



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Glenn A. Youngkin  
Governor

G. Bryan Slater  
Secretary of Labor

Kishore S. Thota  
Director

Brian P. Wolford  
Chief Deputy Director

May 21, 2024

Complainant: James Popielec  
Association: Cambria Cove Homeowners' Association  
File Number: 2024-01928

---

*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

James Popielec, the Complainant, submitted a complaint to Cambria Cove Homeowners' Association dated November 2, 2023. The Association provided a response to Mr. Popielec's complaint dated January 31, 2024. The Complainant then submitted a Notice of Final Adverse Decision ("NFAD") to the Office of the Common Interest Community Ombudsman dated February 10, 2024, and the NFAD was received by our Office on February 23, 2024.

## Authority

In accordance with its regulations, the Common Interest Community Ombudsman (CICO), as designee of the Agency Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18 Va. Admin. Code ("VAC") § 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 of the Code of Virginia of 1950, as amended ("Va. Code") 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.

The only documents that will be considered when reviewing a NFAD, in accordance with Regulation 18 VAC 48-70-90, are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered.

If within 365 days of issuing a determination that an adverse decision conflicts with laws or regulations governing common interest communities we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with Va. Code §54.1-2351 or §54.1-2352 as deemed appropriate by the Board. Further, this Determination is final and not subject to further review pursuant to Va. Code § 54.1-2354.4(C).

### Determination

In the NFAD, the Complainant makes a single allegation: that the Cambria Cove Homeowners’ Association (the “Association”) violated Va. Code § 55.1-1820.1 of the Property Owners’ Association Act (“POAA”), by refusing his request to install solar energy collection devices on his home. Specifically, the Association refused Mr. Popielec’s request to install solar energy collection devices on the forward(street)-facing portion of his home’s roof because the Association’s declaration prohibits “solar energy collection devices” to be visible from the community’s streets. The relevant subsection of Va. Code § 55.1-1820.1(B), states:

No association shall prohibit an owner from installing a solar energy collection device on that owner’s property *unless the recorded declaration for the association establishes such a prohibition*. However, an association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate issued pursuant to § 55.1-2309 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property. (Emphasis added.)

In the materials submitted with this NFAD, there is a letter from the Association’s counsel to the Association’s Board of Directors states that the Association’s Declaration, in Section 5.21 expressly provides that “[n]o solar collector panels ... or other energy conservation equipment shall be constructed or installed on any Lot unless it is generally not visible from any street, as

determined in the sole discretion of the ACC pursuant to Article VIII of this Declaration.”<sup>1</sup> A copy of this provision of the Declaration, found at page 793, was attached to Mr. Barna’s letter.

In support of his application to install solar energy collection devices on the street-facing portion of his home, Mr. Popielec provided a “HOA Solar Certification Form” from James Parker, an employee of Sun Tribe Solar, that noted that the Association’s refusal to allow solar energy collection devices on the street-facing portion of his home reduced the energy production of the solar energy collection device by 47 percent, along with supporting documentation for this estimate. In addition, Mr. Popielec included photographs of two homes that apparently are in Cambria Cove and have installed street-facing solar energy collection devices. Through these submissions, Mr. Popielec asserts that the Association is violating Va. Code § 55.1-1820.1(B) by refusing his application to install solar energy collection devices on the street-facing roof of his home given the unreasonable energy collection reduction that results from its refusal.

Based on the information submitted with this NFAD, it is our opinion that the Association has not violated the POAA by refusing Mr. Popielec’s request. Specifically, the statutory language of Va. Code § 55.1-1820.1(B) expressly provides that property owners’ associations may prohibit the installation of solar energy collection devices, but such associations can only do so where the prohibition is expressly provided for in its Declaration that is recorded in the locality’s land records. When an association’s Declaration has no such provision, “however,” it can only impose reasonable restrictions on the installation of solar energy collection devices. And Va. Code § 55.1-1820.1(C) instructs associations on what will be considered as unreasonable restrictions, one of which is a restriction that reduces energy production by ten percent (10%) below the projected energy production of the initially proposed installation. In essence, Va. Code § 55.1-1820.1(B) ensures that only associations who have prohibitions in their recorded Declarations will be able to refuse the installation of solar energy collection devices. For communities without such recorded prohibitions, Va. Code § 55.1-1820.1(B) limits the associations from placing unreasonable restrictions on homeowners seeking to install such devices on their homes.

Here, because the Declaration for Cambria Cove has a prohibition against street-facing solar energy collection devices in its recorded Declaration, the facts and information set forth in the complaint packet do not support a determination that the Cambria Cove Homeowners’ Association’s refusal to approve Mr. Popielec’s request conflicts with Va. Code § 55.1-1820.1(B). It is important to note that the Office of the CIC Ombudsman can only determine if the association involved in the NFAD matter before it acted consistently with the statutory provisions of the applicable law, here the POAA. Therefore, we do not address why other homes in Cambria Cove may have been allowed to install solar energy collection devices on the street-facing portions of their homes. For the reasons discussed above, the Office of the Common Interest Community Ombudsman will close this matter with a **no violation** determination.

---

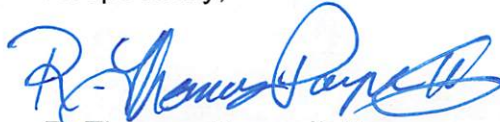
<sup>1</sup> Letter from Brad Barna, dated May 8, 2023, citing Declaration of Covenants, Conditions and Restrictions for Cambria Cove filed in Chesterfield County land records, Deed Book 8180, Page 781 *et seq.*, Feb. 8, 2008.

Required Actions

Because there was no violation found, there are no required actions.

Please contact us if you have any questions.

Respectfully,



R. Thomas Payne II, Esq.  
Acting CIC Ombudsman/Deputy Director,  
Compliance & Investigation Division