



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

December 7, 2015

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Karen Sargent
Association: Silcott Meadows Homeowners' Association
File Number: 2016-01144

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 her complaint to the Association on September 22, 2015. The Association provided a final determination to the Complainant dated October 8, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated October 29, 2015 and received October 30, 2015.

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 in her Complaint to the Association that a board meeting that utilized teleconferencing did not have sufficient audio capacity to ensure that members could hear what was being said and provided two examples that occurred during a recent meeting. The Complainant also stated that it was difficult to identify the board members who were speaking on the teleconference system and it was difficult to understand them when they spoke when others were speaking. The Complainant alleged that this was a violation of §55-510.1(B) of the Property Owners' Association Act which states

[i]f a meeting is conducted by telephone conference or video conference or similar electronic means, at least two members of the board of directors shall be physically present at the meeting place included in the notice. The audio equipment shall be sufficient for any member in attendance to hear what is said by any member of the board of directors participating in the meeting who is not physically present.

(emphasis added)

In its response to the Complaint, the Association stated that it denied the complaint.

Based on the examples provided, it is not clear that there was a violation of the Property Owners' Association Act. The first example indicated that a board member not present, speaking through the phone, stated that he had not been able to hear the whole conversation. This does not appear to be a violation since §55-510.1(B) speaks to the ability of the members in attendance to hear what is being said by any member not physically present, and not the other way around.

The second example was of a member who was not physically present and may have been unkindly commenting about statements being made by the Complainant at the meeting. If, as alleged here, the non-present board member was speaking to another non-present board member and saying something about the speaker, I would imagine that whatever was being said was never intended to be heard by the physically present members. As is often the case, board members on all types of boards, will comment among themselves during a meeting and their comments are not necessarily intended to be heard by the people in attendance, nor are they necessarily germane to the subject at hand.

The difficulty in identifying speakers or hearing them when they are interrupted, or interrupting, is no doubt frustrating, but does not appear to be a violation of the Act, since it does not require that speakers be identifiable and any interruption of one speaker by

another, whether in person or over a teleconference device would be difficult to understand.

Based on the evidence provided, I cannot make a determination as to whether the Association violated §55-510.1(B) of the POA Act. It does not appear that the first example resulted in a violation, and the second example is simply not sufficient to determine if the comments made by the individual who was not present were even meant or intended to be heard by the members and owners who were present.

Required Actions

No action is required of the Association.

Both the Complainant and the Association are welcome to contact me if they have any questions regarding this Determination or the requirements that have been set forth.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Silcott Meadows Homeowners' Association