval of the Minutes for December 2, 2010 to Agenda Item F-4 and Jim Carver seconded the motion. Chairman Roncaglione called the question and the motion was carried by a unanimous vote.

C. Public Comment.

Tyler Craddock, Executive Director, Virginia Manufactured Housing/Modular Housing Association spoke on the "Issue of Manufactured Housing Titling". This will be reviewed by the Department of Housing Commission and the General Assembly at a later date.

The Virginia Manufactured Housing Board presented a plaque to Michael C. Nickell for public services provided and Chairmanship to the Board.

D. Committee Reports.

1. Educational Program Committee.

There are no reports for the Educational Program Committee.

Mr. William H. Moody, Board Member, has plans to attend the next Board meeting scheduled for March 17, 2011.

E. Report of the Secretary/Associated Director/Deputy Director Reports.

None.

F. Old Business.

1. Salesperson License Application for Matthew C. Foster.

After discussion of the application, Eric C. Anderson made a motion to grant a license to Matthew C. Foster and Walter K. Hughes, Sr. seconded the motion. Chairman Roncaglione called the question and the motion was carried by a unanimous vote.

2. Payment of Administrative Fees by Golden Rule Homes, Inc. – Kurt Herring.

An internal memo was received in the office concerning \$500 Kurt Herring, Golden Rule Homes, Inc. paid. Mr. Wallace explained to the Board that the memo included in the Board package was inadvertent and should not have been included in the agenda package. After much discussion, the Board concluded the memo was an internal communication among staff and there are no issue(s) to discuss.

Mr. Stephen Jacks, Assistant Attorney General, discussed and defined that a Consent Order is a contract arrangement between the party(s). If the party(s) and the Board agree to a Consent Order, a contract is established. The Board may reject the Consent Order and the Board may go further with a regular case decision process. In addition, the Board may operate with a different Consent Order with different terms.

Much discussion was made from the Board concerning the way Informal Fact-Finding Conferences are being handled from previous procedures to new procedures being implemented.

The Board discussed the Minutes of December 2, 2010. The dealership, Golden Rule Homes, Inc. apparently withheld funds from the consumer for over a year before returning the funds back to the consumer. The Consent Order did not address the apparent violation and Board members expressed that the actions of the dealership would likely have been penalized.

3. Process of Discussion on Procedures.

Informal Fact-Finding (IFF) Conferences/Mr. Stephen Jacks, Assistant Attorney General.

- All Board decisions in disciplinary cases and recovery fund cases are case decisions under the Administration Process Act.
- The Administration Process Act has a number of requirements that the Board decide all decisions based on the evidences in the record.
- That record is prepared and made available for the parties to review ahead of time in order for the Board to discuss and respond to it.
- If the parties decide to appeal a case, the Courts have the ability to review the established record of the case. That is one of the purposes of having IFF Conferences to establish the record that the Board does not receive new information once the record has been closed.
- Regulators have the opportunity under §2.2.-40-20 to have a formal hearing before the full Board rather than an IFF Conference with a board member or staff member.
- The statute is written that allows the Board to make a disciplinary decision based on the evidence presented to the record that there may be a violation. This offers the regulator (the licensee) an opportunity to pay an amount of money to a consumer that the regulator may be found in violation of the Regulations.

- There are two separate and distinct decisions the Board should consider. The Board may consider the disciplinary case first because the Board may impose sanctions on the regulant and consider the transaction recovery case second. This is a due process issue. The procedures are that staff collects the facts and then present those facts to the Board, who are the decision makers in case decisions. The Board has authority to offer Consent Orders and staff provides the Board a general scope of information about the case before the Board.
- The Board may say, under certain situations, we would like to do a formal hearing rather than an IFF Conference or in certain situations the Board delegates' staff to do an IFF Conference. There is a guidance document that the Board may adopt and post to the public site. This is the default procedure under the Administrative Process Act. This is the way the State laws mandate these procedures to be followed. Unless, the Board states as a general policy that we are going to have formal hearing on all cases, whatever the situation, it is the Board who has final authority.
- The Administrative Process Act states that you shall have an IFF Conference to ascertain the facts upon which the Board will base its decision; or you may have a formal hearing if all the parties agree to waive the IFF Conference. If the IFF Conference has already taken place, the Board may proceed to a formal hearing. There is no procedure to go directly to a formal hearing without the IFF Conference. It requires both the Board and the parties involved to waive the IFF Conference and proceed to a hearing before the full Board or before a Hearing Officer appointed by the Board.

Consent Orders, Information, Negotiations, Fines, Contracts and Violations/Mr. Stephen Jacks, Assistant Attorney General.

