



COMMONWEALTH of VIRGINIA  
Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

Maurice Jones  
Secretary of  
Commerce and Trade

March 8, 2016

Jay W. DeBoer  
Director

Complainant: Mathias Neumann  
Association: Bluewater Property Owners Association  
File Number: 2016-01869<sup>1</sup>

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*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.*

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### Complaint

Complainant submitted his complaint to the Association on December 7, 2015. The Association provided a final determination to the Complainant dated January 5, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated and received on February 3, 2016.

### 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

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<sup>1</sup> Incorrectly referred to as File No. 2016-01887 in prior correspondence from this office.

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 §55-513 and §55-510.1 of the Property Owners' Association Act, as well as a violation of §13.1-862 of the Nonstock Corporation Act. Because the Nonstock Corporation Act is not common interest community law, this allegation will not be examined as this office has no authority to provide a determination for anything other than alleged violations of common interest community law or regulations.

Specifically, the Complainant alleges that the Association violated §55-513 of the Property Owners' Association Act by failing to comply with the declaration concerning Board of Director vacancies, and violated §55-510.1 of the Act by failing to comply with executive session requirements. §55-513 of the Property Owners' Association Act pertains to the adoption and enforcement of rules. Limited information was provided in the Complaint regarding the way in which the Association violated the Declaration, regardless, however, of what was provided, this office cannot review or interpret the governing documents of an association, and therefore cannot opine as to whether an association had failed to comply with its own declaration.

In its response to the allegation that it had violated §55-510.1, the Association stated that it had not done so, and had properly met in executive session to consider personnel matters, which it did when it "...discussed the merits of the two individuals who expressed interest in filling the board vacancy..." The applicable provision from the Property Owners' Association Act states

The board of directors or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, pending or probable litigation and matters involving violations of the declaration or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session.

Here, the term "personnel" is not intended to apply to members of the board, or potential members. The term personnel is generally defined as an employee, not a board member or potential board member. As such, executive session was not used in a manner that complies with the Property Owners' Association Act, since there was nothing in the Complaint or the Association's response that indicated the board members (or potential board members) are employees of the Association.

#### Required Actions

The Association needs to ensure that any future executive sessions are carried out in a manner that fully complies with §5-510.1(C) of the Property Owners' Association Act.

A failure to comply with this provision may result in this matter be referred to the Common Interest Community Board for whatever action it may deem appropriate.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Bluewater Property Owners' Association