BEFORE THE
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND

In the Matter of

James R. Johnson	*	
	*	
	*	
Complainant	*	
	*	
v.	*	Case # 46-06
	*	July 12, 2007
The Hallowell	*	
Homeowners Association, Inc	*	
	*	
Respondent	*	

DECISION AND ORDER

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland ("CCOC"), for hearing on March 1, 2007 pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the duly appointed Hearing Panel, having considered the testimony and evidence of record, finds, determines, and orders as follows:

SUBSTANTIVE AND PROCEDURAL BACKGROUND

The dispute

Case 46-06 is a dispute in which Mr. Johnson ("Johnson") alleges that the Hallowell Homeowners Association ("Hallowell") spent association funds to alter common areas in violation of the Hallowell Declaration of Covenants ("Covenants").

Mr. Johnson filed a complaint against Hallowell with the CCOC on July 11, 2006 and followed it with an additional complaint filed on July 21, 2006 relating to the same subject matter, adding information to his first complaint and modifying the relief requested. Both complaints have been consolidated as 46-06[1]. In his complaint, Mr. Johnson alleged that the Association had not complied with the Covenants when it installed new equipment on three tot lots in the Hallowell community in February 2006. In particular, he alleged that at the lot on Saint Florence Terrace near his home, the new equipment had changed the character and use of the lot as well as doubled the size of the lot, all detrimentally affecting his enjoyment of his

[1] Mr. Johnson signed the complaint submitted on July 11, 2006. Mr. Johnson and Ms. Michele Lambert signed the complaint submitted on July 20, 2007. The CCOC staff designated Mr. Johnson as the sole complainant. At the hearing, Mr. Johnson indicated that he would be the sole complainant.

property. He further alleged that expanding the size of the tot lots was beyond Hallowell's powers set forth in its articles of incorporation and that Hallowell had not met the standard of harmony with surrounding structures and topography required in Article V of the Declaration by installing a plastic border on the tot lot. He also alleged that the Board's enlargement of the to lots was invalid because Hallowell had not notified Hallowell owners of the significant changes it planned for the lots, that the Hallowell Board of Directors had met in an unauthorized closed meeting to approve the modifications, and that the Association had made the changes without obtaining approval from the Maryland National Capital Park and Planning Commission (MNCPPC) to change the features of the tot lots from their approved features as shown on the Hallowell community site plan

Hallowell responded on August 21, 2006 by letter to the CCOC explaining that Hallowell had received a civil citation from M-NCPPC and had been ordered to submit a site plan amendment regarding the three tot lots. Hallowell asserted that Mr. Johnson's complaint was not within the CCOC's jurisdiction. Subsequently, Hallowell submitted its Answer to the Complaint. Hallowell further asserted that the Board of Directors had the authority to expand the tot lots, because such expansion was within the boundaries of the common area parcels, and that the Board had notified residents and obtained comments from the community, notwithstanding that there are no requirements in the governing documents for the Board to obtain such input prior to making decisions regarding the common areas.

Mr. Johnson initially asked the Commission on Common Ownership Communities to direct the association to refrain from spending additional Association funds to prepare a site plan amendment until the CCOC had resolved his complaint. In the second part of the complaint filed on July 20, 2007, he asked the Commission to order Hallowell to remove the new oversized play equipment, and if the tot lots were reduced in size, to install a new border that met the architectural standards from the Declaration.

Hallowell asked the CCOC to deny jurisdiction or to stay a hearing of the dispute pending resolution of the M-NCPPC's citation and Hallowell's application for a site plan amendment. Hallowell further asked the CCOC to uphold the Board's actions to expand the tot lots.

The complaint was not resolved through mediation, and the dispute was presented to the Commission on Common Ownership Communities, which voted that the dispute involved matters within the Commission's jurisdiction, and scheduled the dispute for hearing.

