



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

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Governor

G. Bryan Slater
Secretary of Labor

Brian P. Wolford
Interim Director

November 1, 2024

Complainant: Mary Roddy and Alberta E. Arrington
Association: Boardwalk Property Owners' Association, Inc.
File Number: 2025-00848

DETERMINATION - NOTICE OF FINAL ADVERSE DECISION

Introduction

This matter came before the Office of Common Interest Community Ombudsman ("Office") for review on October 3, 2024, as a result of the Notice of Final Adverse Decision ("NFAD") submitted by Mary Roddy and Alberta E. Arrington ("Complainants"). The Complainants initially submitted a complaint to the Boardwalk Property Owners' Association, Inc., Board of Directors ("Board") on June 20, 2024, and the Board issued a notice of final decision on September 16, 2024, on the complaint. Therefore, the NFAD was timely filed and within the jurisdiction of this Office, which has been designated to review final adverse decisions and determine if the decisions conflict with laws or regulations governing common interest communities.

Issues to be Decided

The Complaint contends that the Board failed to: (1) adopt a complaint procedure; (2) respond to their complaint; and (3) hold open meetings. The first two issues are moot¹ and will not be addressed in this determination. As to the third issue, this Office finds that the Board is not in violation of the applicable law as explained below.

Authority

In accordance with its regulations, the Common Interest Community Ombudsman (CICO), as designee of the Agency Director, is responsible for determining whether a "final adverse decision may be in conflict with laws or regulations governing common interest communities." (18 Va. Admin. Code ("VAC") § 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 of

¹ The first issue is moot because the Complainants filed their complaint using the Association Complaint Procedure, and the NFAD indicates that it was withdrawn. The second issue is moot because the Association Board issued a final decision on September 16, 2024. Please note that the issue as to whether the final decision was delayed is not before this Office.

the Code of Virginia of 1950, as amended (“Va. Code”) 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.

The only documents that will be considered when reviewing a NFAD, in accordance with Regulation 18 VAC 48-70-90, 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. Further, this Determination is final and not subject to further review or appeal pursuant to Va. Code § 54.1-2354.4(C).

If, within 365 days of issuing a determination that an adverse decision is in conflict with laws or regulations governing common interest communities, we receive a subsequent NFAD for the same violation, the matter will be referred to the Common Interest Community Board to take action in accordance with Va. Code §54.1-2351 or §54.1-2352 as deemed appropriate by the Board.

Determination

As described more fully below, the Office has determined, upon a review of the materials submitted with the NFAD, that the Board did not violate the applicable law² as to third issue.

Failure to hold open Board and Architectural Review Committee meetings.

The Complainants state that the Board and its architectural review committee (ARC) failed to hold open meetings regarding the height of a boathouse owned by another association homeowner. The Complainants assert that in 2023 the Association approved the boathouse to be as tall as 19 feet high, and subsequently, that Appalachian Power also approved the height (19 feet) of the boathouse. The Complainants state that in May of this year however, the owner of the

² Note that this Determination is limited to whether the Board violates CIC law. It did not determine whether the Board’s action, or lack thereof, adversely affected the Complainants’ property; whether the Board has a fiduciary duty to protect the aesthetics and market values of the Complainants’ homes; nor does it address whether the Board violated the ARC policies and procedure, or the Association governing documents. These are matters outside the scope of our jurisdiction, and which are reserved to courts/tribunals of competent jurisdiction.

boathouse started constructing a taller structure and subsequently sought approval to modify and accommodate a 23-foot-tall boathouse. The Complainants point out that the proposed or approved 23-foot-tall boathouse structure obstructs the Complainants' view of Smith Mountain Lake, compromises the aesthetics of their homes, and negatively impacts the market values of their homes. The Complainants assert that not only did the owner of the boathouse fail to comply with the requirements of the Association's ARC approval form; but the Association Board and its ARC also failed to comply with its own governing documents as well as the Property Owners' Association Act in discussing and approving the request for an accommodation of a 23-foot-tall boathouse. The Complainants argue that both the Association's ARC and Board held meetings to review, discuss, and ratify/approve the request for modification and accommodation; and those meetings should have been open meetings to allow the participation of the property owners whose homes are negatively impacted to voice their oppositions to the request.

In its final decision, the Board states that its ARC ratified its approvals and recommendations of approvals through unanimous written consent. The Board asserts that at its meeting on July 8, 2024, it approved and ratified its prior approval of the same. The Board points out that at the July 8, 2024, meeting the Complainants were given an opportunity to make comments. The Board argues that the Board and its ARC are entitled to take actions without a meeting in accordance with the applicable law and its governing documents.

The applicable law, Va. Code §55.1-1816, states in pertinent part:

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. Va. Code §55.1-1816 (A).

Notice of the time, date, and place of each meeting of the board of directors ... shall be published where it is reasonably calculated to be available to a majority of the landowners. 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. Va. Code §55.1-1816 (B).

As shown above, the applicable law initially did not contain any deference to the association governing documents or any other association law. It has since been amended as reflected as follow:

The requirements of this section govern the conduct of meetings of the board of directors without regard to whether the property owners' association is incorporated or unincorporated but **shall not be**

interpreted to supersede corporate authorities otherwise established by law or the governing documents. Va. Code §55.1-1816 (E). (Emphasis added).

Subsection A of the applicable law mandates that all meetings where the business of the association is discussed or transacted, whether those of board of directors, or of subcommittees (except executive committee) shall be open to the property owners. Va. Code §55.1-1816 (A). This part of the applicable law clearly limits the association's power to discuss or transact the association business without holding open meetings. In other words, subsection A supports the Complainants' arguments that the Board and its ARC were obligated to hold open meetings regarding the request to modify and accommodate a 23-foot-tall boathouse in place of the previously approved 19-foot-tall boathouse. However, the Board argues that its action and that of the ARC were taken pursuant to its governing documents in accordance with subsection E of Va. Code §55.1-1816. The Board further argues that the Virginia Non-Stock Corporation Act reinforces its right to make decisions without holding open meetings as long as all directors consent in writing. See, Va. Code § 13.1-865(A). The Board points out that its action as well as that of its ARC were unanimous and were in writing as required by the Virginia Non-Stock Corporation Act. As a result, this Office, reluctantly³, concludes that the Board's action, of not holding an open meeting before taking an action, is not contrary to the applicable law.

Conclusion

As to the Complainant's allegations, based upon the information in the record, including the original complaint, its accompanying documents, as well as the NFAD, this Office concludes that the Board did not violate the applicable law and thus, no action is required.

If any of the parties is dissatisfied with this determination, or part thereof, the party could seek remedies in civil court.



Justina Ehiawaguan, Esquire
CIC Ombudsman

cc: Board of Directors
Broadwalk Property Owners' Association

³ Perhaps this is an unintended consequence of the above statute, but we note that reliance on decision-making provisions of Nonstock Corporation Act by associations enables association boards to move governance decisions from the sunshine to the darkness, which will, like it does here, serve to frustrate many association members.