



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

April 22, 2021

Complainant: Philip Coletti
Association: Clark's Corner Homeowners Association, Inc.
File Number: 2021-02064

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 27, 2020. The Association provided a response to the complaint dated February 15, 2021. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 23, 2021 and received on March 5, 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. If such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

Determination

The Complainant provided several pages of introductory information that were not part of the complaint submitted to the Association. As such, only those portions that were included in the original complaint to the association can be part of this determination.

The Complainant alleged that the Association failed to provide notice for the special meeting held to consider a complaint he submitted through the association complaint process. Such failure would be a violation of §55.1-1816¹ of the Property Owners Association Act. The Complainant stated that only he and three other owners received notice of the meeting. The Association consists of eight lots. The Complainant also alleges that the Association “failed to provide notice that would make notice reasonably calculated to be available to a majority of lot owners.”

The Association responded to the Complaint by stating that it found that proper notification had been provided to both the complainant and the other owners. The Association wrote that notice was sent to the Complainant via email and was also posted on the association website calendar. The Association noted that the Complainant has refused to join the association website. The Association provided a copy of the calendar notice with its final decision.

Upon review of the emails to the Complainant regarding when the consideration of his complaint would take place, there were discrepancies in the actual dates that may have proven understandably confusing to the Complainant. There was also an email where the board president said that the HOA Board did not plan to invite homeowners to the consideration. But the Association stated in its final decision that it did provide notice of the meeting for consideration of the complaint via the association website. I agree with the Association that posting the notice on the association website is sufficient to meet the requirements of notice, since it appears the website is available to a majority, if not all, owners. There is not sufficient evidence in the NFAD for me to determine whether the Association failed to provide notice, since the Complainant provided an email that said other owners would not be included in the consideration meeting, but the Association stated in its final decision that notice had been posted on its website. I do find that the multiple email notices provided to the Complainant for

¹ A. All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55.1-1815.

B. Notice of the time, date, and place of each meeting of the board of directors or of any subcommittee or other committee of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners.

consideration of his complaint created confusion. I would certainly encourage the Association to be more careful with notice to complainants in the future and make certain that it is consistent with the notice of consideration it is providing.

Required Actions

As noted above, I ask the Association to be more careful when issuing notices of consideration in response to an association complaint. And I would remind the Association that these meetings should be open to all owners and notice should be provided to all owners. 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.