

COMMON INTEREST COMMUNITY BOARD

MINUTES OF MEETING

The Common Interest Community Board (Board) met on December 5, 2019, at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2nd Floor, Board Room 3, Richmond, Virginia 23233.

The following members were present:

Drew Mulhare, Chair
Maureen A. Baker
David S. Mercer, Vice-Chair
Paul Orlando
Lori Overholt
Scott Sterling

Board members Tom Burrell, Amanda Jonas, 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, Mr. Orlando, Vice-Chair, called **Call to Order** the meeting to order at 9:41 a.m.

Mr. Orlando advised the Board of the emergency evacuation procedures. **Emergency Evacuation of Board Rooms**

Ms. Henshaw advised the Board of amendments to the agenda. Mr. Mulhare moved to approve the agenda as amended. Ms. Overholt seconded the motion which was unanimously approved by: Baker, Mercer, Mulhare, Orlando, Overholt, and Sterling. **Approval of Agenda**

Ms. Overholt moved to approve the September 5, 2019, Board meeting minutes as presented. Mr. Mulhare seconded the motion which was unanimously approved by: Baker, Mercer, Mulhare, Orlando, Overholt, **Approval of Minutes**

and Sterling.

Ms. Henshaw introduced to the Board newly appointed Board Member David Mercer, who will serve as the attorney member of the Board.

Introduction of New Board Member

Ms. Henshaw advised the Board that Pia Trigiani is no longer a member of the Board after having served two full terms, the maximum allowed by statute. Ms. Henshaw expressed her appreciation for Ms. Trigiani's exemplary service.

Ms. Henshaw advised the Board that after having served as Acting Director of DPOR, Mary Broz-Vaughan was named Agency Director in September 2019.

There were no members of the public present to address the Board.

Public Comment Period

Mr. Orlando opened the floor for annual nominations of the Board Chair. Mr. Sterling moved to nominate Mr. Mercer. Mr. Mercer respectfully declined the nomination, but advised he would be willing to assist in any manner necessary to serve the Board. Ms. Overholt asked Mr. Mulhare if he would accept the nomination for Chair. Ms. Henshaw and Ms. Broz-Vaughan advised the Board of the extent of the responsibilities of the Board Chair and Vice-Chair. After discussion, Mr. Mulhare responded affirmatively. Mr. Sterling moved to nominate Mr. Mulhare as Board Chair, and Mr. Mercer as Board Vice-Chair. Ms. Overholt seconded the motion, which was unanimously approved by: Baker, Mercer, Mulhare, Orlando, Overholt, and Sterling. By acclamation, Mr. Mulhare was named Board Chair, and Mr. Mercer was named Vice-Chair.

Election of Officers

Mr. Mulhare assumed Chair of the Board.

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

Update on Regulatory Actions

Amendments to the Condominium Regulations in connection with the recodification of Title 55 of the Code of Virginia as outlined in SB 1080, were published in the Virginia Register on November 11, 2019, and will become effective on December 31, 2019.

Amendments to the Time-Share Regulations in connection with the recodification of Title 55 of the Code of Virginia as outlined in SB 1080, were published in the Virginia Register on November 11, 2019, and will become effective on December 30, 2019.

Amendments to the Common Interest Community Manager Regulations in connection with the recodification of Title 55 of the Code of Virginia as outlined in SB 1080, were published in the Virginia Register on September 30, 2019, and became effective on November 1, 2019.

Amendments to the Common Interest Community Management Information Fund Regulations in connection with the recodification of Title 55 of the Code of Virginia as outlined in SB 1080, were published in the Virginia Register on September 30, 2019, and became effective on November 1, 2019.

Amendments to the Common Interest Community Ombudsman Regulations in connection with the recodification of Title 55 of the Code of Virginia as outlined in SB 1080, were published in the Virginia Register on November 11, 2019, and will become effective on December 11, 2019.

The Board's general review of the CIC Management Information Fund Regulations is in process. A public hearing was held on November 12, 2019, as part of a sixty-day public comment period that will end on December 27, 2019.