- The case file that staff prepares should include all the facts and evidence that is collected in relation to the case and should be information the Board receives. Staff serves as investigators of the cases and determines what may be relevant; but the Board should be well informed of all decision-making materials.
- If the case is appealed to the Circuit Court, all of the relevance evidence needs to be included in the record and nothing excluded. In such a case, the Court would remand the case back to the Board and demand the Board to include all information. If evidence was not put in the record, or was held out as being irrelevant prior to being before the court, it does not get put into the record unless the Court should decide whether it was proper to exclude evidence. The Court could remand the case back to the Board and indicate to the Board to reconsider the case with the excluded information.
- Fines may be included in a Consent Order.
- Keep in mind, public comments are not included in the record for an actual case; and public comments may be addressed to the Board.
- Also, if the Board has information outside of the record, the court will not have the ability to review such information. It could cause your case to be questioned.

Eric C. Anderson made a motion that the Chairman appoint a sub-committee to discuss the process to establish case decision guidelines and Gina M. Burgin seconded the motion. Chairman Roncaglione called the question and the motion was carried by a unanimous vote.

The sub-committee will consist of: Eric C. Anderson, Walter K. Hughes, Sr., Gina M. Burgin, Jim Carver and Clinton Wallace.

4. Approval of Minutes

Eric C. Anderson made a motion that the December 2, 2010 Minutes be postponed until revisions are complete. This will be addressed at the meeting scheduled for March 17, 2011 and Gina M. Burgin seconded the motion. Chairman Roncaglione called the question and the motion was carried by a unanimous vote.

G. New Business.

The Summary of the Informal Fact-Finding (IFF) Conference prepared on behalf of the Virginia Manufactured Housing Board held on December 14, 2010, provides the following:

1. IFF Conference – Case No. 2010-36; VAMHB v Commonwealth Construction d/b/a Tri- State Housing (Disciplinary).

Based upon the evidence and the IFF Conference, the following recommendation regarding the Counts as outlined in the Report of Findings was submitted:

- Count 1: 13 VAC 6-20-170 (16) License required; annual renewal. Failing to renew a license and continuing to engage in business as a dealer after the expiration of any license. It is therefore recommended that the license of this Regulant be revoked.
- Count 2: 13 VAC 6-20-170 (5) Failing to comply with the warranty service obligations and claims procedures required by this chapter. It was documented that the dealer failed to provide documentation according to the above regulation that each dealer is required to issue a warranty to the buyer, in writing, setting forth required terms. It is therefore recommended the dealer be assessed a penalty \$1,000.00.
- Count 3: 13 VAC 6-20-170 (2) Failing to comply with any provisions of this chapter. It was documented that the dealer failed to provide documentation of a written disclosure to the buyer alerting the buyer to the actual damage that may be assessed of the buyer by the dealer, as listed in subsection A of this section, for failure to take delivery of the manufactured homes as purchased. It is therefore recommended the dealer be assessed a monetary penalty of \$1,000.00
- Count 4: 13 VAC 6-20-170 (9) Failing to comply with the advertising provisions in Part IV of this chapter. During the Dealer Lot Inspection, the advertising records were requested and there was no available information in the dealer files upon request. It is therefore recommended the dealer be assessed a monetary penalty of \$250.00.

Count 5: 13 VAC 6-20-170 (14) Failing to appear before the board upon due notice. The regulant failed to respond to a request to appear at a dealer lot inspections. The regulant also failed to appear during the IFF Conference as requested. It is therefore recommended the dealer be assessed a monetary penalty of \$250.00

Count 6: 13 VAC 6-20-170 (15) Failing to comply with orders issued by the board pursuant to this chapter. The regulant was requested to provide documentation of matters during the IFF Conference during the dealer lot investigation and never produced the documents as requested and as indicated would be done. The regulant was requested to provide documentation of the matters reviewed during the dealer lot inspection. It is therefore recommended the dealer be assessed a monetary penalty of \$500.00.

Eric C. Anderson made a motion that on Count 1 Commonwealth Construction & Development, Inc. is found in violation 13 VAC 6-20-170 (16) License required; annual renewal. Failing to renew a license and continuing to engage in business as a dealer after the expiration of any license.

Eric C. Anderson made a motion that on Count 2 Commonwealth Construction & Development, Inc. is found in violation of 13 VAC 6-20-170 (5) Failing to comply with the warranty service obligations and claims procedures required by this chapter. It was documented that the dealer failed to provide documentation according to the above regulation that each dealer is required to issue a warranty to the buyer, in writing, setting forth required terms.

Eric C. Anderson made a motion that on Count 3 Commonwealth Construction & Development, Inc. is found in violation of 13 VAC 6-20-170 (2) Failing to comply with any provisions of this chapter. It was documented that the dealer failed to provide documentation of a written disclosure to the buyer alerting the buyer to the actual damage that may be assessed of the buyer by the dealer, as listed in subsection A of this section, for failure to take delivery of the manufactured homes as purchased.

Eric C. Anderson made a motion that on Count 4 Commonwealth Construction & Development, Inc. is found in violation of 13 VAC 6-20-170 (9) Failing to comply with the advertising provisions in Part IV of this chapter. During the Dealer Lot Inspection, the advertising records were requested and there was no available information in the dealer files upon request.

Eric C. Anderson made a motion that on Count 5 Commonwealth Construction & Development, Inc. is found in violation of 13 VAC 6-20-170 (14) Failing to appear before the board upon due notice. The regulant failed to respond to a request to appear at a dealer lot inspections. The regulant also failed to appear during the IFF Conference as requested.

