

DELAWARE MANUFACTURING HOME RELOCATION AUTHORITY

1675 S. State Street
Dover, Delaware

Minutes of April 13, 2011

IN ATTENDANCE:

Authority: Richard Lemire, Chairman
Terri Rock
Ken Fuchs
Derek Strine
Caron Thompson
Joanne Agostarola
Brian Posey
Fred Neil

Absent: Charles Clark

Legal Counsel: William Denman

Other Attendees: Ed Speraw, Code Investigator
Scott Sipple, Accountant
Steven Class, Citizen
Donna Faubel, Citizen

I. CALL TO ORDER:

Mr. Lemire called the meeting to order at 1:04 p.m.

II. REVIEW AND APPROVAL OF MINUTES:

Ms. Rock made a motion to accept the minutes from the January 19, 2011 meeting. Ms. Thompson seconded the motion.

Unanimous approval was given by all members present by voice vote.

III. NEW BUSINESS:

A. HB62 – REDUCTION OF BOARD

Mr. Lemire stated he had invited several legislators to address the board regarding several issues going on in the Legislature, but due to being called into committee

Meetings of which they are Chairperson, they were unable to attend.

Mr. Lemire stated the first item to be brought up to the Board and discussed is HB 62. This bill came up so quickly and he and none of the board members knew what was going on or were even were aware of it. It was also moved up on the Legislative committee calendar from a Wednesday meeting to a Tuesday meeting.

Mr. Lemire stated he strongly opposes this bill but he can only speak for himself and stated he wanted to open the floor for discussion by other board members.

Ms. Rock stated she would like to hear Mr. Neil's comments since was supporting it and had gone to the committee meeting held at Legislative Hall and now he has changed his mind.

Mr. Neil stated the duty of the RTA is to collect the assessment fees and see that it is dispensed properly in the event of a change in use of land.

Mr. Neil stated with regards to board membership, is the board better off with five "Brian Poseys" and one representative from each of us, (landlords and homeowners) or are we better off as we are set up. He did not oppose the proposed reduction; he feels it has some merit. The only thing that has him concerned is that Mr. Jerry Heisler also supports the law. If they have a neutral body, the law works. He cannot oppose the law because he does not like it. Will the Board be better off? They certainly will not be any worse off by having by having three "Brian Poseys". You can shift the deck around any way you want.

On the issue of collecting assessment, Mr. Neil stated if the board is going to enforce the law, they need penalties. Mr. Denman has drafted a piece legislation and it is going to be proposed as part of the law. This is going to get the attention of some people who owe money to the RTA. The board needs to collect the money and get it where it needs to go.

Will a smaller body be able to do a better job than a larger body? He really doesn't know and can't oppose it.

Ms. Rock stated she opposed it.

Mr. Posey stated if the Legislature contemplates a different model, he doesn't feel the Authority should take a position on it. He does not have position on it. Someone evidently came up with it and who is he to question the new model. He thinks an argument could be made that it could be more nimble and perhaps less political.

Mr. Lemire stated that by having the Chair of the Manufactured Home Committee in the House appoint a member to the board it does become very political. It is the same with an appointment by the Attorney General's Office. More so since the legislation states that those people will answer to who appointed them.

The Board works revenue neutral. They get no money from the State. Now there will be stated representatives that are elected and all of a sudden will be sitting on the Board? He does not know how that would work.

He strongly opposes it right now because the Board has had no time to talk about it or to hash it through because if it goes through some people here today will no longer be on this board.

The way it was put together was well thought out and before it changes, he feels the board needs to have their voice heard.

Ms. Rock stated she feels she needs to say why she opposes it. There has been a problem of getting all members to the table for a meeting. If you have only 5 members and appointed from certain entities, and one gets sick, it could put a hamper on what the board does.

Mr. Lemire stated when you go from 9 to 5 members; your quorum to do business goes to 60%. So, if you kept this board and reduced the requirement to 60% you would accomplish the same thing and have more flexibility to always have a quorum which was the stated reason for the bill, that we did not have a quorum for meetings. We have not had a problem getting a quorum.

