

DELAWARE MANUFACTURED HOUSING RELOCATION AUTHORITY

Dover Public Library

Dover, Delaware

Minutes of April 11, 2007 Meeting

IN ATTENDANCE:

Authority: Stevan D. Class (Chairman)
 Ken Fuchs
 William Reed
 Ed Speraw
 Raymond Paylor
 Jerome Heisler
 Susan Laushey

Legal Counsel: William Denman

Attendees: Ralph Durstein III – Deputy Attorney General
 Scott Sipple, CPA
 Robert & Ann Fillmore – Angola Beach Estates
 Peter Evanoff – Angola Beach Estates
 Valene Kamorowsk – Angola Beach Estates

I. CALL TO ORDER:

Chairman Class called the meeting to order at 1:04 P.M.

II. REVIEW AND APPROVAL OF MINUTES OF LAST MEETING:

Chairman Class presented the minutes of the February 14, 2007 meeting for comments and corrections. Mr. Heisler made a motion to accept the minutes. Mr. Paylor seconded the motion.

After unanimous approval was given from the members present by voice vote, the motion was carried.

III. NEW BUSINESS:

A. ADMINISTRATIVE REPORT:

Ms. Sisco, Administrative Assistant, reported that she is still in the processing of creating the database of all manufactured homes in Delaware. Ms. Hambleton, from the Finance Department, sent an updated list of who contributes to the trust fund which will be used to build the database on.

Ms. Sisco stated she contacted the County Planning Departments to get a list of communities and tax parcel numbers and is waiting for them.

Ms. Class asked that Ms. Sisco email the list from the Department of Finance to all board members for their review and comments.

Mr. Reed stated he was looking at the Organizational Regulations and noted there was a position listed for a "Manager". Mr. Class stated Ms. Sisco was hired part time and previous to that Ms. Bird was part time. This can be looked into but the Board has been concerned with high costs and keeping them down. Mr. Reed replied he wasn't suggesting the position be filled, but maybe the board should change the organizational regulations.

B. FINANCIAL REPORT:

Mr. Scott Sipple handed out the financial report and gave brief overview of the report.

Mr. Sipple requested the Board transfer \$40,000 from the Trust Fund to the Operating Account.

Mr. Heisler made the motion to transfer \$40,000 from the Trust Fund to the Operating Account. Mr. Speraw seconded the motion.

After unanimous approval was given from the members present by voice vote, the motion was carried.

C. BOARD MEMBERS CONDUCT & ETIQUETTE

Mr. Paylor stated he requested to have this item put on the agenda. He feels that as board members everyone must understand that no one member can make a decision and stand alone and represent this organization. Each member is due respect no matter what their opinion is on a matter. Verbal assault and name calling are not acceptable at meetings. Mr. Class stated he agrees with this. As volunteers, everyone has certain duties and responsibilities under the charter by the statute. We need to accomplish what we have to do. Even though we all feel strongly about certain things, we need to do our best and smoothly without emotional outbursts.

D. APPLICATIONS FOR BENEFITS

Mr. Denman stated there were no applications for consideration at this meeting. For the Board's information there are two pending applications.

The first application is for relocation benefits submitted by Matt and Linda Hanna of the Lynn Lee Mobile Home Park. This park has been the subject of litigation for many years. The amount they are requesting is \$9,924.44. Since the home is a single wide, the most they could receive is \$4,000. We are looking into seeing if the landowner and tenants contributed into the trust fund. To date, we have not been able to confirm that there were contributions made into the trust fund by anyone. This could be an obstacle for them receiving any reimbursement.

The Lynn Lee litigation goes way back and was a change in use that took place before the authority was created. It was fought vigorously in court.

Mr. Reed states there is a lot to this park closure.

Mr. Denman stated the application was just received and further investigation is going to be done before it would possibly be presented at the next meeting.

Mr. Denman stated the second application was from Paul Lovett, landowner of Oak Grove Park. This was submitted in the last two weeks and also needs to be reviewed before it is presented to the Board. The Authority did pay benefits to many of the tenants of this park who either abandoned or relocated. Now the owner has filed an application for the costs associated with removing some of the abandoned homes. The amount of the application is \$18,150. There are some issues that are being looked into before it comes before the Board.

Mr. Speraw asked what is being done about addressing the issue of reimbursement of removal costs that the landowner incurs. It was brought up at the last meeting but still nothing has been done.

Mr. Denman stated it is a legislative issue since the statute gives the landowner the right to these benefits. The Board cannot change the statute, but the caps can be changed for abandonment costs.

