STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

David Estes and Judy Estes	)	**Docket No. 12-01**
"Complainants"	)	
	)	
v.	)	
	)	
Joseph Dupont, L&J Dupont	)	
Limited Partnership/Pine Gardens	)	
Mobile Home Park	)	
"Respondent"	)	

Hearing held on April 16, 2012 at Concord, New Hampshire.

DECISION

This matter came on for hearing before the Board of Manufactured Housing (hereinafter referred to as the Board) on the complaint of David Estes and Judy Estes (hereinafter referred to as the Complainants) against Joseph Dupont, L&J Dupont Limited Partnership/ Pine Gardens Mobile Home Park, (hereinafter collectively referred to as the Respondent) alleging the Respondent's conduct to be in violation of 205-A:2 VIII (d). At the hearing, the Petitioners proceeded pro se and the Respondent was represented by counsel, Donald C. Crandlemire, Esquire. After careful consideration of all the evidence presented, including the exhibits offered and the testimony adduced, the Board finds the following facts and makes the following rulings:

FINDINGS OF FACT

The Complainant Judy Estes and the Respondent Joseph Dupont are brother and sister. They each have resided for a number of years at separate residences in Pine Gardens Mobile Home Park, Belmont, New Hampshire, a manufactured housing community owned at one time by their father Lawrence Dupont, whether in his individual capacity or through an entity. The evidence was presented that the community is now owned by L & J Dupont Limited Partenership; the Respondent Joseph Dupont owns a controlling interest in the entity and, while the evidence was somewhat murky as to the Complainant Judy Estes's actual ownership interest in the limited partnership, it was clear that her interest, if any, was a very small minority stake. Sufficient evidence was presented that the Complainants are tenants within the meaning of RSA 205-A:1 IV and that the Respondent is a manufactured housing park owner within the meaning of RSA

205-A:1 V and therefore have standing as parties as described in RSA 205-A:27 IV (a). And although there are a number of issues between the parties going back for perhaps many years involving issues not within the Board's subject matter jurisdiction, and there were numerous exhibits filed with the Board, for the purposes of the Board's determination, the issue is relatively simple and the facts are straightforward and not significantly contested.

Sometime in 2007, the Complainant Judy Estes secured a position with the Belknap County Sheriff's department as a Sheriff's Deputy. In the discharge of her duties she was expected to bring her cruiser home at the end of her shift. Having her cruiser was department policy as it enabled her to be available virtually around the clock for emergencies and unexpected events requiring her service as a deputy. She asked for and received permission from the parties' father, Lawrence Dupont, to park a third vehicle in the driveway in contravention of the then park rules limiting the number of vehicles per household to two. He granted the request which was communicated to the Complainant by her brother, respondent Joseph Dupont. There is no issue, therefore, that the Respondent was aware that Complainant Judy Estes was given this permission notwithstanding that he did not have the authority to grant or deny the Complainants' request because such authority was vested in their father. Evidence was introduced that the driveway at the Complainants' home can easily accommodate the three vehicles without interfering with road travel or plowing operations. Further, the Respondent admitted in his pleadings that such was the case.

In May of 2010, the Respondent took over the operation of the community from the parties' father. In July of 2011, the Respondent decided to issue new Park Rules and by correspondence dated November 29, 2011, informed the Complainants that consistent with the "newly adopted park rules" she would no longer be permitted to keep the third vehicle at her home, but would be required to park the vehicle in the visitor parking area, at a vacant home site, or by arrangement with another resident where that resident had only one vehicle. This was required out of "fairness" to the other residents because the Complainant should not be seen by them to be receiving special treatment by virtue of her relationship with the Respondent. The same sentiment was expressed in an additional correspondence dated December 2, 2011. There was more correspondence along the same lines from the Respondent to the Complainants. And finally, the Complainant, Judy Estes, was served with an eviction notice dated January 5, 2012. At the time of hearing no eviction action had been commenced. The Complainants have refused to comply with the request and continue to park three vehicles at their home site.