Ms. Agostarola stated she is suspicious of this because she believes a little over a year ago the Board was having a difficult time getting everyone at the table. She thinks it was due to sickness. There also was an appointed board member who never showed up for a meeting and another member who had problems. From what she can remember, it was being addressed with the Governor's Office to reappoint someone. Since the issue was resolved with one member, and another was reappointed, it is not obvious that there is a problem.

Obviously something stuck in someone's mind that there was a problem but she cannot recollect anything else that would make someone in the Legislature want to change the Board. They were looking at it as a way to help the Board.

There are pluses and minuses to having a smaller board, but this Board works. If it went higher there would be an issue and if it went lower there would be a problem. Dropping the board by 40% would, in her opinion, cause a problem.

Mr. Lemire stated in his conversation with Senator Long it probably is not going to be dealt with this month, and she has not even signed to have it received in the committee. She still has to sign for it and schedule it. Her comment to him was that it would probably not happen until May sometime.

If the Board supports it, he can speak for the Board.

Ms. Thompson stated she is in opposition to it. She feels that the Board works, this change is very fast and she would like more information.

Mr. Fuchs stated he really doesn't understand what is going on. He was just recently re-appointed. He likes everyone on the Board and the fact that the Board is helping people when the need arises.

Mr. Denman stated he would suggest changing the provision that requires 75% approval for expenditure of money. There has been a problem with this at times when there was a lot of "change of uses" and applications for benefits by homeowners who need their money quickly. But it was accomplished. He feels by changing the 75% threshold, even it was reduced from 7 to 6 members it would still be better. He feels it is a well balanced board. Either way it goes, the Board would make it work.

Ms. Rock stated she did not know if as a Board anything can be done. If an individual wants to go in and fight it and present their own case, they can do this.

Ms. Agostarola stated it looks like they are asking what the Board is thinking. She does not see a problem with what the Board currently has.

Mr. Lemire stated he would like more information as to what is behind it and what the reasoning is for the change. He would like to have the time to get some information and find out what is really going on.

Mr. Lemire stated the smaller the board, more of a commitment those members have to make. When you have a larger board that can make a quorum, you normally can get everything done every time.

Ms. Agostarola stated she has not heard from anyone present who is adamantly in favor of making this change. She is hearing that no one sees a problem with the way the board is and they do not see a quorum problem. It needs to be explained to the board where there is a problem.

Mr. Fuchs stated he does not understand what is going on regarding membership of the board. He had his term extended for six years and now they are discussing shorter terms if the number of members is reduced.

Ms. Agostarola made the motion to have the Chairman of the Authority go forward and question the rationale for the proposed change in the number of Board members. Ms. Thompson seconded the motion.

The vote was 4 yes and 3 who did not want to vote. Those who did not vote were: Fred Neil, Brian Posey and Ken Fuchs.

Mr. Speraw, who previously served as a board member, briefly discussed the formation of the RTA and its board. Mr. Speraw stated he sees no problem with having 9 members and recommends instead a change in the percentages required for a quorum.

Mr. Posey stated with regards to member reduction, he encouraged everyone present today to look the public meeting aspect to that and in terms of the accountability and not only do they have potential accountability from the various appointers of the new authority but also have the public meeting nature that the expertise of those in the room that can be shared even if they are not an authority member.

B. FINANCIAL REPORT:

Mr. Lemire briefly discussed the collection of fees issue which was drafted in a bill some time last year and which never got to the floor of the House. It has now been revived, so to speak and the bill has been spearheaded through by Rep. John Kowalko.

Mr. Lemire stated he was hoping Rep. Kowalko would be in attendance to explain why he drafted a new bill and did not use the one from last year.

Mr. Lemire stated he believes it is still in discussion and the Board will be kept informed of its progress.

Mr. Denman stated anything that can be done to allow the Authority to Reover attorney fees from delinquent MHPs will help. There are 5 to 10 communities that are just not paying their share. Right now there is no incentive out there to make them bring their account up to date. Penalties and recovery of legal fees will give them some encouragement to pay.

Mr. Sipple gave an update on the final annual audit.

Discussion followed.

C. FIOA REQUESTS:

Mr. Lemire stated recently two FOIA requests were received. He would like to recommend that the website be updated under information section to include the communities registered with the RTA and the homeowner associations registered with the RTA.