Mr. Speraw stated if the landowner has a change in use or is selling the land and making a profit, he is not in favor of paying the landowner anything.

Mr. Heisler stated the Board can put caps on reimbursement to landowners.

Mr. Fuchs asked why the fund has to reimburse the landowner for removal and disposal of abandoned homes. He thought the fund was for the benefit of the homeowners.

Mr. Denman stated the statute, section 7014, gives the landowner in exchange for him contributing to the fund the right to be compensated for the reasonable cost of removing the homes that have been abandoned on his property.

The maximum is \$4,000 for a single wide and \$8,000 for a double wide for the landlord. There is flexibility in setting maximum rates.

Mr. Heisler stated the Board needs to change the cap. It would be much quicker to go through here than through the Legislature. There is already a reasonableness clause in it. If anyone comes in at the next meeting with an abandoned unit and wants to get reimbursed, we can state this our new policy which is going out for regulation. This what the Board feels is reasonable and what it will pay.

Mr. Denman stated if the Board wants to lower the caps, then you have to have a proposed resolution adopted by the Board members, propose the regulation and have it published and then have a public session.

Mr. Heisler stated the Board can make it policy almost instantaneously because there is a reasonableness clause.

Mr. Denman stated that when you look at what has been paid out so far to landowners, it has been no where near \$4,000 per home. If a community owner realizes any profit from the disposal of an abandoned home, they have to account to the Board for that profit.

Mr. Heisler stated no one is talking about a lot of money. It is felt that something should be given back if it is reasonable. A mistake was made setting the caps at \$4,000 and \$8,000. The Board can correct it and change the amounts.

Mr. Speraw made the motion to change the caps to \$500 for a single-wide home and \$1,000 for a double-wide home. Mr. Heisler seconded the motion.

The motion carried unanimously.

Mr. Class stated there will have to be public hearing on this. This will be discussed at the next meeting.

Discussion followed on the issue of qualifications and terms of the appointed members of the Board in regard to one of the members.

Mr. Denman stated an issue of qualifications and terms should be resolved so the Board is not questioned with every decision made because there might be a Board member who does not meet the qualifications in the statute.

Mr. Class stated this is not a personal issue. The purpose to make sure we maintain the integrity of the Board. Mr. Class asked what the Board wants to do on the issue of the statute and its requirements for the Board.

Mr. Paylor stated he would have to review the statute before he would make any recommendations.

Mr. Heisler stated it is important to have each county in the state represented. Mr. Class stated he agreed. It is just that one member resides geographically but does not reside in a manufactured home.

Mr. Class stated he did not see a problem with changing the statute.

Mr. Durstein stated he felt the statute gives the Board the flexibility.

Mr. Denman stated since it is an issue that has been raised, it does need to be looked into either through some type of legislative amendment or through the Governor's office.

Mr. Class asked Ms. Sisco to check the files for information on the terms and appointments of the Board members.

Mr. Class stated the Chairman would like to recognize Mr. Durstein of the Attorney General's Office.

Mr. Denman excused himself from the rest of the meeting since the topic of discussion was to be the investigation of Victorian Village.

Mr. Class stated he believed that Mr. Denman's firm was representing the new buyers of the community.

Mr. Durstein stated Mr. Denman would have a direct interest in the deal being conducted and indirect interest in the decisions being made by the RTA Board regarding Victorian Village.

The issue was raised if this is a situation where his firm should decline that kind of representation in light of this whole board. It is a close ethical question that the lawyers would have to look at. It would be easier to answer the question, "Can he represent the seller in the transaction"? The answer is "No he can't" and he doesn't think his firm could, because that would jeopardize his role as attorney for the Board.

The buyer is a little different, because it is a harder situation to anticipate. It is a more significant restriction on his law firm's practice and is a less direct conflict with this Board's work. The initial conclusion is that the representation by his firm of the buyer is not a conflict and would not compel him to resign as attorney for this board. The board could make an independent determination that they are uncomfortable with it.

Ethical questions are usually two questions; first, is the attorney required to withdraw from the representation or is his partner required to withdraw from representation. The second question, is the Board uncomfortable with Mr. Denman's representation. This is something the Board would have to determine.

Mr. Durstein stated as a lawyer, from an ethical question, it was handled properly.

Mr. Reed and Mr. Speraw both expressed their concern about the conflict of interest in this situation.

