



OFFICE OF THE COUNTY EXECUTIVE

Isiah Leggett  
County Executive

Timothy L. Firestine  
Chief Administrative Officer

MEMORANDUM

March 18, 2015

TO: Chris Cihlar, Director, Office of Legislative Oversight

FROM: Timothy L. Firestine, Chief Administrative Officer *Timothy L. Firestine*

SUBJECT: OLO Draft Report No. 2015-8, An Evaluation of the Commission on Common Ownership Communities

I am in receipt of your draft report No. 2015-8, providing an evaluation of the Commission on Common Ownership Communities. As the first review of this program in over 20 years, and understanding the limitations of the sample size responding to the surveys, your assessment of this program has been thorough, thoughtful, and balanced. I am pleased that your review resulted in identifying potential ways to improve upon the success of this relatively unique program.

In response to the report's Recommendations, I offer the following comments:

**OLO Recommendation #1:** Request the County Executive review the Commission's allocation of resources and ensure the Commission performs all tasks mandated by Section 10B, including more informal dispute resolution (mediation), education, and policy work.

**CAO Response:** We agree with this recommendation. County Executive Leggett established the initial Task Force, recommended they consider the creation of the Commission, and introduced legislation to ultimately establish the Commission more than 20 years ago. Striving to encourage and provide informal dispute resolution as an alternative to litigation in court continues to be one of the primary responsibilities of the Commission. However, as referenced in Finding #5, this unique program is no longer operating as an informal and efficient dispute resolution program. We share the concerns expressed by some stakeholders that the Commission's hearing process can be protracted and expensive especially when the parties retain legal counsel. We support the idea that the work of the Commission should be refocused on its original objectives with much more emphasis on community outreach, education, informal negotiation, and mediation.

To the extent that Commission staff is engaged in duplicating a process similar to court litigation, Commission staff does not have the time or resources to engage in outreach, education, and other services which may assist those living in common ownership communities.

Chris Cihlar, Director, OLO

Page 2

March 18, 2015

We are determining what steps could be taken to promote a more robust informal resolution program. For example, the mediation offered by the Commission is currently optional. Mandating participation in mediation may serve to enhance the Commission's ability to function as an alternative dispute resolution program while also enabling Commission staff to engage in other more productive activities.

Funding for the Commission is supported by an annual fee charged to every common ownership community unit. It is necessary to strike an appropriate balance between the fees and the services which these common ownership communities receive.

**OLO Recommendation #2:** Request the Executive to develop an electronic case management system for all Commission complaints and a database inventorying all relevant information regarding common ownership community.

**CAO Response:** While we recognize the need to determine and develop an optimum way to enable staff to provide support to the Commission through the use of electronic data management, the Office of Consumer Protection (OCP) does not currently have this technology. This year, OCP will work with the Department of Technology Services to upgrade the department to an electronic case management system. At that time, we will assess the needs of the Commission as well.

**OLO Recommendation #3:** Absent significant drawbacks, including organizational capacity to absorb the Commission, relocate the Commission on Common Ownership Communities from the Office of Consumer Protection to the Department of Housing and Community Affairs (DHCA).

**CAO Response:** We recognize the need to provide sufficient resources to support the mission of the Commission. We believe that this concern is best addressed by refocusing and adjusting the Commission's complaint resolution process to ensure that it operates as an alternative dispute resolution process. In addition, we recognize that sufficient information technology resources would need to be provided to OCP and the Commission in order to accomplish this goal. We believe the Commission's operational efficiency will be greatly improved as a result of the implementation of the first two OLO recommendations.

We believe that the work of the Commission should be refocused on its original mission of educating owners and Association Boards on their rights and responsibilities, outreach for the purpose of building stronger organizations, and most importantly, utilizing its resources to create a system which provides an incentive to mediate differences rather than relying on litigation. We realize that the Commission needs additional resources to get the job done. This includes financial, human, and technology resources to help the operation run smoothly. Once this assessment is complete, we will revisit the issue of where the Commission should be located.

Chris Cihlar, Director, OLO

Page 3

March 18, 2015

Again, I thank the Office of Legislative Oversight for its work on this report. If you have questions or need additional information please contact Fariba Kassiri, Assistant Chief Administrative Officer.