Procedural History

Following submission of the Complaint and Answer, the CCOC accepted Mr. Johnson's complaint for resolution, noting in its Summons, Statement of Charges, and Notice of Hearing dated December 7, 2006, that it was not accepting jurisdiction of any legal matters that were within the sole jurisdiction of MNCPPC. CCOC Commissioner Staci Gelfound was appointed as the interim panel chair, and she approved discovery requests submitted by Mr. Johnson, pursuant to Executive Regulation 10-B-06.01.04. Christopher Hitchens was appointed as Panel Chair, and

a hearing was scheduled for and held on March 1, 2007. Mr. Johnson submitted a Motion to Compel Hallowell to further respond the Request for Production of Documents he had submitted, which the Panel Chair denied, finding that Hallowell had made the documents requested available to Mr. Johnson for review on October 19, 2006, and that Hallowell asserted it had no further documents. The Panel Chair scheduled a Pre-hearing conference immediately prior to the hearing scheduled on March 1, at which the parties and Panel Chair discussed which issues remained to be heard, and each party summarized its testimony and exhibits to be presented. Mr. Johnson further moved to compel Hallowell to answer interrogatories that he contended remained unanswered. The motion was deferred to permit the full panel to consider it at the hearing. At the hearing, the Hearing Panel determined that the interrogatories had been timely filed, but that they had not been transmitted to the Respondent. Nonetheless, the Panel concluded that it was the Complainant's burden to follow up with the CCOC staff when he received no response, but Complainant had not contacted the CCOC staff to pursue a response to the interrogatories. Had that been done, the Respondent's failure to receive the interrogatories could have been cured and there would have been sufficient time to respond. Therefore, the Panel denied the Complainant's Motion to Compel Respondent to Answer Interrogatories.

SUMMARY OF TESTIMONY AND EVIDENCE

Complainant's Case

The Complainant presented the testimony of three witnesses: Ms. Michele Lambert, Mr. James Johnson, and Ms. Juanita O'Dell.

Ms. Lambert

Ms. Lambert testified that she had lived in her home in the Hallowell community for 17 years, and that during that time, changes had been made to the St. Florence Terrace tot lot, but none of the changes had increased the size of the tot lot. She explained that on February 9, 2006 she observed that the tot lot was being enlarged so that its boundary extended to within 30 feet of her lot line.

Ms. Lambert opined that the new playground did not meet the Consumer Product Safety Commission's definition of a "tot lot" and asserted that Hallowell had misinformed the community when it noted in its Fall/Winter newsletter that there were "New Tot Lots on the Way," without disclosing the major expansion of the footprint or the change in equipment to accommodate older children. She further noted that Hallowell had installed a true tot lot at the community swimming pool in the previous year, creating an expectation that the additional new tot lots would be similar in size, and designed for pre-school age children.

Ms. Lambert described the details of the changes in the tot lot: additional swing, a larger slide. She explained her understanding that the new equipment required more space to be safely used, when compared to the previous equipment. She further explained that the change in equipment meant the tot lot was no longer suitable for younger children, and that the older children who were now attracted to the equipment played unsupervised by parents and created more noise than younger children. Ms. Lambert described a patio she had installed in 2004 and

gave her opinion that the new presence of the enlarged playground, and particularly the black plastic border around the play area was not harmonious with the natural setting of the common area and her home. She testified that she believed that the new lot had reduced the desirability and value of her home.

Upon cross examination, she testified that she had received Hallowell's Fall/Winter 2005 newsletter containing an article on the Board's intent to modify the tot lots, and that prior to initiation of this complaint, she did not regularly review the minutes of the meetings of the Hallowell Board of Directors.

