

Comstock Homebuilding Companies, Inc.
Form DEF 14A
April 15, 2005

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant x

Filed by a Party other than the Registrant o

Check the appropriate box:

- o Preliminary Proxy Statement
- o **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- x Definitive Proxy Statement
- o Definitive Additional Materials
- o Soliciting Material Pursuant to §240.14a-12

Comstock Homebuilding Companies, Inc.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- x No fee required.
- o Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
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 - (4) Proposed maximum aggregate value of transaction:
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COMSTOCK HOMEBUILDING COMPANIES, INC.
NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
June 2, 2005

The Annual Meeting of Stockholders of Comstock Homebuilding Companies, Inc., a Delaware corporation, will be held at 9:00 a.m., on Thursday, June 2, 2005, at Westfields Conference Center, 14750 Conference Center Drive, Chantilly, Virginia, for the following purposes:

1. To elect four directors, one to serve for a one-year term expiring in 2006 and three to serve for a three-year term expiring in 2008.
2. To ratify the appointment of PricewaterhouseCoopers LLP as the independent registered public accounting firm of our Company for the fiscal year ending December 31, 2005.
3. To transact such other business as may properly come before the meeting or any adjournment thereof.

These items of business are more fully described in the proxy statement accompanying this Notice.

Only stockholders of record at the close of business on April 8, 2005 are entitled to notice of and to vote at the meeting.

All stockholders are cordially invited to attend the meeting and vote in person. To assure your representation at the meeting, however, you are urged to mark, sign, date, and return the enclosed proxy as promptly as possible in the postage-prepaid envelope enclosed for that purpose. You may vote in person at the meeting even if you have previously returned a proxy.

Sincerely,

Reston, Virginia
April 15, 2005

Jubal R. Thompson
General Counsel and Secretary

COMSTOCK HOMEBUILDING COMPANIES, INC.
11465 Sunset Hills Road, Suite 510
Reston, Virginia 20190

PROXY STATEMENT

VOTING AND OTHER MATTERS

General

The enclosed proxy is solicited on behalf of Comstock Homebuilding Companies, Inc., a Delaware corporation, by our Board of Directors for use at our Annual Meeting of Stockholders to be held on Thursday, June 2, 2005 at 9:00 a.m., or at any adjournment thereof, for the purposes set forth in this proxy statement and in the accompanying meeting notice. The meeting will be held at Westfields Conference Center, 14750 Conference Center Drive, Chantilly, Virginia.

These proxy solicitation materials were first mailed on or about April 21, 2005 to all stockholders entitled to vote at the meeting.

Voting Securities and Voting Rights

Stockholders of record at the close of business on April 8, 2005, which we have set as the record date, are entitled to notice of and to vote at the meeting. On the record date, there were issued and outstanding 8,887,786 shares of our Class A common stock and 2,733,500 shares of our Class B common stock. Each holder of Class A common stock voting at the meeting, either in person or by proxy, may cast one vote per share of Class A common stock held on all matters to be voted on at the meeting. Each holder of Class B common stock voting at the meeting, either in person or by proxy, may cast 15 votes per share of Class B common stock held on all matters to be voted on at the meeting.

The presence, in person or by proxy, of the holders of a majority of the voting power of the stock outstanding constitutes a quorum for the transaction of business at the meeting. Assuming that a quorum is present, a plurality of affirmative votes properly cast in person or by proxy will be required to elect directors and a majority of affirmative votes properly cast in person or by proxy will be required to ratify the appointment of PricewaterhouseCoopers LLP as the independent registered public accounting firm of our Company for the fiscal year ending December 31, 2005.

Votes cast by proxy or in person at the meeting will be tabulated by the inspector of elections appointed for the meeting and will determine whether a quorum is present. The inspector of elections will treat abstentions and broker non-votes as shares that are present and entitled to vote for purposes of determining the presence of a quorum. In the election of directors, broker non-votes will be disregarded and have no effect on the outcome of the vote. With respect to the ratification of the appointment of PricewaterhouseCoopers LLP as the independent registered public accounting firm of our Company, abstentions from voting will have the same effect as a vote against such matter and broker non-votes will be disregarded and have no effect on the outcome of the vote.

Voting of Proxies

When a proxy is properly executed and returned, the shares it represents will be voted at the meeting as directed. If no specification is indicated, the shares will be voted (1) for the election of the nominees set forth in this proxy statement, and (2) for the ratification of the appointment of PricewaterhouseCoopers LLP as the independent registered public accounting firm of our Company for the fiscal year ending December 31, 2005.

Revocability of Proxies

Any person giving a proxy may revoke the proxy at any time before its use by delivering to us either a written notice of revocation or a duly executed proxy bearing a later date or by attending the meeting and voting in person.

