



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

Mary Broz-Vaughan
Director

April 23, 2021

Complainant: Stephen Kim
Association: Clark's Corner Homeowners Association, Inc.
File Number: 2021-02073

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 March 2, 2021. The Association provided a response to the complaint dated February 15, 2021. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman which was received on March 16, 2021.

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 believes that the Association failed to comply with §55.1-1807(1)¹ of the Property Owners’ Association Act when it publicly disclosed a tree removal permit/easement violation notice he received from the City of Fairfax, without posting the same information for two other owners or providing it to the Complainant upon request. The Complainant believes that he should have the right to access the tree removal permit of the two other homeowners.

The Association responded that the City of Fairfax required the permit to be posted publicly prior to the removal of a tree and noted that all such permits are a matter of public record. The Association wrote that the email string that included a copy of the permit was only related to the Complainant’s property and thus other permits were not included. The Association stated that no “PII” was disclosed and the Association was not in violation of Virginia HOA law.

The Complainant has not provided any evidence as to how the Association may have been in violation of §55.1-1807. This statute references §55.1-1815 which governs owner access to books and records of the association, among other things. The Complainant did not specify how the Association failed to comply with this code section which leaves me without any way to provide a determination. While the Complainant stated that he made numerous requests for the permit information, no copy of such a request was included in the Complaint and therefore no determination can be made as to whether the request was done in accordance with the statute and whether the Association had an obligation to provide such documents. In addition, this office does not enforce local ordinances and cannot determine if posting the permit was appropriate or not, under Fairfax requirements.

The Complainant did include additional information in a cover letter that may have shed further light on his complaint, but because the information was not included in the original complaint to the Association it cannot be considered here. Without sufficient information contained in the original complaint to the Association, this office cannot provide a determination as to whether there has been a violation of common interest community law.

¹ Every lot owner who is a member in good standing of a property owners' association shall have the following rights:

1. The right of access to all books and records kept by or on behalf of the association according to and subject to the provisions of § 55.1-1815, including records of all financial transactions;

Required Actions

No further action is required of the Association. Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Clark's Corner Homeowners Association, Inc.