THE STATE OF NEW HAMPSHIRE

BOARD OF MANUFACTURED HOUSING

Sherryland Park, Inc.	)	
	)	Docket No. 001-96
v.	)	
	)	
Robert and Sheila Dickerson	)	

Hearing held on April 22, 1996, at Concord, New Hampshire.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Board of Manufactured Housing ("the Board") makes the following findings of fact and conclusions of law and issues the following order in the above-referenced matter..

PARTIES

1. Sherryland Park, Inc. is the managing entity of Sherryland Park, a manufactured housing community located in Tilton, New Hampshire. Mr. George Hast is the owner and operator of Sherryland Park. For all purposes, Mr. Has and Sherryland Park, Inc. shall be treated in this order as a unified entity and shall be identified as "Complainant" or "Sherryland".

2. Robert and Sheila Dickerson are lawful tenants of Sherryland Park. See, Stipulation and Order, dated 76/89 in Dickerson v. Sherryland Park, Inc. and George F. Hast, Belknap Sup. Ct. no. E-88-274.

MATTERS AT ISSUE

3. Complainant seeks a determination by this Board that Respondents are in violation of certain specific rules and regulations of Sherryland Park. Specifically, Respondent alleges that Respondents are in violation of:

(a) a rule promulgated by letter dated July 20, 1994

forbidding the use of oil for residential heating and requiring that all homes in the park be heated by propane gas, electricity or wood. ("the oil ban"). Respondents have refused to comply with this rule and currently maintain an oil storage tank on their lot.

(b) Rule B.5 and C.1, which, taken together, forbid construction of a porch appurtenant to the Respondent's manufactured housing unit without prior approval of the construction materials and plans by park management. Respondents have constructed a porch which has not been approved by management.

(c) The July 22, 1994 Rule Change, par 1., which requires tenants to neatly stack cordwood under cover in a structure and location approved by park management. Respondents maintain a pile of cordwood situated beside their unit which, on evidence presented to this Board, is typically covered by a blue tarpaulin.

(d) Rule II.C.1, which requires the neat and safe storage of rubbish. On evidence presented to the Board, Respondents have in the past stored automotive oil containers within the trailer hitch of their unit.

(e) Rule II.B.1 which requires tenants to maintain clean driveways. Complainant alleges that Respondents have caused oil damage to their driveway and must bear the responsibility for clean-up costs. See Rule III. A.1 (Tenants responsible for damage to paved parking areas from leaking automotive oil.)

THE OIL BAN

4. As a preliminary matter, there is no question but that the oil ban regulation was properly promulgated to tenants pursuant to RSA 205-A:4, V (1989). The ban was announced by letter dated July 20, 1994 and became effective in October 1994, three months after promulgation. Thus, if this Board determines the rule to be reasonable, Sherryland could properly enforce the rule against the Respondents.

5. In essence, the oil ban forbids the use of home heating oil for heating purposes within Sherryland Park. As an incentive to encourage the conversion from oil to other sources of energy, Sherryland offered financial remuneration to homeowners who converted from oil heat. While there was conflicting testimony as to the satisfaction of homeowners with the implementation of the ban, there appears to be no question but that all homeowners at Sherryland except the Dickersons accepted Sherryland's financial incentive package and converted from oil to propane heating.

6. Mr. Hast testified that the ban was motivated by his concerns that home heating oil spillage could contaminate the well water and water supply of park residents.

7. Thus Sherryland contends that the ban is justified by RSA 205-A:2, VIII(d), which forbids rules requiring tenants to dispose of personal property or fixtures which the tenant had prior permission to possess or maintain, except where such rules are necessary to protect the health and safety of other tenants.

8. The Board finds that, prior to the July 1994 promulgation of the oil ban regulation, the Respondents had permission from Sherryland to maintain an oil storage tank on their property for the purpose of heating their home. Thus, Sherryland's oil ban may only be upheld if it shows that the rule is necessary to protect the health and safety of tenants at the park.