Mr. Johnson

Mr. Johnson gave a summary of his claims: (1) he believed that the Articles of Incorporation for Hallowell did not include expansion of the common area elements among Hallowell's authorized powers and that the Bylaws did not assign expansion of the common areas as one of the duties of the Board of Directors; (2) he believed that the Board of Directors had failed to document its decision making process with regard to expanding and changing the character of the tot lot, as required by Article 8, Section 2(a) of the Bylaws and failed to obtain the Architectural Control Committee's approval for the changes; (3) he believed that in changing the equipment and expanding the tot lot the Board had created a nuisance in violation of the Article 8, Section 3 of the Declaration and that the plastic border on the tot lot was inconsistent with guidelines adopted by the Association; (4) that Hallowell had failed to obtain approval for a site plan amendment from MNCPPC; (5) that Hallowell had violated Section 11B- 111 of the Maryland Homeowners Association Act by having a closed meeting in August of 2005 to discuss the tot lot expansions; and (6) that Hallowell had not communicated to the community that it planned to change the character of the tot lot through any meetings, minutes, newsletters or other communications.

Upon cross examination by Mr. Fisher, Mr. Johnson elaborated on his interpretation of the Hallowell powers in the Articles of Interpretation and the Bylaws with regard to the common areas. He challenged Mr. Fisher's interpretation of the Board's power to "improve" the common areas, stating that he did not believe "improve" included the power to double the size of a tot lot. He testified that he during the period of January –November, 2005 he reviewed the minutes of the Hallowell Board of Directors meetings and recalled seeing discussions of the tot lots, but that they did not convey the Board's intention to expand the tot lot. Mr. Johnson reviewed the September 12, 2005 meeting minutes and noted that it mentioned the Board's acceptance of a specific contract proposal for new equipment on the tot lot. He testified that he had not attended the September, October, or November 2005 Board meetings, and that he did not oppose modification or upgrading of the tot lot in general, but did not approach the Board or its management company to get further details of the modifications he knew about from the minutes of the Board's meetings.

Mr. Johnson explained the use of the tot lot that he believed constituted a nuisance: that he felt compelled to interrupt his outdoor backyard activities to respond to unsafe use of the new equipment by children, such as hanging off of the slide, standing up on swings, and inappropriate access to the tot lot though yards by children on bicycles. He testified that

although this activity was annoying to him he had not asked Hallowell to take any action to eliminate these circumstances. He pointed out some of the behaviors in photographs that were admitted into the record.

Mr. Johnson testified that although the July 2005 newsletter indicated that the Board would hold an informal discussion regarding the tot lots in August 2005, he was not aware of any notice to the community of the meeting the Board subsequently held, although some residents did attend it.

Ms. O'Dell

Ms. Juanita O'Dell testified that she is a member of the Architectural Control Committee (ACC), appointed by the Hallowell Board of Directors. She testified that the ACC reviews proposals from homeowners for architectural changes to homes, but that it does not review the Association's changes to the common areas, such as modifications to the swimming pool or the tot lots. She testified that she had not read Article V of the Hallowell Declaration, which sets forth the standard for architectural review. Ms. O'Dell stated that she was aware of the tot lot improvement plans through her attendance at Board meetings where the plans were discussed, and she described a meeting of the Hallowell Board of Directors that she attended in which a representative of the contractor that installed the new tot lots made a presentation describing the equipment to be installed. She said that she was aware through a newsletter announcement of an informal meeting of the Board planned to be held in August 2005 to discuss the planned improvements to the tot lots, but that she did not attend it and did not know whether it occurred.

Testimony from the Complainant's witnesses was supported by photographs and documents admitted into the record, including portions of the Hallowell governing documents, the contract for the equipment installed, and minutes of the Hallowell Board of Directors meetings.

Respondent's Case

The Respondent presented the testimony of Ms. Susan Szajna.

Ms. Szjana

Ms. Szjana testified that she had been a property manager for nineteen years and that her company, Community Association Services, had had a contract for property management services with the Respondent for seven years.