A public comment period was held from June 10, 2019, to July 1, 2019 for the periodic review of the Condominium Regulations. No public comments were received. The Board voted to retain the regulations as is at its September 5, 2019, Board meeting.

A public comment period 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 ended on October 21, 2019. Ms. Henshaw advised the periodic review will be discussed later in the meeting.

Ms. Henshaw and Ms. Broz-Vaughan explained the periodic review process to the Board. Ms. Henshaw advised that a periodic review of Board regulations was conducted in accordance with Executive Order 14, and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia.

Periodic Review

The Board considered the periodic review of Public Participation Guidelines. A public comment period was held and no public comments were received. Mr. Orlando moved to retain the current Public Participation Guidelines as is. Ms. Overholt seconded the motion which was unanimously approved by: Baker, Mercer, Mulhare, Orlando, Overholt, and Sterling.

The Board considered the periodic review of Common Interest Community Manager Regulations. A public comment period was held and one public comment was received wherein a member of the public submitted a comment, and also requested that a public comment she submitted in writing to the Board in June 2019, be reconsidered. The commenter stated that the Department's interpretation of the regulations imposes a requirement that experience gained in providing management services to obtain a license can only be gained through an already licensed management company, which prevents otherwise qualified companies from providing management services, and effectively creates a monopoly for licensed managers. The commenter further stated that the Department's reading of the regulation is not consistent with the plain language of the statute, and is arbitrary and capricious. The commenter noted that the 2017 JLARC review of the Department recommended that regulation of common interest community managers be eliminated.

The Board reviewed and discussed the comment received. The discussion included the requirement for licensure of common interest community managers and certification of certain employees of common interest community managers. The requirement for licensure of common interest community managers and certification of certain employees of managers is established in statute by the General Assembly, and can only be changed through legislative action. Discussion also included experience requirements to obtain a license. It is not a requirement that experience in providing management services must be obtained under a licensed common interest community manager. For example, an individual may obtain experience providing management services as an employee of an association, which may be used to demonstrate qualification for licensure.

After review and discussion, Mr. Orlando moved to retain the current Common Interest Community Manager Regulations as is. The decision to retain a regulation in its current form does not prevent the Board from initiating action to review or amend the regulation in the future. The Board thanks the commenter for her participation. Mr. Sterling seconded the motion which was unanimously approved by: Baker, Mercer, Mulhare, Orlando, Overholt, and Sterling.

The Board considered the periodic review of Common Interest Community Management Information Fund Regulations. A public comment period was held and no public comments were received. Mr. Orlando moved to retain the current Common Interest Community Management Information Fund Regulations as is. Ms. Overholt

seconded the motion which was unanimously approved by: Baker, Mercer, Mulhare, Orlando, Overholt, and Sterling.

The Board considered the periodic review of Common Interest Community Ombudsman Regulations. A public comment period was held and one public comment was received. The commenter stated many owners residing in common interest communities may be unaware that an association complaint process exists in order to report alleged violations of common interest community statutes or regulations, and that making the complaint process and complaint form available is insufficient for those who are unaware the process exists. The commenter feels that the complaint process and sample form need to be distributed to all association members upon initial adoption or revision; and annual notification to members and residents regarding how to request the procedure and form should be provided. In addition, the commenter suggested that when there are changes to an association's complaint procedure, the association governing board should readopt the resolution establishing the procedure, and distribute to the membership.

Mr. Mercer disclosed that he is legal counsel to the association in which the public commenter lives; however, the public comment was not made on behalf of the association. After review and discussion, Mr. Orlando moved to retain the current Common Interest Community Ombudsman Regulations as is. The decision to retain a regulation in its current form does not prevent the Board from initiating action to review or amend the regulation in the future. The Board thanks the commenter for his participation. Mr. Mercer seconded the motion which was unanimously approved by: Baker, Mercer, Mulhare, Orlando, Overholt, and Sterling.

The Board considered the periodic review of Time-Share Regulations. A public comment period was held and no public comments were received. Ms. Overholt moved to retain the current Time-Share Regulations as is. Mr. Orlando seconded the motion which was unanimously approved by: Baker, Mercer, Mulhare, Orlando, Overholt, and Sterling.

