



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

January 6, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: John Klonaris
Association: Hunters Green Cluster Association
File Number: 2015-01682

The Office of the Common Interest Community Ombudsman has been designated to review final adverse decisions and determine if they may be in conflict with laws or regulations governing common interest communities. Such determination is within the sole discretion of the Office of the Common Interest Community Ombudsman and not subject to further review.

Complaint

Complainant submitted two complaints to the Association dated September 16, 2014 and September 17, 2014. The Association provided a final determination to the Complainant dated November 19, 2014 and the Complainant then submitted his Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated December 10, 2014 and received December 12, 2014.

Determination

The Common Interest Community Ombudsman (CICO), as designee of the Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18VAC 48-70-120) The process of making such a determination begins with receipt of a NFAD that has been submitted to this office in accordance with §55-530(F) (Code of Virginia) and the Common Interest Community Ombudsman Regulations (Regulations). A NFAD results from an association complaint submitted through an association complaint procedure. The association complaint must be submitted in accordance with the applicable association complaint procedure and, as very specifically set forth in the Regulations, "shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.

Under the Regulations, applicable laws and regulations pertain solely to common interest community laws and regulations. Any complaint that does not concern common interest community laws or regulations is not appropriate for submission through the

association complaint procedure. In the event that such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

The Complainant has alleged in his first complaint, that the Association improperly approved a motion to allow French doors in the rear of townhomes. The Complainant stated that the vote taken for approval violated the Board Code of Conduct. In addition, the Complainant also alleged that several board members initiated the suggested change to help another board member who was in violation of the cluster standards. No allegation was made that any violation of common interest community law or regulation had occurred, and therefore no determination will be provided in response to this Complaint.

The second Complaint alleged that by submitting a parking expansion application to the Reston Association's Design Review Board (DRB) without knowledge of or review by the owners, the Board of Directors made decisions outside of open meetings and violated §55-510.1 of the Property Owners' Association Act. According to the Complainant, the Association subsequently rescinded the application and notified the owners and residents of the association that it intended to request a postponement on the submission of the parking application in order to allow the Parking Committee to meet and review the submission to the DRB and decide how to proceed. The Complainant also alleged that the Association was not being truthful with the community, violated the Association's Code of Conduct and removed the co-chairs of the Parking Committee in a retaliatory manner. The only portion of the second Complaint that is appropriate for consideration by this office, as it alleges a possible violation of common interest community law or regulations, is the allegation related to open meetings. None of the other allegations is appropriate for the complaint process and a determination will not be provided in response to those allegations.

The Association provided a Notice of Final Determination to the Complainant and responded to the bulk of the allegations, but the only portion of the Association's response that will be considered is that portion related to the allegations that the Association failed to make decisions in an open meeting. The Association, in its response, noted that the application submitted was not intended to be binding on the Association, that it was merely an administrative step, and that the Association believed the Parking Committee was in agreement. The Association also stated that "once disagreement arose over the submission the Board voted to withdraw the application and has since not taken any further steps forward."

If the Association did make decisions without a meeting regarding the application to the DRB, by withdrawing that application it has essentially self-corrected any such decisions. It is not clear from my reading of the Complaint and Notice of Final Determination whether a meeting without notice, which would be a violation of §55-510.1 ever took place, or if there was an abuse of work sessions. There is simply not enough evidence in the Complaint to support such allegations. However, I also find it logical that some type of decision must have taken place, outside of a meeting, since there does not appear to have been any vote or motion in an open meeting that made its way into any meeting minutes.

Required Actions

Because the Association has already withdrawn the application to the DRB, there does not appear to be any further action necessary in relation to the failure to provide notice of a meeting. The Association needs to ensure that in the future it provides notice of all meetings and does not circumvent the notice requirements by using work sessions or other informal meetings. Any future violation of §55-510.1 of the Property Owners' Association Act may result in a referral to the Common Interest Community Board for whatever action it deems appropriate.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Hunters Green Cluster Association