He also suggested the quarterly Missed Payment Report be on the website so that it would show every community and where they are in regards to the status of their account.. The accounts, however, would not reflect phone numbers. Christine Hambleton, in the Division of Revenue, would be the one to contact to have this report forwarded to the department that does the posting for the RTA website.

By posting this information on the website, it would eliminate some of the requests received.

Discussion followed.

Ms. Sisco stated she would have both lists emailed tomorrow to have them posted on the RTA website.

Mr. Denman stated the Board might want to consider adopting a regulation regarding the recovery of the cost providing information requested by a FOIA. If the board wants to recover any fees for reproducing information requested, it cannot do it without a regulation.

The Board felt this was a good idea. Mr. Lemire stated he would review some of the policies of other agencies and come back with a recommendation at the next board meeting.

Mr. Denman stated at that time the Board would adopt the regulation, publish it and give the opportunity for the public to make comment.

Mr. Class asked if the accounts to be posted online are the community owner's accounts with the RTA. Mr. Lemire replied yes it is the Missed Payment Report that is issued quarterly.

Mr. Strine stated the report reflects contributions and delinquent contributions by both tenants and landowners.

D. LEGAL COUNSEL REPORT:

Mr. Denman stated he received a check from Peter Schaeffer, the attorney that represents the tenants at Noble's Pond, in the amount of \$723 which represent the tenant's share of the Noble's Pond assessment. The Attorney General's Office has agreed to take on the legal issue of whether Noble's Pond is subject to the assessment. The tenant's want to ensure that they have the protection under the statue.

Mr. Denman requested guidance from the Board as to what he should do with the check.

Mr. Sipple stated since Noble's Pond is not registered, it is not known if they are liable for it. It is not the RTA's money and should not be held by the RTA.

Mr. Lemire suggested that their lawyer set up an escrow account and deposit the money into that account for it to be held until at such time it is determined that they should be contributing to the RTA.

Mr. Sipple stated it should be documented and a record of this money being held in an escrow account by their lawyer be filed with Ms. Sisco in her office for the future if it is determined that the tenants should be contributing to the RTA.

Ms. Rock asked if the tenants can collect from the RTA if they have paid their share, even if the landowner is not contributing to the fund.

Mr. Denman stated yes. The tenants are entitled to benefits. You can't have the tenants who are ready, willing and able to contribute to the RTA their share, denied the benefits just because the landowner does not contribute his or her share.

If there was a change in use of land at Noble's Pond and the tenants had not contributed, they could be told they are not eligible for benefits. This is not fair when they are ready and willing to contribute.

Discussion followed.

It was decided to send the check back to Mr. Schaefer, have him set up an account and notify us by letter that he set up this account and the tenants are contributing to it.

Donna Faubel stated that the money the RTA received is not from all residents. This represents about 10 residents. In the past, Noble's Ponds was modular but no more modulars are being constructed. The homes are now stick built. If this issue is resolved in favor of the RTA, there will be less than 10 homes who pay into the RTA.

Mr. Denman stated he filed suit to collect sums from the owners of Laws MHP. Ed did an inspection and counted about 15 homes. He has received a settlement offer pursuant to which the Owner would pay the sums due From April 2004 through March 2011 based on the actual number of homes rented (10-12). When Ed did his count, he included some homes on an adjacent parcel. The past due totals \$2,682.00 exclusive of interest. They would like to pay this amount over a 12 month period, which would come to about \$223.50 per month. They have requested that the RTA waive the interest.

In response to Mr. Denman's suggestion, they have agreed that if the interest is waived, the owner will not try to go back and collect past due sums from the tenants and would only seek to recover the tenants' share from April 1, 2011 forward. He recommends the proposal be accepted.

A brief discussion followed.

Ms. Agostarola made the motion to accept the settlement proposal from the owners of Law MHP. Mr. Strine seconded the motion.

Unanimous approval was given by all members present by voice vote.

Mr. Denman stated there are a handful of parks that are not complying and he briefly outlined each pending lawsuit. The RTA needs to get more aggressive with some of these parks, but he is awaiting the passage of the pending legislation regarding penalties and recovery of legal fees.

If any of these parks should go up for sale, the RTA has the benefit of HB 504 which requires that the communities be up to date with the money owed the RTA before they can sell the property.