Solicitation

We will pay for this solicitation. In addition, we may reimburse brokerage firms and other persons representing beneficial owners of shares for expenses incurred in forwarding solicitation materials to such beneficial owners. Proxies also may be solicited by certain of our directors and officers, personally or by telephone or e-mail, without additional compensation.

Annual Report and Other Matters

Our 2004 Annual Report to Stockholders, which was mailed to stockholders with or preceding this proxy statement, contains financial and other information about our Company, but is not incorporated into this proxy statement and is not to be considered a part of these proxy soliciting materials or subject to Regulations 14A or 14C or to the liabilities of Section 18 of the Securities Exchange Act of 1934, as amended. The information contained in the Compensation Committee Report on Executive Compensation, Report of the Audit Committee, and Performance Graph below shall not be deemed filed with the Securities and Exchange Commission, or the SEC, or subject to Regulations 14A or 14C or to the liabilities of Section 18 of the Exchange Act.

We will provide, without charge, additional copies of our annual report on Form 10-K for the year ended December 31, 2004 as filed with the SEC to each stockholder of record as of the record date that requests a copy in writing. Any exhibits listed in the Form 10-K report also will be furnished upon request at the actual expense we incur in furnishing such exhibit. Any such requests should be directed to our Company's secretary at our executive offices set forth in this proxy statement.

ELECTION OF DIRECTORS

Nominees

Our certificate of incorporation and bylaws provide that the number of our directors shall be fixed from time to time by resolution of our Board of Directors. Presently, the number of directors is fixed at eight and that number of directors is divided into three classes, with one class standing for election each year for a three-year term. At each annual meeting of stockholders, directors of a particular class will be elected for three-year terms to succeed the directors of that class whose terms are expiring. James A. MacCutcheon and David M. Guernsey are in the class of directors whose term expires at the meeting, and Messrs. MacCutcheon and Guernsey have been nominated by our board for re-election for three-year terms expiring in 2008. Robert P. Pincus has been nominated by our board for election to a three-year term expiring in 2008. Socrates Verses has been nominated by our board for election to a one-year term expiring in 2006. Gregory V. Benson and Gary Martin are in the class of directors whose term will expire in 2006. Christopher Clemente and A. Clayton Perfall are in the class of directors whose terms will expire in 2007.

Unless otherwise instructed, the proxy holders will vote the proxies received by them for each of the nominees named above. Messrs. MacCutcheon and Guernsey currently are directors of our Company. In the event that any nominee is unable or declines to serve as a director at the time of the meeting, the proxies will be voted for any nominee designated by the current Board of Directors to fill the vacancy. It is not expected that any nominee will be unable or will decline to serve as a director.

The Board of Directors recommends a vote **for** the nominees named herein.

Nominees for Director Standing for Election

David M. Guernsey, 57, has been a director since December 2004, and is a member of the Compensation Committee of our Board of Directors. Mr. Guernsey has served as the President and Chief Executive Officer of Guernsey Office Products, Inc., an office supply company, since May 1971. Mr. Guernsey serves on the Board of Directors of Virginia Commerce Bancorp, Inc., a banking company.

James A. MacCutcheon, 52, has been a director since December 2004, and is a member of the Audit Committee of our Board of Directors. Mr. MacCutcheon has served as the President and Chief Executive Officer of Sunburst Hospitality Corporation, a private hospitality company, since September 2000 and served as its Executive Vice President and Chief Financial Officer from 1997 to September 2000.

Robert P. Pincus, 58, has been the director of Fidelity & Trust Financial Corporation, a financial holding company, since March 2005, chairman of Fidelity & Trust Bank, a regional banking institution, since March 2005, and a director of Fidelity & Trust Mortgage Inc., a regional mortgage lending company since March 2005. He also has served as chairman of Milestone Capital Partners, a private equity firm, since October 2002, and director of the Mills Corporation, a NYSE listed company, since April 1994. From 2000 to 2005, Mr. Pincus served as regional Chairman of the Board and from 1998 to 2002 he served as regional chief executive officer and president of the Branch Banking and Trust Company's DC Metro Region. From 1991 to 1998, Mr. Pincus served as President of Franklin Bank prior to its acquisition by the Branch Banking and Trust Company. Mr. Pincus currently serves on the Board of the University of Maryland Foundation and is a Trustee of American University.

Socrates Verses, 47, has been the President and Chief Executive Officer of Realeum, Inc., a property management and business integration software company, since March 2001. From January 1995 to February 2001, Mr. Verses served as President and a director of Technology Enablers, Inc., an e-services company. From 1987 to 1995, he served as Vice President of Sales for the Recognition Equipment Software Division of IBM Corporation.

