

COMMISSION ON COMMON OWNERSHIP COMMUNITIES

Minutes of the Monthly Meeting

April 5, 2017

(Approved)

The monthly meeting of the Commission on Common Ownership Communities was called to order at 7:01 pm by Chairperson, Rand H. Fishbein PhD.

Present: Commissioners, Burrows, Ethier, Fine, Fishbein, Fonoroff, Gardner, Gelfound, Majerle, Oxendine, Radcliff, Winegar, Viney

Absent: Commissioner Zajic (There is one vacancy).

Late: Commissioner Branda was approximately 20 minutes late arriving because of a stuck elevator in the building.

Also attending: Walter Wilson, Associate County Attorney; Mark Anders and Larita Carney, CCOC Staff members; Dallas Valley, and Larry Dorney

1. **MINUTES.** Dr. Fishbein stated there were two sets of minutes to consider from February and March. The Commission voted unanimously to accept the minutes of the meetings from February, 2017 and March, 2017.
2. **COMMUNITY FORUM.** Larry Dorney stated he believed the Commission was doing a great job and were unappreciated for their work.
3. **SUBMISSION OF DISPUTES FOR COMMISSION CONSIDERATION.**
 - a. **50-16-Mill Creek Towne East HOA v. Mani Afshana Asfa (Default).**

Mr. Anders presented (that:

- mediation did not take place as Respondents promised to make repairs and have not yet made them to Complaint's satisfaction, and
- the Staff recommends the Commission accept jurisdiction of the dispute, enter an Order of Default, and refer the dispute to a hearing panel for further proceeding consistent with the Default Judgment Procedures.

Mr. Wilson agreed that this default was under the subject matter jurisdiction of the Commission. He went on to say that he concurred with the Staff on recommendations to accept jurisdiction in all the matters before the Commission this month.

A motion was made by Ms. Either, with a second by Mr. Fine. The Commission voted to accept jurisdiction in this matter, with Mr. Majerle abstaining.

- b. **56-16-Greencastle Lakes CA v. Faustine Moukam and Cynthia Emalue (Default).**

Mr. Anders presented to the Commission that the respondents have not answered the complaint nor have they responded to the motion for default. Staff

recommends that the Commission accept jurisdiction of the dispute, enter an Order of Default, and refer the dispute to a hearing panel for further proceeding consistent with the Default Judgment Procedures.

A motion was made by Mr. Fine, with a second by Ms. Gelfound and the Commission voted unanimously to accept jurisdiction in this matter.

c. 61-16-Longmead Crossing v. Adrienne Venson (Default).

Mr. Anders presented to the Commission that there had been no mediation in this case because the respondent did not answer the complaint. Staff recommends that the Commission accept jurisdiction of the dispute, enter an Order of Default, and refer the dispute to a hearing panel for further proceeding consistent with the Default Judgment Procedures.

A motion was made by Ms. Viney, with a second by Mr. Fine. The Commission voted unanimously to accept jurisdiction in this matter.

.

d. 81-16-Ginsburg v. Avenel Community Association.

Mr. Anders presented to the Commission that the parties agreed to mediation but the Complaints did not attend on the day scheduled. Staff recommends that the Commission accept jurisdiction of the dispute, enter an Order of Default, and refer the dispute to a hearing panel consistent with the Default Judgment Procedures.

Chairperson Fishbein recused himself from any participation in this case.

Commission Winegar took over as Chairperson. A discussion concerning the Complainant/owner not appearing for mediation and possible dismissal of the case ensued. Mr. Wilson stated that if a party refuses or fails to participate in mediation, the Director must dismiss the dispute. This idea was discussed by the Commissioners. Ultimately, the Motion was made by Mr. Fine to send the case back to the Staff and for them to figure out the needed procedure. The Motion was seconded by Mr. Burrows and passed with Commissioners Winegar, Oxendine, Branda opposing and Commissioner Fishbein abstaining.

A discussion then took place regarding how to ensure the parties are aware of the requirement of mediation. The Commission decided to recommend an update to the entire intake form be performed to reflect the change in the law and striking the question: “ Do you agree to mediation?”.

e. 04-17-Maryland Mutual 11 v. Deborah Dubuque (Default).

Mr. Anders presented to the Commission that there was no mediation in this matter because Respondents did not answer the complaint. Staff recommends that the Commission accept jurisdiction of the dispute, enter an Order of Default, and refer the dispute to a hearing panel for further proceeding consistent with the Default Judgment Procedures.

A motion was made by Mr. Majerle and seconded by Ms. Gelfound to accept jurisdiction.-The Commission voted to accept jurisdiction. Commissioner Radcliffe abstained concerning this matter.

4. Requests of the Commission.

None

5. Decision and Orders Issued.

Mr. Anders summarized the recent decision in *Rich v. Mutual 11*, CCOC #58-16. Complainants asserted Respondent failed to comply with the Agreement because Respondents failed to call a Board Meeting to consider a proposed rule within 30 days from the date of the Agreement. Therefore, Complainants seek reinstatement of their complaint and a hearing on the broader issue raised by their complaint.

