



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam  
Governor

April 8, 2020

Brian Ball  
Secretary of  
Commerce and Trade

Complainant: James Buckley  
Association: The Meadows at Dahlgren  
File Number: 2020-02071

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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

The Complainant submitted a complaint to the Association dated October 18, 2019. The Association provided a response to the Complainant dated February 3, 2020. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated February 21, 2020 and received February 25, 2020.

## Authority

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 §54.1-2354.4 (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 failed to provide notice of association meetings by posting notice to the association website or by using any other reasonable method for posting notice. The Complainant believes the Association has used work sessions, informal gatherings and email exchanges to vote and make decisions that should be made in an open forum. The Complainant also alleges that the Association has failed to post agendas and other supporting materials to the association website or to make these documents available through some other method at the same time they are made available to the board of directors. The Complainant alleges that the Association is in violation of §55-510.1 (now §55.1-1816<sup>1</sup>) of the Property Owners' Association Act.

The Association acknowledged its failure to provide notice of upcoming meetings in accordance with the Association's meeting protocols, but does not believe that this failure resulted in a violation of §55.1-1816.B. The Association did not respond to the allegation that it had failed to provide any notice of meetings.

In its response to the Complaint alleging misuse of work sessions, informal gatherings, and email, the Association wrote that it has used work sessions in the past to complete an action not completed in a regular meeting. The Association acknowledged that it has used email to cast votes when an in-person meeting was not possible. The Association also stated that it has held telephonic voting for the same reason, but ensured that two board members were in one location during the conference call. The Association said that it will provide the proper announcement for phone voting in the future, to include the subject, location, and time.

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<sup>1</sup> A. All meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted shall be open to all members of record. The board of directors shall not use work sessions or other informal gatherings of the board of directors to circumvent the open meeting requirements of this section. Minutes of the meetings of the board of directors shall be recorded and shall be available as provided in subsection B of § 55.1-1815.

B. Notice of the time, date, and place of each meeting of the board of directors or of any subcommittee or other committee of the board of directors shall be published where it is reasonably calculated to be available to a majority of the lot owners.

A lot owner may make a request to be notified on a continual basis of any such meetings. Such request shall be made at least once a year in writing and include the lot owner's name, address, zip code, and any email address as appropriate. Notice of the time, date, and place shall be sent to any lot owner requesting notice (i) by first-class mail or email in the case of meetings of the board of directors or (ii) by email in the case of meetings of any subcommittee or other committee of the board of directors.

Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the association's board of directors or any subcommittee or other committee of the board of directors conducting the meeting.

Unless otherwise exempt as relating to an executive session pursuant to subsection C, at least one copy of all agenda packets and materials furnished to members of an association's board of directors or subcommittee or other committee of the board of directors for a meeting shall be made available for inspection by the membership of the association at the same time such documents are furnished to the members of the board of directors or any subcommittee or committee of the board of directors.

As to agendas and meetings, the Association said that it has always provided a copy of the agenda to members attending meetings. The Association also said that it has provided agendas via email to board members and association members as well as to the webmaster for posting on the Association website. A copy of the agenda is also available at board meetings.

I do not think that the Association provided sufficient information in response to the allegation that it has not provided notice of board meetings. While this office cannot read or interpret an association's meeting protocols, there is a very clear requirement for notice of ALL meetings under Virginia law. The allegation in the Complaint was that the Association failed to post or announce meeting notice in advance of board meetings. Regardless of what might be contained in the Association's meeting protocol, the Property Owners' Association Act requires notice of all meetings. And that notice must be "published where it is reasonably calculated to be available to a majority of the lot owners."

The Association must cease using unannounced work sessions where it is discussing or transacting the business of the association. §55.1-1816 specifically addresses the misuse of work sessions and notes that they are not to be used to circumvent open meeting requirements. The same statute also says "[a]ll meetings of the board of directors, including any subcommittee or other committee of the board of directors, where the business of the association is discussed or transacted shall be open to all members of record" (emphasis added).

The Property Owners' Association Act does not address voting by email and therefore no determination can be provided regarding this issue. Based on the information provided in the NFAD, the Association's attempt to vote telephonically was not carried out correctly. Unlike email voting, where board members are not gathered at one time to discuss or transact the business of the association, the very nature of telephonic voting requires the gathering of board members, just not necessarily in the same location. As such, it does constitute a meeting, and while the Association may have had two board members present it did not appear to have provided notice of the telephonic meeting which is required by §55.1-1816 of the Property Owners' Association Act.

I believe that the Association may misunderstand the requirements related to providing agenda packets and materials to association members. Agenda packets are not required to be available or distributed at the actual meeting to which the packet pertains, but instead, the agenda packet must be made available for inspection to association members at the same time it is given to the board members, whether that is one day in advance of the meeting or ten days in advance.

#### Required Actions

The Association must make certain that all meetings are open to all members of the Association. This means providing appropriate notice as required by §55.1-1816. The Association must also end the use of unannounced work sessions, and improper telephone meetings. §55.1-1816.B outlines the requirements for a telephonic meeting,<sup>2</sup>

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<sup>2</sup> If 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

which would also include, of course, proper notice to all association members. Finally, the Association must ensure that agenda packets and any materials that it provides to board members are also available to owners at the same time such documents are given to the board members.

This Determination provides notice to the Association that it must address the statutory violations that have been referenced in this document. A failure to do so may result in a referral of the matter to the Common Interest Community Board for whatever action it may deem appropriate.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
The Meadows at Dahlgren

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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.

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