Eric C. Anderson made a motion that on Count 6 Commonwealth Construction & Development, Inc. is found in violation of 13 VAC 6-20-170 (15) Failing to comply with orders issued by the board pursuant to this chapter. The regulant was requested to provide documentation of matters during the IFF Conference during the dealer lot investigation and never produced the documents as requested and as indicated would be done. The regulant was requested to provide documentation of the matters reviewed during the dealer lot inspection.

Eric C. Anderson made a motion that on Count 1 Commonwealth Construction & Development, Inc. is found in violation of 13 VAC 6-20-170 (15) a penalty of suspension of license until the decision of the Board be assessed.

Eric C. Anderson made a motion that on Count 2 Commonwealth Construction & Development, Inc. is found in violation of 13 VAC 6-20-170 (5) It is therefore recommended the dealer be assessed a penalty \$2,500.00.

Eric C. Anderson made a motion that on Count 3 Commonwealth Construction & Development, Inc. is found in violation of 13 VAC 6-20-170 (2) It is therefore recommended the dealer be assessed a monetary penalty of \$2,500.00.

Eric C. Anderson made a motion that on Count 4 Commonwealth Construction & Development, Inc. is found in violation of 13 VAC 6-20-170 (9) It is therefore recommended the dealer be assessed a monetary penalty of \$2,500.00.

Eric C. Anderson made a motion that on Count 5 Commonwealth Construction & Development, Inc. is found in violation of 13 VAC 6-20-170 (14) It is therefore recommended the dealer be assessed a monetary penalty of \$2,500.00

Eric C. Anderson made a motion that on Count 6 Commonwealth Construction & Development, Inc. is found in violation of 13 VAC 6-20-170 (15) It is therefore recommended the dealer be assessed a monetary penalty of \$2,500.00. Gina M. Burgin seconded the motion for discussion purposes.

Eric C. Anderson withdrew his motion for Count 1 through 6 and Gina M. Burgin withdrew the second motion.

After much discussion, Michael C. Nickell made a motion to assess Commonwealth Construction & Development, Inc. for Counts 1 through 4 as recommended by staff and Walter K. Hughes, Sr. seconded the motion to suspend the license instead of revocation.

Michael C. Nickell amended his motion for Count 1 instead of revoking the license, I recommend suspending the license until penalties have been paid and the parties appear before the Board. On Counts 2, Count 3, and Count 4, it was recommended assessing the penalties as recommended by the staff and Eric C. Anderson seconded the motion. Chairman Roncaglione called the question and the motion was carried by a vote of five voting "yes" and one voting "no".

Eric C. Anderson made a motion to reopen Counts 5 13 VAC 6-20-170 (14) and Count 6 13 VAC 6-20-170 (15) and Michael C. Nickell seconded the motion. Chairman Roncaglione called the question and the motion was carried by a unanimous vote.

Discussion:

The Board recommended a change to Count 5 and Count 6 due to no reasonable notification of the delivery of mail to Commonwealth Construction & Development, Inc. and no reply from the Commonwealth Construction & Development, Inc. of receiving any type of notification by certified mail.

Michael C. Nickell made a motion to find Commonwealth Construction & Development, Inc. guilty of Count 5 and Count 6 and Jim Carver seconded the motion. Chairman Roncaglione called the question and the motion was carried by a unanimous vote.

Eric C. Anderson made a motion to assess for Count 5 a monetary penalty of \$250.00 and for Count 6 assess the monetary penalty of \$500.00 and Jim Carver seconded the motion. Chairman Roncaglione called the question and the motion was carried by a unanimous vote.

G. New Business.

1. For Cases G-1 through G-9 on the Agenda under G. New Business, additional/supporting information is required by the Board to make the necessary decisions for each case.

Jim Carver made a motion to continue with Cases G-1 through G-9 until the next scheduled meeting for the Board to be provided with additional information for all cases listed on the Agenda. Michael C. Nickell seconded the motion. Chairman Roncaglione called the question and the motion was carried by a unanimous vote.

Discussion:

Staff will provide to the Board all relevant information for each case listed on the Agenda for cases G-1 through G-9.

10. Issue of Manufactured Housing Titling.

Discussion:

Chairman Roncaglione suggested establishing a committee for administrative guidance on a piece of legislation concerning "Manufactured Housing Titling".

Stephen Jacks, Assistant Attorney General: Only a discussion or suggestions can be made by the Board. The Board can only abide by the Governor's decision and approval concerning legislation.

That committee will consist of James W. Roncaglione, Clinton Wallace and Steven Jack, Assistant Attorney General.

H. Future Meeting Date and Location.

The next meeting date and location is scheduled for Thursday, March 17, 2011 at 10:00 a.m., VHC Conference Center, 4224 Cox Road, Henrico Room 2, Glen Allen, VA 23060.

I. Adjournment.

The Virginia Manufactured Housing Board Meeting adjourned at 1:40 p.m.