



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation
August 29, 2022

Glenn A. Youngkin
Governor

G. Bryan Slater
Secretary of Labor

Demetrios J. Melis
Director

Complainant: John Shumate
Association: West Neck Community Association
File Number: 2023-00305

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 an association complaint to the Association dated May 17, 2022. The Association provided a response to the association complaint dated July 19, 2022. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 1, 2022 and received August 2, 2022.

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 and we cannot provide a determination on such a complaint. Common interest community law is limited to the Virginia

Condominium Act, the Property Owners' Association Act, and the Virginia Real Estate Cooperative Act.

Pursuant to the Regulations (18 VAC 48-70-90), the only documents that will be considered when reviewing a NFAD are the association complaint submitted by a complainant to the association (and any documents included with that original complaint), the final adverse decision from the association, and any supporting documentation related to that final adverse decision. Other documents submitted with the Notice of Final Adverse Decision cannot be reviewed or considered.

This Determination is final and not subject to further review.

Determination

The Complainant has alleged that the Association has repeatedly held private meetings in violation of §55.1-1816¹ of the Property Owners' Association Act. The Complainant provided multiple instances of meetings he believed should have been open to the owners. He wrote that the meetings were "officially sanctioned meetings by the Board, or the Board President, to discuss the business of the association."

The Association responded to the allegations by stating that it did not violate the statute and no meetings of the Board were held where the business of the Association was discussed or transacted. The Association also noted that it did not use an informal meeting to circumvent the open meeting requirement.

The statute that governs property owners' association meetings is clear that any meeting of the board of directors must be open to all members if the business of the association is discussed or transacted. The Property Owners' Association Act does not define what constitutes a meeting of the board of directors. In addition, there is no language that states that a quorum must exist to qualify as a meeting of the board of directors and the statute contains additional language regarding work sessions or informal gatherings where it would be unlikely that quorum would even be taken into consideration. Based on the language of the statute, **any** meeting of the board of directors where the business of the association is discussed or transacted should be open to members and notice should be provided.

I cannot absolutely determine if the meetings that the Complainant alleges took place should have been open to the membership. However, in those instances where several board members gathered to meet, as a meeting of the board of directors, as a committee or subcommittee or as a work session or informal gathering of the board of directors and the business of the Association was discussed or transacted, notice should have been provided to the association members and those meetings should have been open to the membership. If the Complainant's conclusions are accurate,

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.

there were several instances where it appears the Association should have provided notice of a meeting.

Required Actions

The Association needs to ensure that it fully comports with §55.1-1816 going forward and makes certain that all meetings where the business of the Association is discussed or transacted are open to all association members. A failure to do so may result in a referral of this matter to the Common Interest Community Board.

Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather S. Gillespie".

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
West Neck Community Association