THE STATE OF NEW HAMPSHIRE
BOARD OF MANUFACTURED HOUSING

Richard and Joyce Clarke "Complainant" v. Iron Wheel Inc./Thomas Waters "Respondent"	)))))))	Docket No. 15-02

Hearing held on January 16, 2015, at Concord, New Hampshire.

DECISION AND ORDER

The Board of Manufactured Housing ('the Board"), heard a complaint filed by the home owners, Richard and Joyce Clarke ("Complainant") of a manufactured home which is situated at #102 Iron Wheel Park/6 Shaft Street, Danville, New Hampshire, alleging that Iron Wheel, Inc./ Thomas Waters ("Respondent") has violated RSA 205-A:2 X(a), which statute requires a park owner or operator to:

"Be reasonably available in person, by means of telephone, or by telephone recording device checked at least twice daily to receive reports of the need for emergency repairs within the park;"

After considering all testimony and evidence presented to the Board, including all documents in the record, the Board issues the following order.

BACKGROUND INFORMATION

A hearing was held on January 16, 2015, in Room 308 of the Legislative Office Building, Concord, New Hampshire. Chairman Mark Tay, Esq. and Board members Lois Parris, Judy Williams, Robert D. Hunt, Esq., Glenn Ritter and Peter Graves heard this case.

Complainant Richard Clarke was not present due to ill health. Complainant Joyce Clarke was present, accompanied by Frank Potter – Vice President of the Iron Wheel Homeowner's Association. The Respondent, Iron Wheel, Inc., represented by Mr. Thomas Waters – President, was present. Neither party was represented by legal counsel.

On September 22, 2014, Complainants Richard and Joyce Clarke filed a complaint with

the Board alleging the following issues: That rain (surface) water collects at the intersection of the driveway serving the manufactured home and the street (Shaft Street); and that the collected water poses a hazardous condition, particularly in winter, to the Complainants. That the Park operator has refused to remedy the pooling surface water, despite repeated requests from the Complainant(s).

As a result of the Respondent's refusal, the Complainant brought this matter before the New Hampshire Board of Manufactured Housing.

FINDINGS OF FACT

Complainant, Ms. Joyce Clarke presented the Board with testimony as follows:

The Complainant introduced verbal testimony that the subject manufactured home was purchased from the Respondent. As part of the purchase arrangements, the Respondent contributed the sum of Five Hundred Dollars ($500.00) toward the paving of the driveway serving the manufactured home site. The Complainant testified that her husband (and co-Complainant) Richard Clarke had asked the Respondent for a recommendation/reference for a paving contractor, and was given the name of "*Ken's Hot Topping*". Subsequently, the Complainants contracted with this paving company, who installed the subject driveway.

The Complainant further testified that the Respondent witnessed the driveway being installed; and felt that the Respondent should have brought the potential problems related to the grading/slope of the driveway to the contractor's attention at that time.

The Complainant stated that at some point after the driveway was paved, the Respondent had the roadway paved. This action resulted in the roadway's surface being at a higher elevation or grade than the end of the driveway, which in turn led to the pooling of surface water and the hazardous condition at the conflux of the driveway and road.

The Complainant introduced to evidence a total of 4 pictures; 3 of which depict a substantial puddle of water, and a definitive "lip" between the pavement of the driveway and that of the roadway. The fourth picture depicts a slight berm of the shoulder of the road, apparently intended to relieve the pooling of the surface water.

The Respondent did not wish to cross examine the Complainant.

Questioning of the Complainant from Board Member Robert Hunt revealed that the driveway and roadway had both been paved in 2001. Prior to the 2001 paving, both the driveway and roadway were gravel. The Complainant also re-iterated, upon question from Board Member

Lois Parris, that the Respondent had directed the Complainants to utilize *Ken's Hot Top* as a pavement contractor.

Board Chairman Mark Tay, Esq. inquired as to how the Complainant saw RSA 205-A:2 X(a) to be a factor in the matters being testified to. The Complainant indicated that this seemed to be the closest match on the Board's Complaint Form to the problem the Complainants were experiencing. The Complainant also stated it was her hope that the drainage would be fixed so as not to be a slip and fall hazard, and so that emergency vehicles might access her home, as her husband is in a period of declining health.

The Respondent then introduced verbal testimony including statements that he did not recommend *Ken's Hot Top*, nor oversee their work on the Complainant's driveway. The Respondent stated that he did inform the Complainant that *Ken's* was the contractor he utilized, but he did not check the grading that was done by *Ken's* prior to the driveway being paved.

The Respondent also testified that he was unaware of the existence of a water problem until 2009. When he was made aware of the water situation, he checked and found dirt blocking the berm along the roadway – which he scraped out with a bucket loader. He also cut down trees in an attempt to provide a better drainage of the pooling area.

The Respondent testified that the subsurface of the driveway was "pitched" the wrong way by *Ken's* prior to the pavement being applied – but that was not his problem. He had, per his agreement with the Complainant, contributed $500.00 towards the paving, as the Complainants wanted a more elaborate driveway than was included with the manufactured home purchase. The Respondent expressed that contribution as his sole involvement, and the end of his responsibility.

The Respondent introduced two photographs into evidence to depict the disparity between the finish grade of roadway and that of the driveway, and illustrate the problem of the driveway being "pitched the wrong way".