Ms. Szjana explained that she had observed the condition of the primarily wooden tot lot equipment in the community, and noted the deterioration of the St. Florence Terrace since its installation in approximately 1990, and had also been contacted by residents in the community who expressed concern about the safety of the equipment, and in particular the potential to be injured by splinters from the surface of equipment, and the sparse wood chips cushioning the tot lot surfaces. In 2004, she encouraged the Hallowell Board of Directors to consider replacing the tot lot equipment. She testified that the Hallowell Board of Directors considered changes to the

tot lots at its meetings in 2005, that she was present, and that the minutes of the meetings reflected the tot lots as discussion items. She testified that the minutes were taken by a paid minute taker and that minutes focused on actions taken and votes of the members rather than details of board members' discussions. She explained that Hallowell follows a process of reviewing draft minutes and approving them at a subsequent monthly meeting, and then posting the minutes on the Hallowell website. She also testified that a Hallowell newsletter from 2005 contained an article indicating that new equipment was being reviewed in anticipation of installation. Ms. Szjana explained that the Board publishes a schedule of meetings for the year, but does not publish a separate notice for each meeting. She said that the Board does not meet in the month of August.

Ms. Szjana described the Board's process considering the tot lot equipment replacement, including reviewing equipment proposals from contractors, observing a renovated tot lot in a nearby neighborhood that Ms. Szjana had worked on and obtaining comments from owners in the community. She explained that from the equipment proposals, the Board learned that since the original equipment was installed in 1990, the recommended required area for safe use of equipment, particularly swings, has increased, as well as the recommendation for cushioning the ground area under the swings. Ms. Szjana testified that it was evident that that the footprint for the tot lots would need to be enlarged to comply with the recommended requirements for new equipment, and that she explained the need for the larger tot lot footprints to the Board. She testified that the Board received presentations from contractors that included specifications of the proposed new equipment, as well as drawings and photographs of what the new tot lots would look like, and that a "handful" of homeowners attended the Board's meetings during the time period the new equipment was under consideration.

In her cross examination, Ms. Szjana described a letter from one contractor, Playground Specialists, in which the contractor said that the footprint for the new equipment would be "slightly larger than that of the old." She testified that the minutes of the Board's meetings in 2005 did not mention that the size of the footprints for the tot lots would double or that the new equipment would be appropriate for use by older children.

Ms. Szjana described an instance where with regard to approving removal of a tree that would impact two property owners, the Board instructed the owner seeking removal of the tree to apprise the other neighbor of his request, but that she was unaware of any requirement in the Hallowell governing documents requiring the Board to notify owners of actions it planned to take in managing the common areas. She also described a get together of Board members in August 2005 to "mull" over proposals for the equipment replacement, in preparation for making a decision. She said that there was no minute-taker at the meeting, that she did not attend the meeting, and that her contract requires her to attend all Board meetings.

Other exhibits admitted into the record included the Commission's file on this dispute, including the Hallowell governing documents, and the parties' responses to interrogatories and requests for production of documents, various play equipment specifications, Hallowell's newsletters for Fall 2004, Winter/Spring 2005, and Summer 2005, documentation to support Hallowell's application to the Maryland National Capital Park and Planning Commission for a site plan amendment for the tot lots, and Hallowell's Architectural and Exterior Guidelines.

FINDINGS OF FACT

1. The Petitioner is the owner of property known as 3214 Saint Florence Terrace, Olney Maryland, in a community known as Hallowell, and which is subject to a Declaration of Covenants (hereinafter referred to as the "Covenants") recorded Liber 6874, 266, among the land records for Montgomery County, Maryland.

2. The Respondent is the owner of certain common areas as designated in the Covenants, including Parcel Z, Block M, as shown on Plat 16430, recorded in Plat Book 143 among the land records for Montgomery County, Maryland.

3. The rear yard of 3214 Saint Florence Terrace faces parcel Z, Block M, on which Respondent maintains a tot lot known as the "Saint Florence Tot Lot."

4. The Bylaws of the Hallowell community at Article 8, Section 2(g) provide that the Respondent has the duty to "maintain the common areas to be maintained and elements thereon be repaired and replaced when necessary in the opinion of the Board."

