



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

April 10, 2020

Ralph S. Northam
Governor

Brian Ball
Secretary of
Commerce and Trade

Complainant: Peggy Moynahan
Association: Salem Fields Community Association
File Number: 2020-02239

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

The Complainant submitted a complaint to the Association dated January 27, 2020. The Association provided a response to the Complainant dated February 15, 2020. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated March 9, 2020 and received March 16, 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 has failed, on three occasions, to provide notice of a special meeting. The Complainant references the bylaws of the Association which she says require three days' notice of meetings. The Property Owners' Association Act is also implicated, even though the Complainant did not specifically reference it, as §55.1-1816¹ requires notice of all meetings. As noted above, this office cannot provide a determination related to the governing documents of an association, so the possible bylaw violation will not be addressed.

The Association responded to the Complaint by writing that it had adhered to the bylaws and had followed §55.1-1816.B by posting notice in several locations in the community three days prior to all special board meetings and by giving notice of the same to the board members.

The Property Owners' Association Act requires that "[n]otice, 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." Based on the response from the Association, and without any information to suggest otherwise, it appears that the Association did provide notice appropriately and in compliance with common interest community law.

¹ 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.

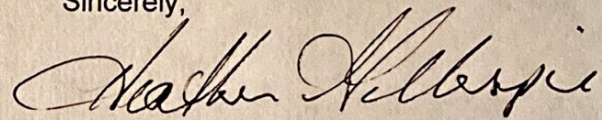
Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the association's board of directors or any subcommittee or other committee of the board of directors conducting the meeting.

Required Actions

No action is required of the Association.

Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather Gillespie".

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Salem Fields Community Association