



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

January 12, 2021

Complainant: Philip Coletti
Association: Clark's Corner Homeowners' Association, Inc.
File Number: 2021-01357

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 November 4, 2020. The Association provided a response to the association complaint dated November 18, 2020. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated December 2, 2020 and received December 11, 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.

Determinations issued by the CICO are based solely on the association complaint submitted to the association, the final decision or determination from the association, and any documents that were part of the original association complaint or the association’s decision. New information that was not included with the original complaint or the association’s final decision will not be reviewed or utilized as part of the determination, unless such information is related to the way in which an association carried out its complaint process.

Determination

The Complainant has alleged that the Association has failed to provide him the information contained in paragraphs 3 and 4 of §55.1-1826(C)¹ of the Property Owners’ Association Act. The Complainant stated that he had requested this information in an email on May 4, 2020 and that the response he received did not address the requirements. The Complainant also wrote that the Association referenced the reserves in minutes from a June 2019 board meeting, but that “the procedures for estimation and accumulation are missing from all board correspondence.”

The Complainant also stated that there is no statement in the budget information as to whether the reserve fund target was met in 2019, or is expected to be met in 2020. The Complainant believes that the Association “has abandoned the recommendations of the Reserve Study and past contribution amounts with no supporting documentation...”

¹ C. To the extent that the reserve study conducted in accordance with this section indicates a need to budget for reserves, the association budget shall include:

1. The current estimated replacement cost, estimated remaining life, and estimated useful life of the capital components as defined in § 55.1-1800;
2. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated cash reserves set aside to repair, replace, or restore capital components and the amount of the expected contribution to the reserve fund for that year;
3. *A statement describing the procedures used for estimation and accumulation of cash reserves pursuant to this section; and*
4. *A statement of the amount of reserves recommended in the study and the amount of current cash for replacement reserves.*

The Association responded to the complaint by stating that it had reviewed the statute it had allegedly violated, its 2020 budget, and the Reserve Study completed in 2019. In addition, the Association included the Complainant's concerns on the agenda for its October Quarterly Meeting to discuss with homeowners. Ultimately, the association approved changes to the budget that reflected the missing language and which are now included in the approved 2021 budget.

A copy of a 2021 budget was included in the NFAD and it contained the information necessary to meet the requirements for paragraphs 3 and 4 of §55.1-1826(C) of the Property Owners' Association Act.

It appears that the Association did fail to include the information required by paragraphs 3 and 4 of §55.1-1826(C) in its 2020 budget. However, the Association has corrected that error and included the required information in its most recent budget, for 2021. So, while there may have been an earlier violation of the statute, it has since been corrected by the Association. I would note that §55.1-1826 was amended in July of 2019 and prior to that time, paragraph 4 of that statute did not exist. I cannot determine when the 2020 budget was created and whether the code section was fully applicable or only paragraph 3 was applicable at the time of the creation of the 2020 budget. Finally, while the Complainant stated that he had requested the information related to paragraphs 3 and 4 of §55.1-1826(C) for the 2020 budget on May 4, 2020, there was no written record of such request in the NFAD and therefore I cannot determine whether there was any violation of common interest community law related to that request. There was a May 3, 2020 email to the association that asked several questions, but it was not written as a request for access to or copies of books and records.

Required Actions

No action is required of the Association.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Clark's Corner Homeowners' Association, Inc.