



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

February 19, 2016

Maurice Jones  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Mark Lepnew  
Association: Bella Vista Condominium Association  
File Number: 2016-01887

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*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.*

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## Complaint

Complainant submitted a Complaint to the Association dated October 1, 2015. The Association provided a final determination to the Complainant dated December 28, 2015 and the Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated January 26, 2016 and received January 27, 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 alleges that the Association made a common area alteration when it added lamp lights around the pet walk area in the fall of 2015. The Complainant expressed concern that this was done without notifying owners beforehand or obtaining a vote of approval. The Complainant states that this has violated the bylaws of the Association which is a violation that cannot be determined by this office, and in turn states that the violation of the bylaws resulted in a violation of the Condominium Act, namely §55-79.75(B) and specifically the following sentence: "All meetings of the unit owners' association or the executive organ, including any subcommittee or other committee thereof, shall be open to all unit owners of record."

The Complainant also alleges that the Association violated §55-79.48 of the Condominium Act which pertains to the execution of condominium instruments. The Complainant does not provide an explanation, however as to how the Association violated this provision and therefore the alleged violation cannot be addressed in this Determination.

In its Notice of Final Decision, the Association stated that the Association is authorized under the bylaws, without the approval of the membership, to make certain expenditures if they cost less than a particular percentage of the total annual assessment for common expenses. The Association noted that the cost of the lights was \$15.90 and that a subcommittee had been created to oversee certain improvements to the dog park which included the installation of the lights. Because the only way to decide if the Association had the power to purchase the lights and install them would be to interpret the bylaws of the Association, no determination can be provided by this office regarding this matter.

#### Required Actions

Nothing is required of the Association.

Sincerely,



Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Bella Vista Condominium Unit Owners Association