



COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Ralph S. Northam
Governor

September 9, 2019

Brian Ball
Secretary of
Commerce and Trade

Complainant: Philip Coletti
Association: Clark's Corner Homeowners' Association
File Number: 2020-00403

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 undated complaint to the Association. The Association provided a response to the Complainant dated July 7, 2019. The Complainant then submitted a Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated August 1, 2019 and received August 5, 2019.

Determination

The Complainant has alleged that the Association failed to provide notice of a meeting on March 23, 2019. The Complainant became aware of the meeting when he noticed members of the Association's board walking through the association. He believed that they were discussing common area issues. As a result of his observation, the Complainant believes that the Association is in violation of §55-510.1 A and B of the Property Owners' Association Act¹ which requires that all meetings of the board of directors to be open to all members of the association.

In its Notice of Final Decision, the Association stated that the walk around the common area was in preparation for a meeting with the locality that had been scheduled

¹ A. All meetings of the board of directors, including any subcommittee or other committee thereof, 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 § 55-510.

B. Notice of the time, date and place of each meeting of the board of directors or of any subcommittee or other committee thereof shall be published where it is reasonably calculated to be available to a majority of the lot owners.

by the prior board. The Association further stated that it was taking stock of the condition of the common area and the concerns that would be raised by the locality in the upcoming meeting with the locality. The Association said that no decisions, actions or 'taskings' were made while the board members walked the grounds. It also noted that "since the event in question, the board has not gathered to discuss HOA issues without announcing a meeting open to homeowners, posting an agenda, and distributing minutes following the meeting."

Based on the information provided by both the Association and the Complainant, it is difficult to determine if a meeting, as defined in the Property Owners' Association Act, took place. Under §55-509, a meeting is defined as "the formal gathering of the board of directors where the business of the association is discussed or transacted." In the scenario described by the Complainant, it does not appear that any business was transacted but it is unclear if any business was discussed. The term business, as it pertains to an association is not defined in the Property Owners' Association Act, which makes it even more difficult to determine if business was discussed. Ultimately, it appears that there is really no way for this office to determine whether business was discussed, since we cannot conclude whether viewing the common areas and "taking stock" of their condition truly amounts to discussing the business of the Association.

Absent the ability to be the proverbial fly on a wall, we can only rely on the information provided in the Notice of Final Adverse Decision in order to make a determination. In this case, there is simply not sufficient information to allow this office to conclude that a violation of §55-510.1 A or B occurred.

Required Actions

No actions are required.

Please feel free to contact me if you have questions.

Sincerely,



Heather S. Gillespie
Common Interest Community Ombudsman

cc: Board of Directors
Clark's Corner Homeowners' Association