The Commission found and concluded that there was no “dispute” within the meaning of Section 10B-8 (4) and (5) of the Montgomery County Code. The Respondent complied with the Agreement’s requirement for noticing and holding a Board meeting to consider the proposed rule within 30 days of the date of the Agreement. The meeting was cancelled at the complainant’s request and a subsequent Board meeting was scheduled to consider the proposed rule. The parties received the benefit of the bargain reflected in, and required by, the Agreement.

Based upon the foregoing, the Panel granted the Respondent’s Motion to Dismiss.

6. Decisions and Orders on Appeal.

10-15, Usui v. Americana Finnmark (Oral Arguments set April 13, 2017 at 1:30)

73-12, Ball v. Potowmack Preserve (Proceedings stayed to allow settlement)

Updates to be provided to the Commission.

7. County Attorney’s Report.

Mr. Wilson reported on insurance coverage for commissioners and panel chairs. The County Attorney’s Office is required to defend all County Employees who are charged with a tort claim action for acting in the performance of their official duties. Section 10B- 6 of the Montgomery County Code specifies the duties required of the

Commissioners. Anything outside that specific list would not be considered a covered activity.

8. DHCA Staff Reports

Mr. Anders handed out to the Commission member a statistical report for March 2017 prepared by Mr. Drymalski. Also, a discussion took place regarding the status of the recommendations on the revised complaint procedures. Meetings and recommendations between the Staff of CCOC and the IT Department have led to the Staff of CCOC doing BETA testing on the database program. More meetings will be conducted soon.

9. Committee Reports

a. Chair person's report.

1. Recommendations to revise CCOC process and procedures. A task force of the Commissioners has had discussion with the Director and Staff supervisor regarding changes they have recommended and have directed the staff to draw up changes in policy recommendations and submit them as soon as possible and circulated them to all concerned.
2. Eight (8) requests for hiring contractors with very specific duties have been sent to the Director and then to the Supervisor.
3. Status of Commission's IT efforts. The deadline imposed by the Commission has passed and the case management product is greatly needed. The Commissioners would like this matter resolved and a program for CCOC complaint process in place as soon as possible.
4. A discussion was had concerning the Commission's payment of the 17.39% charge back to the county for allocated costs. The idea was discussed that the overhead was not charged to the Commission when it was part of the Office of Consumer Protection. Since that money is being taken for associated costs, the Commission cannot do the things it is charged with doing.

b. Education

1. Three Seminars are being set up currently. Revamping the website and all the brochures and manuals also are being done. Board training is in the works as well.

c. Legislation

1. State session ends Monday. No bills were passed so far. The House approved several but they have not moved forward and no more sessions are scheduled for this year. So, it is almost a certainty all the bills are going to die.
2. Also, Areas of involved are changes to the County Code for HOA fines and grievance procedures; restarting the roadway reimbursement program, procedures for how HOAs adopt rules; and amending the towing laws to remove COCs from their restrictions.

d. Process & Procedures

1. Memo being sent to Jay up get a more formal response from him regarding

staff complaint handling policies.

e. Interviewing Committee Status Report

Thirteen (13) applicants applied, two (2) dropped out initially, and one more followed them later. Three (3) applicants reapplied. The list was sent to the County Executive. The three (3) incumbents said yes. There were a couple of highly qualified attorneys that could-be used as panel chair . The Commission will be pursuing this further. Currently, there are two vacancies on the Commission.

f. Meeting spaces

A discussion was had about Commissioners being stuck in elevators and whether that problem will be corrected. It was said that for the last two meetings, the door in the back parking lot was still locked at 6:30-7:00pm. The idea was put forth to move the meetings back to the Council Office Building (COB). It would be a better presence to the public not meeting in a lunch room, it would be a better space and full facilities for everything the Commission needs as well as security around the clock. An informal show of hands was unanimous among the members to move meetings back to the COB.

10. OLD BUSINESS

- a. Update on request for county agency outreach regarding county and utility infrastructure maintenance in community associations.

Since no information was available concerning this matter, it was decided that follow up would be sought from Mr. Drymalski.

- b. Update on the schedule/proposals for quarterly seminars and an annual forum.

The matter was discussed under committee reports.

- c. Status report on survey to be set out with June billings.

The matter was discussed previously.

- d. Update on case management system.

IT told the Commission the case management system would be available the week of April, 24th.

11. NEW BUSINESS

- a. Survey sent to condominiums regarding survey about food waste.

Since no information was available concerning this matter, it was decided that follow up would be sought from Mr. Drymalski.

- b. Suggestion that the Commission schedule a meeting with Judges to discuss association concerns about bankruptcy and delinquencies.

The concern is that judges are implementing the collection law. The judicial system is not helping. A discussion was had previously with the Chief Judge of the District Court and concern was expressed as to why fees are being withheld from Attorneys. It was agreed that it was a good presentation but there was still concern over the Clerks not being responsive to some Attorneys and legal fees of 15% maximum were being awarded. The impact on associations who have to pay legal fees was great. The Judges opinion was that Attorneys take advantage of owners through collection of fees in other charges. The Commission determined not to proceed further with this issue at this time.

12. Adjournment