



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam  
Governor

May 20, 2021

Mary Broz-Vaughan  
Director

Complainant: Searcy Baker  
Association: Lakevale Community Association  
File Number: 2021-02333

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*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.*

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## Complaint

The Complainant submitted a complaint to the Association dated March 3, 2021. The Association provided a response to the complaint dated March 24, 2021. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman which was received on April 22, 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 someone submits this type of complaint as part of a NFAD, we cannot provide a determination.

## Determination

This complaint centers around allegations that the Association has failed to comply with §55.1-1816(A)<sup>1</sup> and §55.1-1816(B)<sup>2</sup> of the Property Owners' Association Act. The Complainant notified the Association, via email, that he wished to receive continual notification of meetings. He also told the Association he intended to record meetings and therefore wanted to know of any requirements for doing so.

After the Complainant's request for continual meeting notice, the Association held a special meeting of the board on February 17, 2021. At that meeting, a committee chair gave a presentation that outlined the work of the committee. The Complainant also read a comment on Facebook that seemed to indicate a committee held a 2-hour meeting recently. Because he had not received notice of any of these committee meetings, these findings led the Complainant to conclude that he and other members of the association had not received notice of meetings pertaining to a pool project.

The Complainant also expressed concern that the Association was no longer recording the Zoom meetings and making them available to owners, as it had done in the past. The Complainant also believes the Association has failed to accommodate his request to record meetings and has not provided him with any restrictions or requirements for such recording.

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<sup>1</sup> 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.

<sup>2</sup> 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.

A lot owner may make a request to be notified on a continual basis of any such meetings. Such request shall be made at least once a year in writing and include the lot owner's name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any lot owner requesting notice (i) by first-class mail or email in the case of meetings of the board of directors or (ii) by email in the case of meetings of any subcommittee or other committee of the board of directors.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the association's board of directors or any subcommittee or other committee of the board of directors conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee of the board of directors for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee of the board of directors.

Any member may record any portion of a meeting that is required to be open. The board of directors or subcommittee or other committee of the board of directors conducting the meeting may adopt rules (a) governing the placement and use of equipment necessary for recording a meeting to prevent interference with the proceedings and (b) requiring the member recording the meeting to provide notice that the meeting is being recorded.

The Association responded to the complaint by stating that it took the complaint seriously and discussed the matter at its most recent board meeting. The Association further stated that it will ensure all meetings are properly noticed and that the Complainant, as he had requested, will receive notice via email. The Association also intends to post notice of all meetings on its website.

The Association also wrote that it had addressed a new recording policy at its most recent board meeting, and that it was not able to provide the Complainant copies of the Zoom meeting recordings since no such recording existed.

It does appear that the Association failed to provide notice of meetings to the Complainant, despite his written request for continual notification. I cannot determine, based on the information provided in the NFAD, if the Association failed to provide notice to all owners as well. I would note, however, that the Association acknowledged its failure to provide notice and has pledged to provide continual notice to the Complainant going forward. It also intends to provide notice to all members and post notice on the association website.

There is no requirement under the Property Owners' Association Act that an association adopt a policy regarding the recording of meetings. The Act does allow an association to adopt rules governing the placement and use of recording equipment to ensure they do not interfere with a meeting. It can also adopt a rule requiring an owner to give notice that a meeting is being recorded. However, associations are not required to adopt these rules. There is no requirement under the Act that an association record meetings, nor is there a requirement that it provide such recordings to members, unless the recordings are part of the books and records of the association.

#### Required Actions

The Association needs to ensure that it fully complies with the requirements of the Common Interest Community Ombudsman Regulations when providing any future final decisions. Specifically, it must meet the requirements of 18 VAC 48-70-50. A failure to do so may result in a referral to the Common Interest Community Board for any action it may deem appropriate.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Lakevale Community Association