

To The County Councilmembers,

Thank you for allowing written testimony in regard to the Tuesday, December 6th hearing on “Bill 28-22, Common Ownership Communities - Duties, Requirements And Procedures.”

I want to share a recent experience with the CCOC that you should be aware of as you debate whether to expand its powers. This agency needs to be revamped and restructured and receive more oversight and supervision – similar to what was done with the Planning Commission staff and members.

A little on King Farm Citizens Assembly. Located in Rockville and bordering Gaithersburg this community of nearly 10,000 people is a mix of townhouses, single-family dwellings, condominiums and apartments. The HOA has an annual budget of over \$4 million and reserves that total approximately \$5 million. In short we are a large operation managed by a professional staff. We also follow the law closely as we have legal counsel to protect the homeowners assets – both monetarily and property-wise.

In 2015 Rockville opted in to the CCOC. I as a homeowner in an HOA supported that decision. I agreed with the mission of the CCOC and felt that there ought to be some neutral agency to help resolve disputes by serving as an arbiter and a panel that could decide cases swiftly instead of having to resort to a protracted court proceeding.

Sadly, that is not now what is in place. In the several years I have been President of King Farm what I have observed of the CCOC is an agency in disarray.

From missed mediation meetings, to missing agendas or missing minutes on the website, missing documents, being slow to provide documents to Circuit Court to head-scratching CCOC or panel decisions – King Farm’s experience is of an agency that has lost its mission and has become insular and error-prone.

The continuance of missing meeting agendas and minutes just point to what has become a, “Do as I say and not as I do” agency. If an HOA did not have meeting agendas or missing minutes they could be called on the carpet by the CCOC but the CCOC bears no consequence for its own haphazard management.

In one instance involving King Farm, the CCOC heard one of the complaints against King Farm and was deciding whether it had jurisdiction. The CCOC arbitrarily made up a reason to take up the case – with a reason that the complainant had not alleged and which was later dismissed by a panel. There should be a tightening up the CCOC’s leeway to take a case or not. The consequence in this case was to take resident’s money in legal fees and management time (not to mention volunteer’s time) for something that was not even alleged and something that was dismissed after a hearing.

Another example of the troubles with the CCOC occurred with a case which should have been decided rather quickly was allowed to drag on for nearly two years. This cost King Farm an untold amount of money in legal fees as well as time from our Management and volunteers. Not to mention the time of our resident who had the dispute in the first place.

Nearly two years after being filed this decision is now in the Circuit Court due to what we consider to be an arbitrary and capricious ruling with a truly headscratching order – it dismissed the complaint but ordered the lengthy decision be sent out to every homeowner in King Farm. \

If the CCOC can issue such rulings then it follows that they must also defend them in Circuit Court if necessary. This Order and Decision by the CCOC is not defended by the County, instead the plaintiff, a King Farm resident with no legal training or qualifications, must choose to defend it. This lets the agency off the hook too easily in defending its decisions in Circuit Court and means that its rulings are not subject to much legal or other scrutiny before issuance - or even afterwards.

The latest example of the CCOC's lack of attention to detail or sloppy staff work occurred in the past month and had real world consequences. A poster on the neighborhood list serv who also is a complainant in a CCOC case on appeal sent this erroneous post out to the entire community:

“On 10/27/2022, the CCOC through the Office of the County Attorney fined KFCA \$500 for the violation of the D&O. If KFCA pays the fine by 11/27/2022, this will be deemed an admission of guilt and the trial date will not be set. Alternatively, KFCA may elect to stand trial in court.”

This was not the case. Whether the poster was confused or deliberately misleading is unknown. But what is known is that the CCOC actions led directly to this post.

The CCOC staff knew about King Farm's appeal of the order. The CCOC knew, because they were apprised that the Court had stayed the order pending a ruling on the matter. The CCOC either ignored or forgot that order and tried to issue a violation. Only the intervention of KFCA's attorney and the County Attorney's office kept that “erroneous” violation from being filed.

When asked to reach out to both parties and clarify the CCOC finally did in grudging language that never acknowledged their error.

I realize no one feels sorry for an HOA – but it should be remembered that all costs to defend a case in the CCOC comes from residents HOA fees. That is an enormous waste that the insular CCOC seems to overlook.

I have expressed concerns over the conduct of the CCOC staff and volunteers before, repeatedly to various offices both in the DHCA and the County Council. To date it appears that the problems are not being rectified.

Unfortunately the CCOC has not improved and this latest incident indicates that things are actually becoming worse. I note that the CCOC's longtime Chair has now been brought on staff with a consulting contract to do work for the CCOC. I question how this deal was arrived at and urge the Council to ask questions of this arrangement.