Continuing Directors with Terms Expiring in 2006

Gregory V. Benson, 50, has been a director since May 2004. He became our President and Chief Operating Officer in 1991. Mr. Benson has over 30 years of home building experience including over 13 years at national home builders, including NVHomes, Ryan Homes and Centex Homes.

Gary Martin, 52, has been a director since December 2004, and is a member of the Audit Committee of our Board of Directors. He has served as a Vice President of M&T Bank since January 2003. From July 2001 to July 2002, he served as a Vice President of Royal Bank of Canada and from September 1991 to June 2001, he served as a Senior Vice President of BB&T, a banking company.

Continuing Directors with Terms Expiring in 2007

Christopher Clemente, 45, has been a director since May 2004. He founded our Company in 1985 and since 1992, he has served as our Chairman and Chief Executive Officer. Mr. Clemente has over 20 years of experience in all aspects of real estate development and home building, and 25 years of experience as an entrepreneur.

A. Clayton Perfall, 46, has been a director since December 2004, and is a member of the Audit Committee of our Board of Directors. He has served as the Chief Executive Officer and as a director of AHL Services, Inc., a provider of outsourced business services, since October 2001. Prior to that, from December 2000 to September 2001, Mr. Perfall served as the Chief Executive Officer of Convergence Holdings, a marketing services company. From September 1996 to October 2000, Mr. Perfall served as the Chief Financial Officer and a director of Snyder Communications, a marketing services company. Prior to that, Mr. Perfall was a partner at Arthur Andersen LLP.

Information Relating to Corporation Governance and the Board of Directors

Our Board of Directors has determined, after considering all the relevant facts and circumstances, that each of Messrs. Guernsey, MacCutcheon, Martin and Perfall are independent directors, as independence is defined by Nasdaq, because they have no relationship with us that would interfere with their exercise of independent judgment.

Our bylaws authorize our Board of Directors to appoint among its members one or more committees, each consisting of one or more directors. Our Board of Directors has established two standing committees: an Audit Committee and a Compensation Committee. The Board of Directors has no standing nominating committee. It is the Board of Directors' view, given its relatively small size and majority of independent directors, that it is sufficient to select or recommend director nominees itself. Each director has the opportunity to suggest any nominee and such suggestions are comprehensively reviewed by the independent directors. Director nominees are recommended for selection by the Board of Directors by a majority of the independent directors. The Board of Directors does not have a charter for the Company's nominating process. However, the qualities and skills sought in prospective members of the Board of Directors generally require that director candidates be qualified individuals who, if added to the Board of Directors, would provide the mix of director characteristics, experience, perspectives and skills appropriate for the Company. Criteria for the selection of candidates include, but are not limited to: (i) business and financial acumen, as determined by the independent directors in their discretion, (ii) qualities reflecting a proven record of accomplishment and ability to work with others, (iii) knowledge of the Company's industry, (iv) relevant experience and knowledge of corporate governance practices, and (v) expertise in an area relevant to the Company. Such persons should not have commitments that would conflict with the time commitments of a director of the Company.

The Board of Directors does not have a specific policy for consideration of nominees recommended by security holders due to the fact that most of the voting control of the Company is held by two individuals. However, security holders can recommend a prospective nominee for the Board of Directors by writing to our corporate secretary at the Company's corporate headquarters and providing the information required by our bylaws, along with any additional supporting materials the security holder considers appropriate. To date there have been no recommended nominees from security holders. The Company pays no fees to third parties for evaluating or identifying potential nominees. Messrs. Pincus and Verses were initially recommended as candidates for director by our Chief Executive Officer, and were subsequently recommended for selection as nominees by our independent directors.

Our Board of Directors has adopted charters for the Audit and Compensation Committees describing the authority and responsibilities delegated to each committee by the Board of Directors. Our Board of Directors has also adopted Corporate Governance Guidelines, a Code of Conduct, a Code of Ethics for the CEO and Senior Financial Officers, and a Whistleblower Policy. We post on our website, at www.comstockhomebuilding.com, the charters of our Audit and Compensation Committees; our Corporate Governance Guidelines, Code of Conduct, Code of Ethics for the CEO and Senior Financial Officers, and Whistleblower Policy, and any amendments or waivers thereto; and any other corporate governance materials required by SEC or Nasdaq National Market regulations. These documents are also available in print to any stockholder requesting a copy in writing from our corporate secretary at our executive offices

set forth in this proxy statement. A copy of the Audit Committee charter is included with this proxy statement as Appendix A.

Interested parties may communicate with our Board of Directors or specific members of our Board of Directors, including our independent directors and the members of our various Board of Directors committees, by submitting a letter addressed to the Board of Directors of Comstock Homebuilding Companies, Inc. c/o any specified individual director or directors at the address listed herein. Any such letters are sent to the indicated directors.

