



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

December 20, 2021

Complainant: Constance Frant
Association: Barcroft Mews Homeowners' Association
File Number: 2022-01052

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 20, 2021. The Association provided a response to the association complaint dated November 10, 2021. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 12, 2021 and received November 16, 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 and we cannot provide a determination on such a complaint. Common interest community law is limited to the Virginia Condominium Act, the Property Owners’ Association Act, and the Virginia Real Estate Cooperative Act.

This Determination is final and not subject to further review.

Determination

The Complainant has alleged that her association failed to follow the Property Owners’ Association Act in its preparation of the Annual Budget. Specifically, she alleges a violation of §55.1-1826.¹ The Complainant stated that the 2022 Budget was presented to homeowners at a quarterly meeting but “[t]he annual budget and reserves for capital components did not meet the statutory requirements.” The Complainant did not, however, specify how the budget and reserves failed to meet the statutory requirements.

The Complainant asked that the Association resubmit the budget for review by the owners and that it include “all the requirements listed in the statute; i.e. the board’s annual review determination, and a statement describing the procedures used for estimation and accumulation of cash reserves.” The Complainant provided additional information in the form of a statement and a chronology, but these documents cannot be considered in this

¹ A. Except to the extent provided in the declaration, the board of directors shall, prior to the commencement of the fiscal year, make available to lot owners either (i) the annual budget of the association or (ii) a summary of such annual budget.

B. Except to the extent otherwise provided in the declaration and unless the declaration imposes more stringent requirements, the board of directors shall:

1. Conduct at least once every five years a study to determine the necessity and amount of reserves required to repair, replace, and restore the capital components as defined in § 55.1-1800;

2. Review the results of that study at least annually to determine if reserves are sufficient; and

3. Make any adjustments the board of directors deems necessary to maintain reserves, as appropriate.

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.

Determination since they were not part of the original complaint to the Association and therefore the Association has not had an opportunity to consider the additional information.

The Association responded to the complaint by stating that the complaint failed to state a violation of laws or regulations governing common interest communities and that the Association is in compliance with §55.1-1826. The Association provided the Complainant a copy of the 2022 Annual Budget

The Property Owners Association Act does not require an association to obtain review or approval by owners before moving forward with a budget. Some associations have governing documents that require owner approval of budgets, but this was not raised in this NFAD and If such review or approval is required by the governing documents the matter would not fall under our authority. The request for the board's annual review determination and procedure for estimating and accumulating cash reserves appears to have been provided in the 2022 Annual Budget. The budget appeared to comply with the applicable statute, although I was not able to find a statement of the amount of reserves recommended in the study per §55.1-1826(C)(4).

Required Actions

If the budget does not contain a statement of the amount of reserves recommended in the reserve study, I ask the Association to please include it in any future budgets and within the next 30 days provide that statement to the Complainant.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Barcroft Mews Homeowners' Association