9. In support of his position, Mr. Hast cited a letter, dated March 25, 1996 from the Water Supply and Pollution Control Commission of the Department of Environmental Services ("DES"), which denied Sherryland Park a waiver from certain annual water testing procedures because of the presence of an oil storage tank within the 200 foot protective radius around a nearby wellhead ("the DES letter").

10. The Board accepts as uncontested Complainant's assertion that the oil tank in question belongs to the Respondents and is situated on lot 5, which is the site of the Respondents' residence.

11. Complainant asserts that the DES's refusal to grant Sherryland Park a testing waiver pursuant to the DES letter imposes a continuing cost of approximately $400.00 annually on the Park.

12. However, Complainant has presented no persuasive evidence to support his contention that the Dickerson's oil tank poses a threat to the health and safety of other residents of Sherryland Park. There is no evidence that the tank is poorly maintained or improperly anchored. To the contrary, the Respondents presented a letter from the fire inspector of the Town of Tilton which

reports that the oil tank conforms with all applicable local fire and safety regulations. Mr Dickerson has also testified that he adjusts the level of the tank to compensate for ground movement on an annual basis.

13. Further, Complainant has presented no evidence to show that an absolute and mandatory ban on oil heating is necessary to protect tenants from any real or imagined threat to their safety posed by the Dickerson's oil tank.

14. Rather, the Board finds that other steps short of removal, including appropriate anchoring, encapsulating and maintenance may be taken to protect the park's water supply from leakage from the Dickerson's tank.

15. Therefore the Board finds that the oil ban, as applied to the Dickersons, is unreasonable and may not be applied to require the Respondents to adopt a home heating method other than oil heat; or to remove their oil storage tank from their property.

PORCH CONSTRUCTION

16. The Board finds that Respondents constructed their porch in or about the Spring of 1990. Both Mr. and Mrs. Dickerson testified that, prior to doing so, they made repeated attempts to contact Mr. Hast for the purpose of submitting plans and obtaining permission pursuant to Sherryland Park Rules B.5 and C.1.

17. In particular, Respondents submitted evidence that they had sent plans and a written request for permission to build by certified mail in November of 1989 to Mr. Hast at an address Mr.

Hast has acknowledged was correct. That letter was never picked up or signed for and was returned by the Post Office to the Dickersons in or about November of 1989. Mr. Hast claims that he never received the certified letter.

18. The Board finds the Respondents testimony, as supported by certified mail receipts, to be credible evidence that Respondents made reasonable efforts to contact Mr. Hast and secure his permission to construct their porch in 1989.

19. The Board further finds that, by failing to respond to Respondents' repeated attempts to comply with the notice and approval requirement before they constructed their porch, and by failing to take any action during or after the construction of the porch, the Complainant has effectively acquiesced in its construction and is estopped from asserting now, more than six years after the original construction, that the porch is in violation of park rules.

20. Furthermore, the Board finds that Rule I.B.5's requirement that constructed porches conform to BOCA requirements to be impermissably vague and unreasonable except to the extent that park management makes available to tenants free of charge and upon request all applicable BOCA regulations and available schematics. There is no showing on the record before the Board that park management has made any effort to provide Respondents with such materials prior to or after the construction of their porch.

21. Thus, the Board finds that, while Rules B.5 and C.1 are, reasonable and enforceable if park management makes available to

tenants free of charge and upon request all applicable BOCA regulations and available schematics, Complainant's attempt to enforce those rules against Respondents at this time, is unreasonable and will not be allowed. Therefore the Board declines to find the Respondents in violation of any park rule by virtue of any alleged non-conformity of their porch to BOCA standards; or by virtue of any alleged failure to provide park management with prior notice of construction.

STORAGE OF WOOD

22. The park's rules require cord wood to be neatly stacked, "undercover in a shed or in some other location with prior approval of park management." July 20, 1994 Rule, par. 1.

23. Respondents stack their wood in a pile in the rear of their home, covered by a blue outdoor tarpaulin. Photographic evidence submitted by the Respondents demonstrates that the woodpile is neatly stacked and effectively covered and enclosed by the tarpaulin.

