



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

February 12, 2021

Complainant: James Swanda and Jessica Zaman
Association: Sun Valley Community Association
File Number: 2021-01626

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 September 8, 2020. The Association provided a response to the association complaint dated January 8, 2021. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated January 10, 2021 and received January 15, 2021.

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 multiple violations of the Property Owners' Association Act, nearly all of which were related to a failure to hold open meetings and to provide notice of those meetings. Specifically, the Complainant alleged a violation of §55.1-1816(A) and 55.1-1816(B) when the Board of Directors met on August 21, 2020, and again on August 28, 2020 when the Board held an emergency meeting with less than 24-hours' notice. The Complainant also alleged a violation of 55.1-1807(3) when a board member was not given notice of the August 28 meeting.

The Complainant further alleged a violation of §55.1-1807 and 55.1-1816, stating that no audio or video recording was made of the August 28th meeting and the minutes of the meeting have not been provided upon request. Finally, the Complainant alleged a violation of §55.1-1816(B) when a private meeting between a board member and a homeowner occurred. All of these meetings center on an ongoing architectural dispute within the association.

The Association responded to these allegations by noting that it had engaged in lengthy review and discussions regarding the complaint and had received legal advice as well. The Association wrote that in regard to the allegations of violations of the Property Owners' Association Act, the governing documents of the association, which do not require board meeting notice to association members, predate 1998 and therefore, pursuant to §55.1-1801(C), control the notice requirements in the Association. Essentially, the Association contends that notice requirements under its own governing documents (of which it says there are none) control and the notice requirements under the Property Owners' Association Act do not apply.

The Association did agree in its response that it would provide several remedial actions in response to the Complaint. It agreed to notify members of meetings in a timely manner, it will open board meetings to members and allow for submission of agenda items, it will publish minutes of all open meetings after they have been approved, and it will not invalidate prior decisions.

From the perspective of this office, the key issue is whether the Association is bound by the Property Owners' Association Act. The Complainant has alleged multiple violations of that Act, while the Association argues that they are not bound by the Property Owners' Association Act due to the provisions contained in §55.1-1801. Until there is a legal finding that the Association falls under the Property Owners Association Act or the Association agrees that it is bound by that Act, this office cannot provide a determination

regarding the allegations contained in the association complaint. We have no authority to draw a legal conclusion as to whether the Association is a property owners' association and therefore bound by the applicable common interest community law. For these reasons, no determination can be provided for this Notice of Final Adverse Decision.

Required Actions

No action is required.

Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Gillespie".

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Sun Valley Community Association