



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Robert F. McDonnell
Governor

March 29, 2013

James S. Cheng
Secretary of
Commerce and Trade

Gordon N. Dixon
Director

Complainant: Joan F. DeCoste
Association: Charleston Condominium Unit Owners Association
File Number: 2013-02170

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

Complainant submitted a complaint to the Association dated November 19, 2012. The complaint contained several allegations, but the Complainant has asked this office to provide a determination for only one portion of the complaint, namely that portion related to Complainant's belief that Association is violating §55-79.83:1 of the Condominium Act by not providing updated costs and lives of reserve study capital components. Complainant submitted a cover letter with the Notice of Final Adverse Decision that was not part of the original complaint. This office does not utilize such additional information in its consideration of NFADs as the NFAD is intended to provide a review solely of the original complaint and the decision made by the Association. The cover letter was, however, reviewed and followed, only to the extent that the cover letter directed this office to review only a particular portion of the original complaint. The Association provided a Final Decision to Complainant dated January 21, 2013. This office received the Notice of Final Adverse Decision on February 15, 2013.

Determination

The Office of the Common Interest Ombudsman (OCICO) has reviewed the Notice of Final Adverse Decision (NFAD). The specific portion of the complaint that has been submitted for review by this office is Paragraph 1(b) of the November 19 complaint. Complainant believes that Association has not properly included the budget information required under §55-79.83:1(B). The Association responded to the Complaint on January 21, 2013, and stated that it believed it was in compliance with the requirements with the possible exception that it had not included the "accumulated cash reserves" but instead included the total of cash and the value of a unit owned by the Association. The Association noted in its response that it will include the accumulated cash reserves

information in its next mailing to unit owners. The Association also noted in its Final Decision that the current accumulated cash reserves are approximately \$400,000. The Ombudsman contacted CFM Management Services, and was provided a draft copy of the mailing that will be sent to unit owners on April 2, 2013 detailing the accumulated cash reserves. .

Neither the NFAD nor the Association's Final Decision included a copy of the current budget, so a copy was obtained from the management company and reviewed. In fact, two copies were provided, one that was sent to owners in October, prior to the Annual Meeting and one that was sent in November, after being approved by the Board of Directors. The copy of the budget that was sent in November included a copy of the 2009 Replacement Reserve Study and a document entitled "Replacement Reserves Status 2013 (RRS)." The RRS noted that estimated replacement, estimated remaining life, and estimated useful life of the capital components were included in the 2009 Replacement Reserve Study.

The Condominium Act states that "...the unit owners' budget shall include, without limitations: 1. The current estimated replacement cost, estimated remaining life and estimated useful life of the capital components." By including the 2009 Replacement Reserve Study, the Association has provided the most current information it has on these components. The use of the word "current" in that paragraph is in relation to the reserve study in its most current form. Upon completion of a 2014 reserve study, the association will henceforth include that information in its annual budgets and that reserve study will provide the information necessary for the current estimated replacement cost, remaining life and estimated useful life.

Because paragraph (2) of §55-79.83:1(B) specifically begins with "As of the beginning of the fiscal year for which the budget is prepared, the current amount..." it stands to reason that had the General Assembly intended associations to provide the most recent fiscal year's estimated replacement cost, estimated remaining life and estimated useful life of the capital components, it would have used language similar to the language used in paragraph (2). Instead the language is simply "The current..." which would appear to mean the current costs and lives as set forth in the current reserve study.

The Association has addressed paragraph (B)(2) of §55-79.83:1 by supplying the Complainant with an estimate of the current amount of accumulated cash reserves and will be sending out a mailing to all owners in the very near future, as it had promised in its response to the Complainant, further detailing the current amount of accumulated cash reserves set aside. The Association has already provided the expected contribution to the reserve fund for the fiscal year in its budget within the RRS.

Finally, the Association included a general statement in the RRS that complies with paragraph (3) of §55-79.83:1.

The OCICO does not find that there has been a violation of any law or regulation governing common interest communities.

Required Actions

No action is required of either party. If either party has any questions regarding this determination, you are welcome to contact me. This Determination is final and there will be no further review.

Sincerely,

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

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
The Charleston Condominium Unit Owners Association