TLF:ef

cc: Fariba Kassiri, Assistant Chief Administrative Officer  
Eric Friedman, Director, Office of Consumer Protection  
Clarence Snuggs, Director, Department of Housing and Community Affairs  
Sonny Segal, Director, Department of Technology Services



# MEMORANDUM

TO: Kristen Latham and Stephanie Bryant  
Legislative Analysts  
Office of Legislative Oversight

FROM: Rand H. Fishbein, Ph.D., Chair  
Marietta Ethier, Esq., Commissioner  
Commission on Common Ownership Communities

DATE: February 27, 2015

SUBJECT: Commission on Common Ownership Response to the draft OLO Report  
Entitled: *An Evaluation of the Commission on Common Ownership  
Communities*

---

The purpose of this memorandum is to provide the official response of the Commission on Common Ownership (CCOC) to the draft report of the Office of Legislative Oversight (OLO) on the operations and requirements of the (CCOC) entitled: *An Evaluation of the Commission on Common Ownership Communities*.

## **Introduction**

The CCOC wishes to express its gratitude to the Office of Legislative Oversight for the impressive report it has produced and the important contribution it is sure to make in strengthening the CCOC and, by extension, improving good governance and social stability in common interest communities across Montgomery County.

Special words of appreciation are due Legislative Analysts, Kristen Latham and Stephanie Bryant, for the fair and balanced manner in which they analyzed the mandate, administrative requirements and constraints under which the CCOC operates. -Their openness to suggestions, diligence and professionalism, throughout the period of their work with the Commission speak highly of their efforts. The Commission looks forward to following up with the OLO in the coming months as we work to make many of changes in policies and procedures suggested by its report – changes that we expect will improve both the efficiency and effectiveness of the services we deliver to County residents.

## **Mandate, Expectations and Realization**

The original drafters of Chapter 10B rightly identified the needs of COCs as shown in the recitation of the issues they expected the Commission to address -- issues ranging from

governance, education and dispute resolution, to matters relating to the maintenance of property values and the financial health of COCs as a means of preventing public financial liability.

The OLO rightfully points out in its General Findings that: “(t)he Commission’s resources have been focused on dispute resolution and as a result, the Commission has done limited work towards their mandated education and policy missions.” Putting the best possible light on the data, last year the Commission reached, through seminars and its annual forum, less than 10% of board members and less than 1% of unit owners. Here are a few examples of what we could and should be doing:

- There are a number of COCs that are financially very secure, well-staffed and are exploring various cost saving approaches. The Commission should be a conduit for the exchange of information whereby the haves share with the have-nots. One condominium replaced 1700 light bulbs in common areas with LED bulbs. The project resulted in annual savings in electricity of \$29,888. The original cost was \$23,603. This is a building with only 97 units.

Moreover, with Pepco incentives the condominium paid under \$5,000 to replace the bulbs and may realize an additional \$2500 in saving if it undertakes an energy study through PEPCO’s consultant Lockheed Martin. The Commission should be disseminating information on such projects and if necessary identifying banks and other funding sources who could loan COCs money to underwrite same. If one fourth<sup>1</sup> of the COCs undertook such a cost saving measure there could be a potential *collective reduction in the cost of electricity of \$7,762,500 the second year.*<sup>2</sup>

- The 1261 requests for information in an eighteen month period highlighted in the OLO report shows a hunger for knowledge. A brochure on how to hold an election doesn’t assure compliance. A webinar or webcasts where board members can ask questions is much more effective. The Commission could, and should, organize, market and sponsor many such interactive communication sessions.
- A recent informal survey conducted by the Commission identified a substantial number of COCs as self-managed. As a recent case before the Commission shows this is fertile ground for financial mismanagement. The Commission could pair successful COCs with those needing help and could establish an educational program specifically for self-managed entities and identify inexpensive sources of financial support.
- The potential for creativity is almost limitless from identifying addressing basic needs such as sample forms, resolutions and similar documentation to investigating the possibility of having COCs use sequential generation of electric and thermal energy from a single fuel source such as natural gas

---

<sup>1</sup> Many COCs are HOAs with limited common areas but many condominiums are much larger than the 97 unit building identified above.

<sup>2</sup>This assumes a one year payback.

## **Staffing**

We concur, wholeheartedly, with the OLO recommendation that the CCOC is in urgent need of additional staffing. The Commission has done some further identification of the needs and the staff required to address all of the functional areas covered in our statutory mandate. We have urged both the County Executive and the Council to address these requirements fully in the FY 2016 budget so that the Commission can build the capacity essential to its function.

## **Automation**

Your second recommendation recognizes that the key to efficient and effective delivery of services is automation. Unfortunately the Commission's ability to communicate digitally with its constituents in a targeted fashion and in real time is virtually non-existent. At present, the Commission has:

- no digital case management system (unlike the courts and the Office of the County Attorney),
- no digital survey capability,
- no ability to collect and disseminate real-time performance metrics,
- no ability to develop or track budgets,
- no ability to do digital messaging, conference calling, media communications, scheduling,
- no ability to efficiently manage personnel and task allocations,
- no ability to interface with other County agency data sets,
- no modern user-friendly web site,
- no ability to host interactive online courses or educational programs, and
- no ability to serve as an integrated digital clearing house for information on common ownership communities.