Mr. Heisler stated if the board wants to get good legal talent that is familiar with what the Board is doing, it is going to be hard given the size of the legal community. You have to weigh conflicts and there are not enough lawyers out there to do this type of work.

Mr. Speraw stated if they are going to worry so much about the location of a manufactured home in New Castle or Sussex County, they have to worry about items such as this.

Mr. Durstein stated Mr. Denman did not represent the seller, who was the operator of the park and dealing with this board. Mr. Denman agreed. It was resolved correctly and he disclosed this. Then the situation changed because his firm was going to represent the buyer. The firm's client is not going to be directly related with the firm's other client. However, disclosure is still required because there is a financial transaction with a mutuality of interest between the buyer and seller.

Mr. Reed stated what they are upset about is the fact that Victorian Village is selling manufactured homes with 99 year leases. It sounds like a flim-flam. They threw people out of their homes. The Relocation Board paid a lot of money to have all these homes relocated. Now we have the same law firm that represents the Board involved in this new deal with the 99 year lease.

Mr. Durstein stated as the issue has evolved now, the question now is does the Board feel something should be done as a result of this so called flood plan where the change in use is a change in use from a conventional park. If the Board wants to visit that, this could create another conflict.

Mr. Heisler stated the bar has certain standards of what is a certain conflict and what isn't. They live within those complex rules. The Board needs to get a better understanding of those complex rules instead of speculating.

Mr. Durstein asked if the Board was aware that Parkowski's law firm was involved in Victorian Village.

Mr. Fuchs stated they were told by Mr. Denman that his firm was representing them when there were only 3 or 4 people left to be relocated. The Board had a public hearing and heard about the hardship cases. The point was it was already a done deal. The Board was told when it was finished.

Mr. Reed asked if anyone was aware that Parkowski's law firm, which represents the Board, is involved in Victorian Village. Mr. Sepraw stated he was at the time.

Mr. Durstein stated when you have a conflict, you disclose it to both clients and withdraw from the transaction, which Mr. Denman did. He did everything right. The question now is when it is disclosed to the client and if the client has a level of discomfort over that representation by the firm, the client has every right to take action.

Mr. Durstein stated he did not know about the firm representing the buyer since he was out of the loop. However, he would be happy on the behalf of the board to ask Mr. Denman to clarify that situation.

Mr. Speraw stated someone cannot sit and represent this board and represent the clients that are involved.

Mr. Heisler stated we need to find out the facts first.

Mr. Class stated he would like to ask the Attorney General's Office, or Mr. Durstein, to look into the relationship of Mr. Denman and his firm and the buyer of Victorian Village and whether they are still involved or involved at any time and if he excused himself when it was brought to his attention and to check into the 99 year lease and see if it falls under Chapter 70. Also, the Holly Lake issue with them representing the buyer.

Mr. Class stated the 99 year lease issue needs to be addressed as it is going to come out more and more on the collection issue if a person is going to start a new community with 99 year leases. We are not collecting assessments if they are not going under Chapter 70.

Mr. Speraw stated the Board handed out \$246,000 to Victorian Village tenants because of a change in use. We don't know if it is still a community or not a community or even what its name is.

Mr. Heisler stated there was a loophole but legislation has just been passed to avoid this and a developer will face a very big penalty if he does not follow the law.

Mr. Speraw stated he knew for a fact that there are 7 homes where the people were not made to move. Then more homes were brought in and it still is manufactured housing with a 99 year lease. Why did the Board pay out that money?

Mr. Heisler stated because the Board relied on the owner's original statement that he was doing a change in use. The Board needs to be the triggering point for action to occur and enforce it.

Mr. Reed stated when this was first discussed, the Director of the Consumer Affairs Office said she was going to refer it to the Civil Division of the Attorney General's office. It has been at least a year and a half. We haven't gotten any feed back on it. We still don't know what is going on with it.

Mr. Heisler replied that until last June because of the John Pardee case, the Consumer Affairs Office wasn't going to do anything. Now, they have to. All that has to be done is to file a complaint with them.

It was not decided if the next meeting would be held on May 9th due to a scheduling conflict with several members who planned to attend another meeting on that day. May 10th was suggested as an alternate meeting date. A canvas will be taken of board members to determine availability and notification will be sent to all of the date for the May meeting.

ADJOURNMENT:

As there was no further business before the Board, the motion was made for adjournment by Ms. Caron, seconded by Mr. Fuchs. After unanimous approval from the members present, the motion was carried.

Respectfully submitted by:

Susan E. Sisco
Administrative Assistant
DEMHRA