5. The Respondent is a Maryland corporation created by Articles of Incorporation filed with the Maryland State Department of Assessment and Taxation, which articles set forth the purposes for which the Respondent is created at Article 4 section (c), including, ". . . to provide for the maintenance, preservation, and repair and replacement of those elements on the common areas which must be replaced on a periodic basis, and architectural control of the residence lots and Common Area. . . . ."

6. During 2005, the Respondent, through its Board of Directors, considered the replacement of the play equipment on tot lots in the community including the St. Florence tot lot, discussed the matter at Board meetings, and invited contractor representatives to a Board meeting to make presentations of their contract proposals for replacement of the equipment. The minutes of the Board meetings were posted on the Hallowell website and reflect that replacement of the tot lot equipment was among the business considered by the Board. The Complainant did not attend these meetings.

7. On an unknown date in August, 2005 an unknown number of Board members and homeowners gathered to further review and evaluate the options for replacing equipment in preparation for making a final selection of a contractor proposal. The Hallowell Board of Directors publishes a yearly schedule of meetings, and does not provide further notice of each monthly meeting, and typically does not meet in August in any given year. The discussion planned for August 2005 was announced at the July 2005 meeting and was characterized as an "informal worksession," but no date for the worksession was provided, and there is no record of any subsequent notice of the date from the Board. At the September 2005 meeting, the Board President, David Tatnall reported that the worksession had occurred.

8. The Hallowell Board of Directors approved the selection of Playground Specialist's proposal at its September, 2005 meeting and authorized further negotiations of terms in October and November. Board member Anthony Macaluso signed a contract with Playground Specialists on December 5, 2005 and the equipment was replaced and the tot lots modified in February 2006.

9. The Saint Florence Terrace tot lot footprint as modified in February 2006 is larger than as originally installed, contains new equipment which accommodates children who are older than the children the original equipment accommodated, and contains a new black plastic border around the larger footprint.

10. The Maryland-National Capital Park & Planning Commission cited Hallowell on April 27, 2006 for changing the footprint of the Saint Florence Terrace tot lot from approximately 30 feet x 30 feet to 35 feet by 58 feet, without getting approval from the agency for a minor site plan amendment.

11. Article V of the Covenants provides in pertinent part that

> It is contemplated that the single family lots and the townhouse lots may be conveyed to different developers…and therefore, in order to permit each community to develop pursuant to its original style of architecture, the Board of Directors may appoint Architectural Control Committee …to enforce the architectural controls of each community…to wit: No building, storage shed, fence or other structure or exterior painting, shall be commenced , erected or maintained , upon the Properties, nor shall any exterior addition or change or alteration therein be made until the plans and specifications showing the nature , kind, shape, height, materials, color and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee, of the community in which the structure exists…. Except that this paragraph shall not apply to any construction by the Declarant, it successors and assigns. . .

12. The Hallowell Architectural Control Committee has historically not reviewed changes made in the common areas in the community.

13. The Hallowell Homeowner's Association Architectural and Exterior Guidelines, revised May, 2003, contain the following provision:

> **RETAINING WALLS.** Retaining wall should be

constructed of materials that are compatible with the exterior materials of the existing house. Retaining walls may also be faced with natural materials that are appropriate for the surroundings. All retaining walls require prior approval from the ACC.

14. Article VIII, section 2(a) of the Hallowell Bylaws provides as follows:

> Section 2. Duties. It shall be the duty of the Board of Directors to:
> (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A members who are entitled to vote;

15. Article VIII, section 3 of the Declaration provides as follows:

> Section 3. No noxious or offensive activity shall be carried on upon any portion of the properties, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood. No exterior lighting shall be directed outside the boundaries of a Lot.

CONCLUSIONS OF LAW & DISCUSSION

1. The replacement of equipment and enlargement of the footprint of the Saint Florence Terrace tot lot by the Respondent are activities that are within the Respondent's powers under the Hallowell governing documents.

