



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

January 22, 2021

Mary Broz-Vaughan
Director

Complainant: Michael E. Smith
Association: Newington Community Association
File Number: 2021-01468

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 October 6, 2020. The Association provided a response to the association complaint dated December 8, 2020. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated December 17, 2020 and received December 29, 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 establish a method of communication for the association that provides a method by which owners can communicate among themselves and the board of directors. §55.1-1817¹ of the Property Owners' Association Act requires an association to establish a reasonable, effective and free method of communication for lot owners to communicate among themselves and with the board of directors.

In its response to the allegation, the Association stated that it found no action necessary and that "existing communication options meet the requirements of the Virginia POA." The Association wrote that owners can "provide letters to the editor, announce items for sale, or pose questions on their monthly newsletter." The Association further noted that there is a community email address to reach all board members and residents are welcome to attend board meetings and participate in the Homeowner Forum at those meetings.

While the Association has provided multiple methods of communication for owners, all the methods provided appear to be uni-directional. By this I mean that letters to the editor, items for sale, questions in a newsletter, and participation in the owners' forum are all one-sided methods of communication and do not appear to provide for communication *among* the owners, as required by common interest community law. Providing a method of communication for lot owners to communicate among themselves can be daunting. Bulletin boards, online forums and chatrooms are among the most common methods, but there are likely many other options available.

§55.1-1817 is specific, as it requires a method for owners to communicate *among* themselves and a method to communicate *with* the board of directors. The Association has provided a method by which owners can communicate with the board of directors – via email or via the forum at board meetings. But there does not appear to be a method by which owners can communicate *among* themselves.

¹ The board of directors shall establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association.

Required Actions

The Association must find a reasonable, effective and free method of communication that allows owners to communicate *among* themselves. This would need to allow for some method of communication that is multi-directional. It is up to the Association to determine what that method might be and what would be most suitable for the Association.

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
Newington Community Association