The Respondent also stated that the plowing of snow, by the Complainant or persons doing the plowing on behalf of the Complainant, contributes to the pooling of water as the snow banks block the water from being shed into the berm as well as a six inch perforated pipe that was buried in the area. (Both the berm and pipe having been installed to carry surface water to a catch basin down gradient from the driveway).

The Respondent spoke to the issue of his being "readily available" (per RSA 205-A:2 X(a)), stating that the Complainants had not only his office phone number, but also his cell phone number – and that Mr. Clarke called his cell phone frequently. Further, the Respondent stated his Secretary lived adjacent to the Complainants. Finally, the Respondent stated that upon being made aware of the surface water/drainage problem, that he had repeatedly "cuffed out" the berm in an attempt to remedy the problem.

Cross examination of the Respondent, by the Complainant, revealed a disagreement between the two of the Respondent's role in overseeing the driveway's installation; and if in fact *Ken's* had been a recommendation of the Respondent. The Complainant's cross examination also revealed that both Complainant and Respondent view the snow removal efforts are made somewhat difficult by additional topography and infrastructure components adjacent to the end of the driveway. The Respondent offered a letter into evidence, from the Complainants, thanking him for pushing back snow banks 2007 to alleviate some of these issues.

Under questioning from the Board Members, the Respondent reiterated his position that the problem stems from an improperly installed driveway, which installation was contracted for by the Complainants. The Respondent also stated that it was his belief that the driveway was the property of the Complainants. The Respondent stated that it was not just the responsibility for shoveling/sanding of the driveway, but the driveway, itself, was under the ownership of the Complainants.

More questions from the Board, to both parties, brought to light that the drainage issue had been less of a problem in years gone by when Mr. Clarke (Complainant) had been in better health, and able to attend to the peculiarities of the subject driveway himself. From 2001 until 2009, the Complainant(s) personally had the physical ability to spend more time and energy keeping snow banks from blocking the drainage of the surface water.

The Respondent also responded to inquiry of the Board that he resides within one and one half miles of the manufactured housing community; and has made considerable effort in making his phone numbers available to his tenants.

RULINGS OF LAW

RSA 205-A:2 Prohibition. No person who owns or operates a manufactured housing park shall:

X. Fail to provide each tenant with the name, address and telephone number of a manager or agent who resides within 10 miles of the park, if the park owner or operator does not reside within 25 miles of the park, which manager or agent shall:

(a) Be reasonably available in person, by means of telephone, or by telephone recording device checked at least twice daily to receive reports of the need for emergency repairs within the park;...

CONCLUSION AND DISCUSSION
The Board finds the following:

The subject complaint, while framed and submitted on the Board's Complaint Form as a violation of RSA 205-A:2 X(a), was rather quickly distilled to a discussion of whom has responsibility for (and perhaps liability from) the grading and paving of the driveway and roadway serving the Complainant's manufactured home.

There was no debate between the parties that would indicate the $500.00 contribution from the Respondent to the paving of the driveway by the Complainant (*or party contracted by the Complainant*) was not in accordance with their contract.

There was no evidence offered by the Complainant to substantiate that the Respondent was not readily available to themselves, or others residing in the park; and the minor distance of the Respondent's residence from the park, being far less than the 25 mile threshold of the relevant statute, was also contemplated.

The Respondent's written community rules, which describe the removal of snow from driveways (and walkways) as being the responsibility of the tenant, are felt to be in keeping with the majority of such community rules in the State of New Hampshire. Thus, the Board cannot find the rule(s) to be unreasonable as applied to this particular case.

After hearing all of the testimony submitted by the parties, the Board feels that the complaint against the Respondent is not sustained. Per Man 210.02, the burden of proof resides with the party asserting the proposition, by a preponderance of the evidence. In this matter, that assertion is that a violation of the statute's language:
"*Fail to provide each tenant with the name, address and telephone number of a manager or agent who resides within 10 miles of the park, if the park owner or operator does not reside within 25 miles of the park, which manager or agent shall:*
(a) *Be reasonably available in person, by means of telephone, or by telephone recording device checked at least twice daily to receive reports of the need for emergency repairs within the park;*"
has occurred. While at least some the Board Members disagree with the Respondent's expressed belief that the tenant has ownership of the driveway; and feel that the Respondent may well have inherent liability as park operator for hazardous conditions within the community - none of the Board members feel evidence was presented that substantiates a violation of RSA 205-A:2 X(a) in this matter.

The New Hampshire Board of Manufactured Housing's jurisdiction is limited to NH RSA 205-A:2, RSA 205-A:7 and RSA 205-A:8. Matters related to surface water drainage,

hazardous conditions and civil liability are beyond the scope of the Board's mandate, and can be raised in an appropriate venue. Accordingly, Motion was made, seconded and passed by the Board members unanimously that; The Complainant's complaint be dismissed.

OTHER MATTERS

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 motions shall be a prerequisite to appealing to the superior court in accordance with RSA 204-A:28, II.

SO ORDERED

BOARD OF MANUFACTURED HOUSING

By:____________________________
Mark Tay, Esq., Chairman

Members participating in this action:
Mark Tay, Esq., Chairman
Peter J. Graves Vice - Chairman
Lois Parris
Robert D. Hunt, Esq.
Judy Williams
Glenn Ritter