The panel concludes that it is reasonable to interpret Article 4 (c) of the Hallowell Articles of Incorporation and Article VIII section 2(g) of the Hallowell Bylaws to authorize the Respondent to modify the Saint Florence Terrace Tot Lot by replacing and altering the equipment and by enlarging the footprint to meet the safety equipment. The panel believes that such activities are inherently included within the powers to "maintain," "repair," and "replace" elements in the common areas provided in both the Article of Incorporation and the Bylaws.

The panel rejects the Complainant's interpretation of these provisions to mean that the Board is constrained to maintain the *status quo* of the tot lot because the provisions do not expressly grant the Respondent the power to enlarge the tot lots or to change their character. The panel believes that because Hallowell's action did not alter the size of Parcel Z or change the use of the tot lot area on Parcel Z from its recreational use as a play area. These actions are reasonable exercises of it powers under the governing documents.

2. In approving and implementing the equipment replacement at the Saint Florence tot lot, the Respondent has complied with the provisions of the Hallowell governing documents regarding record keeping, approval of architectural changes, and notice to the community of the modifications to the tot lot.

The panel concludes that the minutes submitted into the record comply with the requirements under the Hallowell documents and the Maryland Homeowners Association Act and applicable corporate statutes for record keeping. The Panel acknowledges that comprehensive information regarding the tot lot equipment and information analyzed by the Board in reaching its final decision are not recited in the minutes, but neither the documents nor any statute require such a level of detail, instead requiring a record of the board's ***acts and corporate affairs,*** which commonly focuses on financial records. Moreover, the level of detail is consistent with the level of detail provided in other similar organizations, as is Hallowell's focus on documenting actions and votes taken.

The panel rejects the Complainant's assertion that the changes to the tot lots implemented by the Board required approval by the Architectural Control Committee. Article V of the covenants states explicitly that it is not applicable to construction by the Declarant, its successors, and assigns. The Declarant originally installed the tot lots, and the Respondent is the successor to Declarant. This interpretation has been followed by the Architectural Control Committee in the past, and the panel concludes that it is the correct interpretation of that covenant. Accordingly, Hallowell is not required to comply with the Architectural and Exterior Guidelines cited by the Complainant.

Without specific reference to requirements of the governing documents or statutes, the Complainant asserted generally that the Board had an obligation to provide more written notification that the changes to the tot lot equipment would result in enlarged footprints and a change in character of the tot lots. However, no requirement for such notification was identified in the Hallowell governing documents or any applicable statute, and as noted above, Hallowell complied with its record-keeping requirements. The Panel concludes that the Hallowell Board of Directors spent several months discussing its proposed action and gathering information, and that the process the Board followed at its meetings did provide an adequate opportunity for unit owners to be apprised of the details and ramifications of the replacement of equipment on the tot lots.

3. The equipment replacement and enlargement of the footprint of the Saint Florence Terrace tot lot do not create a nuisance.

The Complainant testified that the change in the equipment and footprint of the Saint Florence tot lot resulted in older children using the lot and that those children were unsupervised by their parents as previous pre-school users were. The Complainant explained that without parental supervision, the older children created more noise and misused the equipment, compelling intervention from the Complainant. The Panel recognizes that the circumstances described by the Complainant are unpleasant for him.

However, although the Complainant may colloquially describe the noise and equipment as a "nuisance," the Panel concludes that the activity does not rise to the legal threshold of a nuisance established in Maryland case law. In *Slaird v. Klewers*, 260 Md. 2, 271 A.2d 345 (1970), the Maryland Court of Appeals held that in assessing the impact of noise, the court must evaluate whether the nuisance:

> will or does create such a condition of things as in the judgment of reasonable men is naturally productive of actual physical discomfort to a person of ordinary sensibilities, tastes, and habits, such as in view of the circumstances of the case is unreasonable and in derogation of the rights of the party…(citations omitted) subject to the qualification that it is not every inconvenience that will call forth the restraining power of a court. The injury must be of the character as to diminish materially the value of the property as a dwelling and seriously interfere with the ordinary comfort and enjoyment of it. (citations omitted). *Slaird*, 260 Md. at 9, 271 A.2d at 348.