Ms. Henshaw advised the Board of HB13, introduced for the 2020 General Assembly session, which would broaden the acceptable methods in which fiduciary managing agents of condominium unit owners' associations may invest association funds.

Legislative Update

Ms. Henshaw and Ms. Broz-Vaughan 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.

Ms. Gillespie provided the Board with the annual report on the Office of the Common Interest Community Ombudsman. The report contains statistics on complaints received by the Ombudsman's office, as well as compliance and enforcement statistics.

Ombudsman Report

Discussion was held on education and outreach opportunities.

The Board recessed from 10:55 a.m. to 11:05 a.m.

Recess

Discussion was held on the requirement for an association governing board to provide a final complaint decision to the complaining association member in writing. Board staff advised that if it is consistent with an association's established complaint procedure, pursuant to 18VAC48-70-50, the final decision may be sent via electronic means. Ms. Gillespie clarified that the Ombudsman's determination on a notice of final adverse decision must be delivered in writing via registered mail in keeping with due process.

**Ombudsman Report
Continued**

Discussion was also held on the complaint procedure as governed by the Common Interest Community Ombudsman Regulations.

Discussion was held on determining sanctions for associations that come before the Board for disciplinary matters. Ms. Henshaw advised that the topic could be placed on a future Board meeting agenda for further discussion.

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 advised that legislation passed during the 2019 General Assembly session requires the cash balance of the Board's funds to be placed in a cash reserve fund. In addition, legislation was passed requiring DPOR to issue refunds to licensees beginning in July 2022, if the excess cash balance of the Board's funds exceeds \$100,000.00 or 20% of the Board's revenue.

Ms. Henshaw gave a brief overview of the Board Member Training Conference held October 3-4, 2019.

**Report from Board
Member Training
Conference**

Ms. Henshaw advised the Board that the Guidelines for the Development for Reserve Studies for Capital Components approved by the Board at its September 5, 2019, Board meeting were presented to the

Other Business

Common Interest Community Workgroup of the Virginia Housing Commission, and Delegate David Bulova, patron of the bill requiring the development of reserve study guidelines for common interest communities.

Mr. Mulhare reminded Board members 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 11:39 a.m.

Adjourn



Drew Mulhare, Chair



Mary Broz-Vaughan, Secretary

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 December 5, 2019

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

Nature of Personal Interest Affected by Transaction:

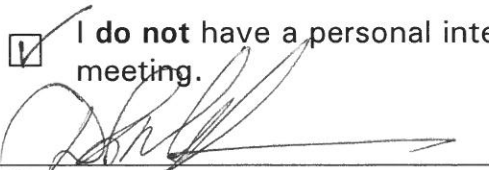
I declare that I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

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

12/5/19
Date

**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 December 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

12/5/19
Date

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

TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government

1. Name: David Mercer
2. Title: Board Member
3. Agency: Common Interest Community Board
4. Meeting/IFF Date: Board Meeting December 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.

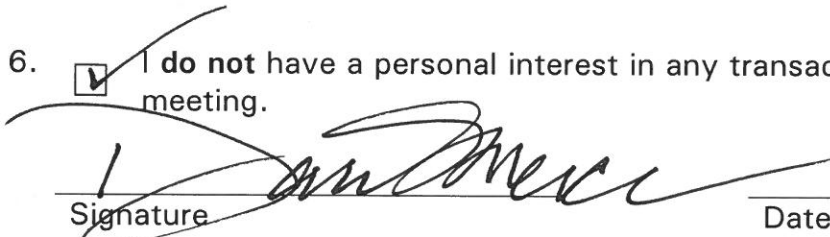
or

I did not participate in the transaction.

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

Signature

Date

 12/5/19

**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 December 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.

P. Orlando
Signature

12-5-19
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 December 5, 2019

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

N/A

Nature of Personal Interest Affected by Transaction:

N/A

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

N/A

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.

Lori Overholt
Signature

12/5/19
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 December 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

Scott E. Sterling

Date

5 Dec. 2019