The Commission is in discussions with several organizations regarding how it might fully modernize its data management system from one that is essentially paper-based to one that is fully digitized.

Your report also points out that recently enacted Council Bill 45-14 will add significantly to the need for information gathering, processing and tracking. The Commission believes that this is true and urges the Executive and the Council to provide the Commission with additional resources to address this additional workload.

## **Dispute Resolution Process**

The Commission is in agreement that the present dispute resolution process is long and paper intensive and that some of the "lesser" claims could be handled in a more informal manner and at less cost. Our staffing requests indicate a strong need to build the capacity for dispute resolution across the full continuum of conflict, from the intervention of an

ombudsman, to mediation to formal adjudication of complaint by a quasi-judicial hearing panel.

Recently, the Commission established a Process and Procedures Committee for the purpose of comprehensively evaluating all CCOC case operations from intake to final disposition with the goal of identifying greater efficiencies without sacrificing fundamental due process rights. The Committee will report back to the full Commission with its recommendations that could range from simple changes in policy to enhancement to our basic authorities. The issues which you have identified will be part of this process.

### **Ethics Commission Ruling**

We respectfully request that you add a recommendation that in the absence of any proven problem with attorneys serving as Panel Chairs and also practicing before the Commission, all previously approved attorneys should be permitted to resume their duties while the concerns of the Ethics Commission are being addressed.

***The Ethics Commission's Letter of Guidance has had crippling effect on the Commission's operations by forcing a Fifty Percent (50%) reduction in our pool of volunteer attorney panel chairs. Attorneys who practice before the Commission and who also serve as Panel Chairs, have been barred from serving the Commission until questions of an appearance of a conflict of interest (not actual), are satisfactorily resolved.***

To the best of our knowledge, there never has been a confirmed instance of a conflict of interest in the nearly 25 years of Commission panel operations. The four instances referenced in the OLO report "where individuals felt that there was a bias..." should be taken as anecdotal until confirmed by an evidentiary investigation. The CCOC has requested, but not received from the Ethics Commission, any details of the complaints made to the CCOC or the names of the complainants. Under these circumstances, it has been impossible for the CCOC to investigate the veracity of the claims or defend its actions.

Nevertheless, the Commission takes any suggestion of a conflict of interest very seriously and currently is looking into put in place additional safeguards to ensure such instances do not arise and if so, are dealt with appropriately.

As noted earlier, the Commission has established a Process and Procedures Committee to review all aspects of the Commission's operations. Part of their charge is to consider meaningful approaches to addressing the issues raised by the Ethic Commission. One idea now under consideration is to put in place "filters," both individuals and rules, that would help to screen attorneys for any actual and/or perceived conflicts of interest. These filters would be in addition to those already in place and which have safeguarded our process successfully for the last quarter century.

Lastly, we respectfully ask that the OLO include a statement in its report to the effect that the Ethics Commission, in its Letter of Guidance to the CCOC, was unable to cite any confirmed instance of a conflict of interest relating to attorney service as a panel chair and his/her practice before the Commission.

### **Where Should the Commission Reside?**

We note, with much reservation, the OLO recommends that the Commission relocate to the Department of Housing and Community Affairs (DHCA). We reluctantly must disagree. The Commission's Budget and Policy Committee has considered this option, met with DHCA officials, and concluded that this would not be a good fit for the following and other reasons:

- The main focus of DHCA is on rentals and individual ownership. COCs have unique issues and problems that need a different focus and approach,
- The Commission wants to think "outside the box"; looking for new creative solutions to issues,
- COCs need an advocate, an entity that will argue their special needs at the County and state levels. This advocacy may conflict at times with the interests of other housing constituencies,
- A major focus of DHCA is housing code enforcement which is not a function authorized under the CCOC's enabling legislation, and
- The Commission is a quasi-judicial body whose functional responsibilities lay outside the traditional focus of both OCP and DHCA.

The Commission has proposed to both the County Council and the County Executive that the Commission become an independent agency, funded through a combination of fees (as currently done), and General revenue. As a stand-alone agency, we would require staffing, funding and administrative capacity essential to meet all of our statutory mandates. After 25 successful years of operation, several NACo achievement awards and a respected body of case decisions, the CCOC has demonstrated it is ready, willing and able to assume the responsibilities associated with being a fully-fledged County agency. It still would be our desire to report directly to the County Executive and the County Council as we currently do.