No evidence was submitted to convince the Panel that the modified Saint Florence tot lot constitutes a nuisance or that Hallowell has violated Article VIII section 3 of the Covenants.

4. The Respondent's failure to obtain a minor site plan amendment from the Maryland National Capital Park and Planning Commission approving the enlarged footprint of the Saint Florence Terrace tot lot does not mean that the action is not within the Board's powers.

As explained above, the Panel concludes that the Hallowell governing documents authorized the Board to implement the modifications to the Saint Florence Terrace tot lot. The authority of the Board granted in its governing document to implement the modifications to the tot lot is a question in this dispute that is within the jurisdiction of the CCOC, but the CCOC cannot make any decision regarding the citation from M-NCPPC. The site plan amendment approval process provides the Complainant with the opportunity to contest the substantive features of the changes to the tot lots, and to request that M-NCPPC require changes.

The standard of care applicable to Hallowell's Board of Directors is from the Annotated Code of Maryland, Corporations and Associations Article, Section 2-405.1, and is commonly referred to as the "business judgment rule." The basic principle of the rule is that a director's actions will be upheld if they are made in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care that an ordinarily prudent person in a like position would use under similar circumstances. In accordance with the limited jurisdiction the CCOC has pursuant to Chapter 10B of the Montgomery County Code, 1994 as amended, the Panel concludes that Hallowell was authorized by its governing documents to take the actions it took to modify the Saint Florence Terrace, that it met the standard from the Annotated Code of Maryland, Corporations Article, and Section 2-405.1. The Panel acknowledges Hallowell's obligation to observe all statutes affecting its actions,

but leaves the effect of the failure to submit a site plan amendment to the M-NCPPC for resolution.

5. The informal work session held in August 2005 substantially complied with the open meetings requirements of the Maryland Homeowners Association Act.

The Maryland Homeowners Association Act, Section 11B-111, requires that generally meetings of a governing body or committee be open to all members of the association. Section 11B-111 (4) allows a board to exclude owners from its meetings if certain exempted matters are to be discussed. There was no evidence or testimony that at the work session held in August 2005, any owner was barred from attending the work session. Rather, the Complainant argued that notice of the work session was not provided to owners. This is an argument that because owners did not receive notice of the meeting, the meeting was therefore, a "closed" meeting. However, the Board announced that the work session would be held (without giving a date) at its July 2005 meeting, and reported on the work session results at its September 2005 meeting. Testimony and evidence did not provide sufficient information for the Panel to determine how many Board members and owners attended. Testimony indicated that historically the Board does not meet in August of any given year. It is not clear if the Respondent intended the August meeting to be a board meeting, or a meeting of a subcommittee of the board (since at least 1 board member attended); but in either case, Section 11B-111(1) and (2) applied to that meeting, and Respondent should have given notice to all its members of the opportunity to attend it While there was no evidence entered into the record of a notice of the meeting provided to all owners after the July 2005 meeting, there was some type of notice, because some homeowners attended it, and there was no evidence in the record to indicate that owners were excluded from attending the work session. The Panel concludes that Hallowell did not make a sufficient effort to notify members of the meeting, but that there was no intent to exclude owners or not to comply with the Maryland Homeowners Association Act. The Panel further notes that no action was taken at the work session. Therefore, the Panel concludes that while Hallowell's actual notice to the owners was inadequate, the Hallowell substantially complied with the Act because it provided a general notice at its July meeting, owners were not excluded, no action was taken, and Hallowell reported the results of the work session.

ORDER

Based upon the evidence of record and for the reasons set forth above, it is this 11th day of July, 2007 by the Commission on Common Ownership Communities, ORDERED that:

1. The relief requested by the Complainant is DENIED.

Commissioners Fleischer and Gelfound concur in this decision.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty days after this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

_____

Christopher Hitchens
Panel Chair
Commission on Common
Ownership Communities