Ms. Sisco stated that Ed had discovered a park, Hastings Park, in February 2011. There were 6 homes. They have never contributed to the RTA. A discovery letter was sent and the present owner, who bought the park in December 2007, came into the office and gave a check for the money owed. He is paying both the landowner and tenant assessment. The park no longer falls under Title 70, because the owner has purchased the 6 homes and brought in copies of all the titles.

Ms. Sisco requested approval for an account to be opened and the money deposited and then the account would be closed since the park does not fall under Title 70.

Ms. Rock made the motion to accept the payment from Hastings Park. Ms. Agostarola seconded the motion.

Unanimous approval was given by all members present by voice vote.

Mr. Lemire stated he would like to discuss the status of Minquadale and its tenants with the RTA. It has not been totally addressed.

Mr. Strine stated he thought they were supposed to pay it since they as a corporation bought it and are leasing it back to themselves.

Mr. Lemire stated as part of the purchase agreement it was stated that it was to remain a manufactured home community for 30 years.

Ms. Agostarola stated the purpose of the RTA is to help tenants if there is a change in use of land. They bought the community and so how can there be a change in land use, so why would they be paying the \$3.00.

Mr. Neil stated it is the law. Until the law is changed that says if you own your own community you don't owe this fee., the fee will be owed.

Ms. Agostarola stated this needs to be gotten on the table since there are active communities purchasing their community. Why would the RTA accept money from them when the RTA does not have anything to give them in return.

Mr. Lemire stated they have to remain a manufactured home community for 30 years. The only thing that would disrupt that is if the State came in and wanted the land. If that happens, whoever is taking the land has to pay a fair value for what they are taking.

Mr. Neil, Ms Rock, and Mr. Strine stated the RTA would still have to pay for the relocation of the manufactured home.

Mr. Lemire stated the State would have to pay for that.

Mr. Strine stated the Statue says they have to pay it. If a community can get the Statue changed fine, but right now the RTA is enforcing the letter of the law.

Discussion followed.

Mr. Speraw stated the manager of the community, at a previous Board meeting, agreed the owed it and they would pay it.

Ms. Rock stated they have not filed a report (assessment) or paid anything into the RTA.

It was decided that Mr. Denman will look into this matter and report back to the Board.

E. HOMEOWNER ASSOCIATIONS:

Mr. Lemire stated he wanted to address the issue of homeowner associations.

There is a situation of 4 homeowner associations in the Pot-Nets Community Mr. Lemire stated in his opinion because all of these communities are registered with the RTA, registered with the State and all on their tax own parcel number they should each have their own homeowner's association.

If the owner decides to sell one community it should not be an umbrella situation where someone in a different community is controlling someone else's community down the road. It is a matter of defining what a community is.

Discussion followed.

Mr. Lemire stated that Mr. Tunnell had told each community in Pot-Nets they should have their own homeowner association and that was his intent.

Mr. Lemire stated this is an internal situation and that he feels the RTA should not get involved in it other than to state the statute states the first one to get registered is recognized. However, one could get dissolved then the next one registered would take its place.

Mr. Denman stated under HB 504 the RTA has a limited function. We are where you register your HOA. When there is a Right of First Offer, the RTA gets copy and if there is no HOA, we must get the names and addresses of the tenants and we transmit that Offer to the tenants and then the RTA responsibility is ended.

Mr. Denman stated with regards to Pot-Nets, it does not make sense to have one global HOA to determine the destiny of 6 or 7 different manufactured home communities.

Mr. Denman stated when Pot Nets HOA first registered, their bylaws stated they represented all the communities. Then 3 years later, three more homeowner associations registered representing their communities.

Mr. Strine stated if someone is going to sell, we can just send out 3 or 4 letters instead of one.

Mr. Denman stated the homeowner's associations in Pot-Nets needs to resolve this themselves. He does not think the RTA has the authority to make the decision. It would be up to the courts.

Mr. Lemire stated he spoke to all the communities and advised them to all register their communities. All would be sent a 504 notice.

V. ADJOURNMENT:

As there was no further business before the Board, the motion was made for adjournment by Mr. Neil and seconded by Mr. Fuchs. After unanimous approval from the members present, the meeting was adjourned at 3:50 p.m.

Respectfully submitted,

Susan Sisco
Administrator