



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

July 25, 2016

Terence R. McAuliffe
Governor

Complainant: Mark Lepnew
Association: Bella Vista Condominium Unit Owners Association
File Number: 2016-03361

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 dated May 5, 2016. The Association provided a final determination to the Complainant dated May 26, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated June 24, 2016 and received the same day.

Determination

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 §55-530(F) (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. In the event that such a complaint is submitted to this office as part of a NFAD, a determination cannot be provided.

The Complainant has alleged a violation of §55-79.75(B)¹ of the Condominium Act. This allegation stems from the Association's decision to improve the dog park area at a meeting on April 21, 2016. The Complainant believes that key metric factors should have been used by the Board as part of its decision making in relation to the dog park improvements and that a majority vote of all owners was necessary before proceeding as the bylaws impose a limit as to how much money the board can spend without owner consent.

The Association responded by stating that it found the complaint to be without merit. It further stated that portions of the Complaint were inaccurate and that the dog park improvements were not approved, instead several proposals were reviewed and one contractor was chosen to repair and replace the ground cover of the park. The Association noted that §5-79.75(B) was improperly applied in this situation since the statute applies to notice of meetings and open meeting requirements.

I agree with the Association that §55-79.75(B) is not applicable to the scenario outlined by the Complainant in his Complaint. There was no allegation that a meeting was held without notice, nor was there an allegation that the Association failed to meet the open meeting requirements of the Condominium Act. A failure to provide information at a meeting that an owner believes is necessary or important to the decision making does not constitute a failure to meet §55-79.75(B) of the Condominium Act. As to whether a majority of owners was required to approve any improvements, that is a matter that would be dependent upon the condominium instruments and therefore would not fall under the authority of this office.

Required Actions

Nothing is required of the Association. I would encourage the Complainant to seek assistance or input from this office prior to filing future Complaints or Notices of Final Adverse Decision. A better understanding of the law and whether it is applicable to a particular scenario may assist the Complainant by saving time and frustration and it may also save the Association time and money.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Bella Vista Condominium Unit Owners Association

¹ Except as otherwise provided in the condominium instruments, the provisions of this subsection shall apply to executive organ meetings. All meetings of the unit owners' association or the executive organ, including any subcommittee or other committee thereof, shall be open to all unit owners of record. The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section. The unit owners' association may, to the extent the condominium instruments or rules adopted thereto expressly so provide, send notice by electronic transmission consented to by the officer to whom the notice is given. Minutes of the meetings of the executive organ shall be recorded and shall be available as provided in § 55-79.74:1.