The Audit Committee

The purpose of the Audit Committee is to oversee the accounting and financial and reporting processes of our Company and the audits of the financial statements of our Company and to provide assistance to our Board of Directors with respect to its oversight of the integrity of the financial statements of our Company, our Company's compliance with legal and regulatory requirements, the independent registered public accounting firm's qualifications and independence, and the performance of our Company's internal audit function, if any, and independent audit. The primary responsibilities of the Audit Committee are set forth in its charter and include various matters with respect to the oversight of our Company's accounting and financial reporting process and audits of the financial statements of our Company on behalf of our Board of Directors. The Audit Committee also selects the independent auditor to conduct the annual audit of the financial statements of our Company; reviews the proposed scope of such audit; reviews accounting and financial controls of our Company with the independent auditor and our financial accounting staff; and reviews and approves transactions between us and our directors, officers, and their affiliates.

The Audit Committee currently consists of Messrs. MacCutcheon and Perfall, each of whom is an independent director of our Company under the Nasdaq rules as well as under rules adopted by the SEC pursuant to the Sarbanes-Oxley Act of 2002. The Board of Directors has determined that Mr. Perfall (whose background is detailed above) qualifies as an Audit Committee financial expert in accordance with applicable rules and regulations of the SEC. Mr. Perfall serves as the Chairman of the Audit Committee. We expect that Mr. Pincus will join the Audit Committee following his election to the Board of Directors.

The Compensation Committee

The purpose of the Compensation Committee includes determining, or recommending to our Board of Directors for determination, the compensation of the Chief Executive Officer and other executive officers of our Company, discharging the responsibilities of our Board of Directors relating to our Company's compensation programs and compensation of our Company's executives, and producing an annual report on executive compensation for inclusion in our Company's annual proxy statement in accordance with applicable rules and regulations of Nasdaq, the SEC, and other regulatory bodies. The Compensation Committee currently consists of Messrs. Guernsey and Martin, with Mr. Martin serving as Chairman. We expect that Mr. Verses will join the Compensation Committee following his election to the Board of Directors.

Board and Committee Meetings

Our Board of Directors held a total of three meetings during the fiscal year ended December 31, 2004. During the fiscal year ended December 31, 2004, the Audit Committee and the Compensation Committee did not meet. During 2004, no director attended fewer than 75% of the meetings of our Board of Directors. We encourage each of our directors to attend the annual meeting of stockholders and, to the

extent reasonably practicable, we intend to regularly schedule a meeting of the Board of Directors on the same day as our annual meeting of stockholders.

Director Compensation and Other Information

We pay each non-employee director an annual retainer fee of \$36,000, plus \$1,000 for each regular board meeting attended. We pay our non-employee directors \$5,000 to serve on the Audit Committee, \$3,000 to serve on the Compensation Committee and \$1,000 for each committee meeting attended. The chairman of the Compensation Committee is paid \$6,000, the chairman of the Audit Committee is paid \$15,000 and the Audit Committee designated financial expert is paid \$32,500. All payments to our non-employee directors are paid 50% in cash and 50% in restricted stock grants based on the stock price at the date of commencement of their term or the date of the annual meeting in the case of members not up for re-election in a given year. Directors are also eligible to participate in our equity incentive plan. We also reimburse our directors for travel and related expenses incurred in connection with attendance at board and committee meetings. Employees who also serve as directors receive no additional compensation for their services as a director.

EXECUTIVE COMPENSATION**Summary of Cash and Other Compensation**

The following table sets forth the total compensation received for services rendered in all capacities to our Company for the fiscal years ended December 31, 2004 and 2003, by our Chief Executive Officer and our four other most highly compensated executive officers for the fiscal year ended December 31, 2004. We refer to these individuals as the named executive officers.

SUMMARY COMPENSATION TABLE

Name and Principal Position	Year	Annual Compensation		Long-Term Compensation Awards			All Other Compensation
		Salary	Bonus	Restricted Stock Awards (\$)	Securities Underlying Options (#)		
Christopher Clemente Chief Executive Officer	2004	\$ 310,273		\$ 150,000	(1)		
	2003	\$ 233,333					
Gregory V. Benson President and Chief Operating Officer	2004	\$ 307,592		\$ 100,000	(2)		
	2003	\$ 230,939					
Bruce J. Labovitz Chief Financial Officer	2004	\$ 150,000	\$ 497,172	(3)	\$ 400,000	(5)	107,143 (6)
	2003	\$ 52,205	\$ 313,502	(4)			
William P. Bensten Senior Vice President	2004	\$ 200,000	\$ 1,043,836	(7)	\$ 1,800,000	(8)	
	2003	\$ 175,000	\$ 196,871				
David D. Howell							