



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

September 19, 2014

Terence R. McAuliffe
Governor

Complainant: Edward Wetzlar
Association: Anna Coves Property Owners Association, Inc.
File Number: 2015-00709

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

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 on August 11, 2014. The Association provided a final determination to the Complainant dated August 23, 2014 and the Complainant then submitted his Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman August 24, 2014. The NFAD was not complete, and the additional required documents were provided September 2, 2014. A cover letter was included with the NFAD, and its contents were considered to the extent that they pertained to the original complaint and did not raise new issues that had not been considered by the Association when it provided its final determination.

Determination

The Complainant stated in his Complaint that the Association would violate §55-514.1 of the Property Owners Association Act if it utilized reserve funds to pay for what he termed a capital improvement of the Association's beach. The Complainant further explained that he believed the reserve funds exist only for repair, replacement and restoration of capital components and that the suggested work on the beach was an improvement rather than one of the categories listed in the statute. The Complainant also noted that the membership of the Association voted to move forward with the beach improvement, but he believes the outcome of the vote was improper, as the owners cannot override state law.

The Association responded to the Complaint by noting that the beach is a capital component under the reserve study which was completed in 2010. The Association also stated that the membership voted in favor of the beach renovation. The Association is of the opinion that the renovation of the beach falls under the repair, replace or restore provisions of the Property Owners' Association (POA) Act and that the term renovation is a synonym for the word restore.

The Office of the Common Interest Community Ombudsman has spoken to both sides of this issue on several occasions. As is always the case, a true picture of a particular situation does not fully emerge until both sides to the controversy have been heard. In this instance, the key question is whether the Association will violate §55-514.1 of the Code of Virginia if it follows through with its plan to renovate the beach. I do not find that the Association will violate the POA Act, specifically §55-514.1. The reason for this determination is that §55-514.1 only addresses the requirement that an association conduct a reserve study every five years, that it reviews the study at least annually, and makes adjustments as needed to ensure proper reserves are maintained. The provision also requires that if the reserve study indicates a need to budget for reserves, the association budget must include certain key categories in that budget as well as a description of the procedures used for calculating some of those categories.

Nowhere in §55-514.1 is there any language that specifically dictates the manner in which an association must *spend* its reserves. This Code section only requires associations to maintain reserves pursuant to the most recent reserve study. Certainly one may infer that reserve funds are to be used solely for reserve purposes, and specifically for the purposes laid out in the reserve study. But the POA Act does not state such, and therefore this office cannot make that leap. I would note, however, that any use of reserve funds in a manner other than the way they were originally intended would likely result in a need to adjust the reserves at the soonest opportunity, to ensure that any future needs for reserve funds will be met.

While this office cannot require it, I would strongly suggest that the Association consider working with an attorney to determine if it is using these reserve funds in a way that comports with the Association's own governing documents and the fiduciary obligations of the board of directors, which serves as a steward of these funds for the entire community.

Required Actions

Because no conflict was found with common interest community law or regulations, no actions are required of the Association. A recommendation has been made, but this office cannot enforce that recommendation as it pertains to business law and the governing documents of the Association.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Anna Coves Property Owners Association