



# COMMONWEALTH of VIRGINIA

Department of Professional and Occupational Regulation

Terence R. McAuliffe  
Governor

May 19, 2015

Maurice Jones  
Secretary of  
Commerce and Trade

Jay W. DeBoer  
Director

Complainant: Scott Barner  
Association: Kingsmill Community Service Association  
File Number: 2015-02574

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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 January 25, 2015. The Association provided a response to the Complainant dated March 18, 2015 and the Complainant then submitted his Notice of Final Adverse Decision (NFAD) to the Office of the Common Interest Community Ombudsman dated April 8, 2015 and received April 17, 2015.

## 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 failed to meet the requirements of §55-510(F) of the Code of Virginia by failing to have an annual meeting of the membership at any time between January 1, 2014 and December 31, 2014 and by not holding such a meeting of the association in accordance with the provisions of the bylaws. §55-510 states that "Meetings of the association shall be held in accordance with the provisions of the bylaws at least once each year after the formation of the association."

The Association has responded by stating that an annual meeting was held on March 12, 2015 (which was after the Complainant had submitted his Complaint to the Association). The Association also noted that it was awaiting the outcome of an en banc panel of the Virginia Supreme Court which was to meet on March 31, 2015 to hear the reasons why an appeal should be granted to consider a declaratory judgment previously dismissed by the local Circuit Court. The Association stated in its response that it intends to "await the panel's decision before making any decisions regarding the calling and scheduling of a special membership meeting for the purpose of holding an election."

If this NFAD had come to this office prior to the Annual Meeting that was held on March 12, 2015, a determination may have resulted that the Association failed to have an annual meeting in violation of 55-510, and that it must hold an annual meeting within some finite period of time. Assuming that compliance with the annual meeting requirement would have been obtained, there would have been no further action or review of the matter by this office.

In the present case, however, the Association did hold an annual meeting, even though it was delayed by six months, and thus the remaining issue is that it did not hold an election of the board of directors at the annual meeting. While an association is required to hold an annual meeting in accordance with the provisions of the bylaws at least once each year, the Property Owners' Association Act does not specifically state that an election must be held at an annual meeting. Any such language would stem from the association's own governing documents, and specifically, the bylaws. Because the requirement to hold the election would be contained in the Association's bylaws and cannot be found in the Property Owners' Association Act, this office has no authority to require the Association to hold its election, as doing so would mean that we were enforcing the bylaws of the Association, and this office has no authority to enforce the governing documents of any association.

Required Actions

No action required.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather S. Gillespie".

Heather S. Gillespie  
Common Interest Community Ombudsman

cc: Board of Directors  
Kingsmill Community Service Association