25. The Board finds the complainant's vision of "suitable" storage and "neatly stacked" imposes an unreasonable financial burden on the tenant, to the extent that it requires construction of a shed or other storage structure for the purpose of sheltering a wood pile. The Board further finds that the Rule's requirement of park management approval of the location for stacked cord wood to be unreasonable to the extent that the rule places no limitation or duty of reasonableness on the park owner in determining the suitability of a stacking site.

26. The Board finds that Respondent's wood pile is in fact neatly stacked and is under cover, thus conforming to the reasonable requirements of the rule change; and further finds the placement of the woodpile to be such that it would be approved by any reasonable park manager.

27. However, the Board declines to find the Respondents in violation of the cited park rule by virtue of Respondent's choice of a well-maintained tarpaulin rather than a storage shed as covering.

OIL STAINS ON DRIVEWAY

28. The Board finds that complainant's claim that Respondents are violating Section III A.3 of the Sherryland Park Rules and Regulations is contradicted by the photographic evidence offered by Respondents. The photos indicate that Respondents' driveway is in no worse condition than driveways of neighbors. The Board finds the park's rule is vague and makes no provision for normal wear and tear.

29. The Board also finds that the rule as presently written relieves the park owner of all responsibilty for driveway maintenance and places the burden upon the tenant for property that is the responsibility of the park owner. The Board finds that rule-making that attempts to assign or transfer the financial burden to the tenant for causes not due to the tenant's own negligence is prohibited by RSA 205-A:2, IX.

30. Therefore the Board declines to find the Respondents in violation of the cited park rule.

STORAGE OF HAZARDOUS MATERIAL

31. The Board finds that Complainant has established by photographic evidence that Respondents have in the past stored automotive oil cans and containers within the trailer hitch to their unit.

32. However, the evidence submitted by the Complainant was several years old; It appears to be undisputed that Respondents have remedied any violation of park rules shown by Complainant's photographs. Moreover, Complainant has presented no evidence to establish that the Respondents are presently storing hazardous material on their lot site in violation of any park rule.

33. Therefore, the Board declines to find Respondents in violation of any park rule by virtue of the storage of hazardous materials on their lot site.

ORDER

In view of the above findings, the Board makes the following orders:

A. The Board orders that the oil ban announced on July 20, 1994, may not be enforced to require Respondents to remove an oil storage tank from their lot; or to adopt a method of heating their home other than oil.

B. The Board orders that the application of Sherryland Park's rules and regulations regarding the design and construction of porches may not be enforced to require Respondents to remove or modify the porch constructed on their premises in 1990; however, the rule may be enforced to require notice to and approval by park management for any modification or replacement of the porch.

C. The Board finds that Sherryland's July 22, 1994 rule change may not be enforced to require Respondents to store cord wood within a structure; and Sherryland's request that the Board find Respondent's present method of and location for storage of cordwood to be in violation of park rules is dismissed.

D. Sherryland's request that the Board find Respondents in violation of park rules regarding the maintenance of their driveway is dismissed.

E. Sherryland's request that the Board find Respondents in violation of park rules regarding the storage of hazardous materials on their lot site is dismissed.

A decision of the board may be appealed, by either party, by first applying for a rehearing with the board within twenty (20) business days of the clerk's date below, not the date this decision is received, in accordance with Man 201.27 Decisions and Rehearings. The board shall grant a rehearing when: (1) there is new evidence not available at the time of the hearing; (2) the board's decision was unreasonable or unlawful.

SO ORDERED:

BOARD OF MANUFACTURED HOUSING

By: Beverly A. Gage
Beverly A. Gage, Chairman

Members participating in this action:

Beverly A. Gage
Patricia A. Dowling
Kenneth R. Nielsen, Esq.
Jimmie D. Purselley
Florence E. Quast

CERTIFICATION OF SERVICE

I hereby certify that a copy of the forgoing Order has been mailed this date, postage prepaid, to George F. Hast, Sherryland Park, Inc., Joseph Dubiansky, Esq., Robert and Sheila Dickerson and Christine A. Tebbetts-Lemmon, McKean, Mattson & Latici.

Dated: June 25, 1996

Anna Mae Mosley
Anna Mae Mosley, Clerk
Board of Manufactured Housing