



COMMONWEALTH of VIRGINIA
Department of Professional and Occupational Regulation

Terence R. McAuliffe
Governor

July 25, 2016

Maurice Jones
Secretary of
Commerce and Trade

Jay W. DeBoer
Director

Complainant: Robert Sledzaus and James Moran
Association: Purple Sage Cluster Association
File Number: 2016-03359

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 February 18, 2016. The Association provided a final determination to the Complainant dated May 4, 2016 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated May 10, 2016 and received June 3, 2016.

Determination

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 §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 has alleged that the Association has violated §55-510.1(C)¹ of the Property Owners' Association Act. Specifically, the Complainant alleges that the Association has continually abused executive sessions and that there has been a failure to vote in open session regarding matters discussed in executive session. The Complainant referenced a Unanimous Written Consent in Lieu of Meeting that was utilized to appoint two new board members to the Board after the resignation of the board members whose terms they were completing. The Complainant also provided a copy of a prior Notice of Board Decision from October 16, 2013, where the Association responded to a similar allegation regarding executive sessions.

The Association responded to the allegations by stating that "the Board reaffirms its commitment to open meetings" and "[a]ll members of the board are new to Board service and are learning the rules relating to Association meetings." It further stated that "the Board will pursue training with respect to Association meeting requirements."

Misuse of executive sessions is a continuing problem in associations. In the present case, there is not enough information or evidence in the Complaint to determine if this has been an ongoing problem in the recent past or something that may have happened sporadically. Because no specific examples of dates, times and places where an executive session was used improperly were provided, it is not possible for this office to make a determination that the Association was in violation of §55-510.1(C) of the Property Owners' Association Act. While the Virginia Nonstock Act was implicated, as a result of the Unanimous Written Consent, that Act does not fall under the jurisdiction of this office and therefore we cannot opine as to whether it was properly applied.

Required Actions

No action is required of the Association. However, because this is a new Board, I would encourage the Association to be particularly careful with its use of executive sessions. §55-510.1(C) is very clear as to the proper methodology for convening in executive session, the acceptable reasons for convening in executive session, and the

¹ C. The board of directors or any subcommittee or other committee thereof may convene in executive session to consider personnel matters; consult with legal counsel; discuss and consider contracts, pending or probable litigation and matters involving violations of the declaration or rules and regulations adopted pursuant thereto for which a member, his family members, tenants, guests or other invitees are responsible; or discuss and consider the personal liability of members to the association, upon the affirmative vote in an open meeting to assemble in executive session. The motion shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The board of directors shall restrict the consideration of matters during such portions of meetings to only those purposes specifically exempted and stated in the motion. No contract, motion or other action adopted, passed or agreed to in executive session shall become effective unless the board of directors or subcommittee or other committee thereof, following the executive session, reconvenes in open meeting and takes a vote on such contract, motion or other action which shall have its substance reasonably identified in the open meeting. The requirements of this section shall not require the disclosure of information in violation of law.

way to subsequently reconvene in an open meeting to vote on any contract, motion or other action. The Association is formally on notice that it must ensure that it follows these requirements precisely for all future executive sessions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather S. Gillespie". The signature is written in a cursive style with a large initial 'H' and 'G'.

Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Purple Sage Cluster Association