



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

August 11, 2016

Complainant: Mark S. Borkowski
Association: Daventry Community Association
File Number: 2017-00019

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 April 17, 2016. The Association provided a final determination to the Complainant dated June 6, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated June 20, 2016 and received June 21, 2016.

Preamble

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.

Determination

The Complainant has alleged that the Association has failed to meet the requirements of §55-510.2 of the Property Owners' Association Act. While the Complainant acknowledges that there is a method of communication with the Board of Directors available, he alleges that there is not a similar method for owners to communicate among themselves and that what does exist is not appropriate to the size and nature of the association. §55-510.2 states "The board of directors shall establish a reasonable, effective, and free method, appropriate to the size and nature of the association, for lot owners to communicate among themselves and with the board of directors regarding any matter concerning the association."

The Complainant notes that the Association has 900 owners on 312 acres of land, but no method of communication between owners. The Complainant created a Facebook page for the members of the Association, but the Association has not approved or endorsed the Facebook page.

In its Final Decision, the Association stated that the creation of a method of communication was on its "Action Item List" and had a current status of "pending." The Association further noted that the association manager "has coordinated similar communication methods at other association clients of a similar size and nature." The goal was to implement a method of communication that met the statutory requirements by August 1, 2016, if at all possible. I have learned from counsel for the Association that there is a resolution pending to implement a new method of communication for owners to communicate among themselves.

It appears that the Association is in the process of establishing a new protocol for communication that will comply with §55-510.2 of the Property Owners' Association Act and is appropriate for the association. I would note that the Association already had a method of communication in place that while it might not have been ideal for the size of the association, it did serve the purpose of providing a method of communication between owners in a manner that complied with the Property Owners' Association Act. Because there is already a method of communication in place, and because the Association is in the process of implementing a new method of communication that would be more in line with current technology and the size of the community, I do not find that there has been a violation of common interest community law or regulation.

Required Actions

I would ask the Association to continue its work toward implementation of a new system for communication among the owners, and to provide notice to this office when such system is in place and no later than 30 days from the date of this Determination.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Daventry Community Association