



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

December 22, 2014

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Lawrence Layman
Association: Council of Co-Owners of McLean House, North, Phase I
Condominium
File Number: 2015-01455

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

Complainant submitted a complaint to the Association dated September 24, 2014. The Association provided a final determination to the Complainant dated October 21, 2014 and the Complainant then submitted his Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated November 10, 2014 and received November 12, 2014.

Determination

The Common Interest Community Ombudsman, 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 §55-530(F) (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.

The Complainant alleges that the Association has failed to comply with the requirements under 55-79.83:1 of the Condominium Act. Specifically, the Complainant believes that the Association failed to include in its budget, "A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the unit owners' association is funding its reserve obligations consistent with the study currently in effect."

The Association responded to the Complaint by stating in its final decision that the 2015 budget incorporates the 2014 reserve study, which includes all the information required under §55-79.83:1. The Association noted the specific pages where statements could be found that outlined the procedures used for the estimation and accumulation of cash reserves. In addition, the Association also noted in its final determination that the 2015 budget states that the Association is funding its reserves above the 2014 reserve study recommendations and that the monthly financial statements of the Association included operating and capital expenditures.

Upon review of the 2014 reserve study and the 2015 budget, I found that there were statements within the reserve study and thus incorporated by reference as part of the 2015 budget, that described the procedures used for the estimation and accumulation of cash reserves. In addition, when distributing the 2015 draft budget for the owners of the Association to review prior to voting on the budget, the Association, through its manager, included a statement in the cover letter that said: "The enclosed reserve funding plan is consistent with the 2014 reserve study, which was developed [by] Thomas Downy, Ltd and accepted by the Board of Directors and is enclosed for your review." Finally, the budget itself, which outlines exactly what funds will be set aside for reserves, clearly demonstrates "the extent to which the association is funding its reserve obligations consistent with the study in effect."

While it is my belief that the information required by §55-79,83:1(B)(3) is contained in the documents that comprise the 2015 Budget, it does not appear that the precise language of the Condominium Act has been met, as there is not "A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the unit owners' association is funding its reserve obligations consistent with the study currently in effect."

Required Actions

The Association must draft and distribute a letter of clarification to the owners of the Association, which will be incorporated by reference into the budget. This letter of clarification will contain the general statement required by §55-79.83:1(B)(3), to include "the procedures used for the estimation and accumulation of cash reserves pursuant to this section and the extent to which the unit owners' association is funding its reserve obligations consistent with the study currently in effect." Such action should be completed within 45 days of the date of this Determination.

The Association will need to make certain that this general statement is included in future budgets where, under §55-79.83:1(B) "the reserve study conducted in accordance with this section indicates a need to budget for reserves."

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Council of Co-Owners of McLean House, North, Phase I Condominium