RULING

The Board is charged with hearing and determining matters involving manufactured housing park rules, specifically RSA 205-A:2, RSA 205-A:7, & RSA 205-A:8.(See RSA 205-A:27 I) The Board is further vested with the authority to determine whether a rule is reasonable as applied to the facts of a specific case. (See RSA 205-A:27 I-a) While the Board was not asked to make a determination of the reasonableness of a rule (or in this case a rule change) by the Complainants in their

petition, we note that our complaint form does not readily lend itself to a request for determination by the Board of the reasonableness of a rule pursuant to RSA 205-A:27 I-a (effective January 1, 2005). In each case that comes before it, the Board has the power to examine a rule in controversy for reasonableness "as applied to the facts of a particular case." RSA 205-A:27 I-a. In this case the central thrust of the Complainants' pleadings and submissions is that the rule change is unreasonable as applied to their situation and the Respondent replied with argument to justify the reasonableness of the rule change, We therefore exercise our power to decide the issue.

RSA 205-A: VIII provides in pertinent part that no Park Owner shall "[m]ake or attempt to enforce any rule which:...(d) [r]equires a tenant to sell or otherwise dispose of any personal property, fixture, or pet which the tenant had prior permission from the park owner *or former park owner* [emphasis added] to possess or use; provided, however, that such a rule may be made and enforced if it is necessary to protect the health and safety of other tenants in the park." While the Board does not reach the issue of whether the Respondent's conduct violates RSA 205-A: 2 VIII (d) it does look to the provisions of that section as a guide to determine the reasonableness of the revocation of the rule waiver previously granted by the prior park owner. The fact that the permission for the Complainants to keep a third car at their residence came from Lawrence Dupont, the former owner, whose authority to do so was not contested, and not the Respondent who is the current owner, is of no consequence. Complainant Judy Estes was granted permission to do so. And while not required to be, such permission was explicitly granted to her with the knowledge of the Respondent.("RSA 205-A: 2 VIII (d)... does not require that such [prior] permission be explicit." Hynes v. Hale, 146 N.H. 533, 540 (2001) Five years after the fact, the Respondent now attempts to revoke that permission for no better reason than "fairness" to the other residents in that it should not appear that, as his sister, she should be receiving disparate beneficial treatment. (It is more likely that the resentment of other residents, if any, would have surfaced as the result of disparate treatment of Complainant Judy Estes by her *father* in 2007, when the two-car limit was waived and not by her brother who may now truthfully represent to those allegedly complaining of such that he is legally bound by his father's decision.) In his attempt to be fair to all of the residents of the community, we find and rule that the Respondent is being unfair to the Complainants. We find and rule that the cost to them of revoking the permission the Complainants have enjoyed for five years far exceeds any benefit that may be conferred upon the rest of the residents.

The Board unanimously finds and rules that the Complainants may continue to park a third vehicle at their residence and that the revocation of permission to do so is **UNREASONABLE** as applied to the facts of this case. Pursuant to RSA 205-A:27 I-a, it is intended that this "ruling shall be binding on the parties in any subsequent court proceeding between the parties, unless the board's decision is reversed on appeal under RSA 205-A:28."

The Respondent's requests for findings of fact and rulings of law are granted and denied consistent with this decision.

Man 211.01 Motions for rehearing, reconsideration or clarification or other such post hearing motions shall be filed within 30 days of the date of the Board's order or decision. Filing a rehearing motion shall be a prerequisite to appealing to the superior court in accordance with RSA 205-A:28 II.

SO ORDERED
BOARD OF MANUFACTURED HOUSING

Dated: 6.25.2012

By: ____________________
Mark H. Tay, Esquire, Chairman

Members participating in this action:

Peter J. Graves
Juanita J. Martin
Kenneth R. Nielsen, Esquire
Lois Parris
Rep. Glenn Ritter
Rep. David H. Russell
Mark H. Tay, Esquire
George Twigg, III
Judy Williams

CLERK'S NOTICE

I hereby certify that a copy of the foregoing Decision of the Board of Manufactured Housing has been mailed this date, postage prepaid, to David Estes and Judy Estes, 63 Scenic Drive, Belmont, NH 03220, Donald C. Crandlemire, Esquire, Shaheen and Gordon PA, P.O. Box 2703, Concord, NH 03302-2703 and to Pine Gardens Mobile Home Park, Inc., P.O. Box 135, Winnisquam, NH 03289.

Dated: 6/25/2012

____
Anna-Mae Twigg, Clerk
Board of Manufactured Housing