



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Brian Ball
Secretary of
Commerce and Trade
Mary Broz-Vaughan
Director

October 21, 2020

Complainant: Raymond and Nancy Long
Association: Arlington Plantation Property Owners Association
File Number: 2021-00757

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

The Complainant submitted a Complaint to the Association dated May 28, 2020. The Association provided a response the submitted complaint dated September 2, 2020. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated September 22, 2020 and received September 25, 2020.

Authority

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 §54.1-2354.4 (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.

Determination

The Complainant alleged that the Association violated both the Property Owners’ Association Act and the covenants of the association. As noted above, this office has no authority to determine if a violation of the governing documents has occurred so the portions of the complaint and NFAD that reference the covenants will not be addressed here.

The Complainant believes that the Association is in violation of §55.1-1807(3)¹. The Complainant alleges the violation occurred when the Association failed to provide notice of a meeting that resulted in a “Unanimous Consent Without a Meeting of the Board of Directors.” According to the Complaint, the Association cancelled a board meeting to be held in early March, due to Covid-19 and subsequently issues the Unanimous Consent. No announcement of a meeting was made in relation to this Unanimous Consent.

The Association’s response to the Complaint addressed several portions of the Complaint that do not fall under our authority and will not be referenced here. In its response to the allegation that the Association was in violation of §55.1-1807 by failing to hold a meeting and failing to provide notice of a meeting, the Association stated that the fees, which are the subject matter of the complaint, “were discussed in properly noticed meetings of the Board.” It also wrote that it utilized §13.1-865 of the Virginia Nonstock Corporation Act when it obtained consent without a meeting, and that the consent was confirmed at a later board meeting and placed into the minutes book of the Association.

I understand the Complainant’s concerns that a decision was made either at an unnoticed meeting or without a meeting. However, the very nature of a “unanimous consent without a meeting” is that no meeting is required in order for a board to come to a decision. Unanimous consents are not governed by common interest community law, which is where our authority lies, but instead, are typically governed by the association’s governing documents and the Nonstock Corporation Act. Because we have no authority over either of these, a determination cannot be provided as to whether it was appropriate to make a decision via unanimous consent. As to the allegation that no

¹ Every lot owner who is a member in good standing of a property owners' association shall have the following rights:

3. The right to have notice of any meeting of the board of directors, to make a record of any such meeting by audio or visual means, and to participate in any such meeting in accordance with the provisions of subsection G of § 55.1-1815 and § 55.1-1816;

notice was provided of the meeting that lead to the unanimous decision, if no meeting was held, there can be no requirement for notice. Based on the Complaint and the NFAD, there was no evidence that a meeting had been held. As such, I do not find the association is violation of §55.1-1807(3).

Required Actions

No action is required.

Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Heather Gillespie".

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Arlington Plantation Property Owners Association