I thought County Executive Marc Elrich said it best in a Press Release. These words could easily apply to the CCOC instead of the Planning Commission:

"It is clear that new people and new voices are needed on the Planning Board. Park and Planning has been run by a group of insiders for far too long. There needs to be a respectful balance of the views of developers and those of the community. I hope that the new Planning Board appointees reflect the demographics of this community and are committed to our residents, community input, and an efficient and transparent process."

I fear that we have yet another Planning Commission scenario.

I urge the Council to probe into whether the CCOC should be revamped. I fear that the CCOC is an agency that serves a real need between HOAs and homeowners/residents but it is not receiving proper supervision and has lost its way. I know that I am not alone in feeling that something is wrong at the CCOC.

I look forward to your debate and can answer any questions or concerns you might have.

Thank you for your time and attention.

Sincerely,

Barry Jackson
President
King Farm Citizens Assembly

To the County Council,

On Bill 28-22, Common Ownership Communities - Duties, Requirements And Procedures. I

want to suggest some changes to the CCOC that I believe will help return it to its original mission of being a positive force in relations between homeowners and Community Associations – because there is a need for a neutral arbiter of disputes. I wanted to build on my prior testimony that just laid out a list of grievances.

King Farm Citizens Assembly is a large HOA in Rockville actually comprising about 1/7th of Rockville's total population – upwards of 10,000 people. King Farm owns and is responsible for roads, sidewalks, landscaping, alleys and parking lots around approximately 450 acres. We own and operate a Community Center and two swimming pools, have a full-time staff and a budget of approximately \$4 million and a reserve of approximately \$5 million. We also coordinate very closely with the City of Rockville both because of our size but also because our services and infrastructure are very much interlinked.

Details of King Farm's prior poor experience with the CCOC are laid out in prior testimony. But it should be noted that I did a brief survey of other Common Communities in Rockville and received responses that were in line with King Farm's experience.

The changes to the CCOC I strongly urge the County Council to consider are:

- 1) Undertake stronger oversight of the CCOC at the Council level or require DHCA to perform a rigorous oversight on all actions of the CCOC staff and members.
- 2) Mediation is not properly placed in the CCOC's bag of tools. The CCOC should first decide that it has jurisdiction before even attempting to mediate.
- 3) Mediation should be optional but not required. Not every case can or should be mediated. A lot of time is wasted by going through the motions when no mediated settlement is possible or probable.
- 4) Jurisdiction of a complaint by the CCOC should be limited to the explicit items that the complaint references. The CCOC should not "read between the lines" or give itself jurisdiction based on other items not referenced in the initial complaint.
- 5) Require that the CCOC and County defend Orders and Decisions if appealed in Circuit Court. Currently, a homeowner or the association must defend the decision of the CCOC to the Court. In particular this places a typical homeowner at a disadvantage as they are generally not lawyers – either forcing them to get a lawyer or navigating an unfamiliar court system themselves. Plus, the CCOC as currently structured is able to avoid scrutiny and accountability for its decisions by in effect washing its hands of that Order and Decisions once it made. Having to defend the decision would hopefully make the decisions tighter and better-reasoned and less likely to be viewed as arbitrary and capricious – and would bring an extra layer of scrutiny from the County Attorney's office.
- 6) Look into the potential conflicts-of-interest among staff, consultants and members of the CCOC. The appearance of conflicts undermines the entire effort of the CCOC. Specifically, what is the relationship with various board members, consultants or the CCOC in general to the Maryland Homeowners Association (MHA)?
- 7) The CCOC should strive to conduct itself as it mandates that Community Associations do. Put out minutes and agendas in advance, respond to inquiries professionally and in a timely manner and

produce documents as required by Courts or other entities. I note that time and time again there is no agenda posted before a meeting. The latest example occurred in December. It is hard to fathom an agency with a mission of focusing on others following the rules who do not follow rules themselves. If an Association were to do this, they would be found in violation by the CCOC, yet the CCOC just shrugs when lack of an agenda is pointed out.

I know that the CCOC at its core is a laudable undertaking by the County to improve the lives of homeowners and Community Associations. But oversight of the mission and tweaks to its operations have left it a shell of what it could be.

I know the City of Rockville opted in to the CCOC in 2015 because at the time it was seen as a positive move for homeowners and HOAs/Condos. I don't know that it is anymore. I remain hopeful that we can make the CCOC what it was intended to be when Rockville chose to become a part of the constituency of the CCOC.

Sincerely,

Barry Jackson
President
King Farm Citizens Assembly