

Before the  
Commission on Common Ownership Communities  
for Montgomery County, Maryland

In the Matter of	x	
Howard Jenkins, et al; Owners of	x	
Units # 108, 112, 701, 712, 1008,	x	
1101, 1109, and 1210,	x	
3333 University Boulevard, West	x	
Complainants	x	
	x	Case No. 112-0
Vs.	x	January 27, 1993
	x	
Lew Hages, President	x	
Board of Directors	x	
Waterford Condominium, Inc.	x	
Respondent	x	

Decision and Order

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 25th day of January, 1993, found determined and ordered as follows:

On August 17, 1991, Howard and Elaine Jenkins, owners of Unit #1101, 3333 University Blvd. West, acting as agent for seven other unit owners; namely, Complainants Theresa Mullaney - Unit # 108; Harold and Hazel Niebel - Unit # 112; Harry C. Lynch and Lillian Secundy-Lynch - Unit #701; Wallace Hoover - Unit # 712; Laurette Endres - Unit # 1008; Johanna Muys - Unit # 1109; and Richard Schaben - Unit # 1210 (hereinafter collectively referred to as the "Complainants") filed a formal dispute with the Office of Common Ownership Communities. The Complainants alleged that Waterford Condominium, Inc., Board of Directors, Governing Body of Waterford Condominium, Inc., hereinafter the Respondent, did not have the authority to impose a \$15.00 per month fee for the use of their limited common element parking spaces, pursuant to Article XV, Section 1(f) and (g) of the Community's Bylaws.

The Respondent Board contended that it had the authority to assess the Complainants for the cost of maintenance of the limited common element parking spaces, pursuant to Article XIII, Section 1 and 2 of the Community's Bylaws; and Article XV, Section 1 (f) and (g) and Section 4 of the Community's Bylaws.

The Complainants sought an order for the Respondent Board to reimburse any previously paid parking assessments, and to cease collection of any further parking assessments, or associated costs.

"(a) the limited common elements include those designated as such on the Record Plat and such other as are agreed upon by a majority of the co-owners to be reserved for the exclusive use of a certain number of condominium units.

(b) This condominium project has designated on the Record Plat certain parking spaces located on the project and which are identified by the Arabic numerals 1 through 10. These parking spaces are limited common elements which shall be assigned, by sale or transfer in the first instance by the Developer to the use of a specific Unit. The method of assignment and subsequent re-assignment is set forth in the By-Laws of the Council of Co-Owners."

c. Article XV of the By-Laws then provides the following language regarding the manner in which the aforesaid spaces shall be maintained:

"Section 1. Management and Common Expenses. The Corporation, acting by and through its Board of Directors, shall manage, operate and maintain the condominium project and, for the benefit of the condominium units and the owners thereof, shall enforce the provisions hereof and shall pay out of the carrying charges hereinafter provided for, the following:

(f) The cost of any and all other materials, supplies, labor services, maintenance, repairs, taxes, assessments or the like, which the Corporation is required to secure or pay for by law, or otherwise, or which in the discretion of the Board of Directors shall be necessary or proper for the operation of the common elements; provided, however, that if any of the aforementioned are provided or paid for the benefit of a particular condominium unit or units, the cost thereof shall be specially assessed to the owner or owners thereof in the manner provided in subsection (g) of Section 1 of this Article.

(g) The cost of maintenance or repair of any condominium unit in the event such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the common elements or to preserve the appearance or value of the condominium project or is otherwise in the interest of the general welfare of all owners of the condominium units; provided, however, that no such maintenance or repair shall be undertaken without a resolution by the Board of Directors without reasonable written notice to the owner of the condominium unit proposed to be maintained and provided further that the cost thereof shall be assessed against the condominium unit on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then owner of the condominium at which time the assessment shall become due and payable and a continuing lien and obligation of said owner in all respects as provided in Article VIII of these By-Laws." (emphasis added)

"(a) the limited common elements include those designated as such on the Record Plat and such other as are agreed upon by a majority of the co-owners to be reserved for the exclusive use of a certain number of condominium units.

(b) This condominium project has designated on the Record Plat certain parking spaces located on the project and which are identified by the Arabic numerals 1 through 10. These parking spaces are limited common elements which shall be assigned, by sale or transfer in the first instance by the Developer to the use of a specific Unit. The method of assignment and subsequent re-assignment is set forth in the By-Laws of the Council of Co-Owners."

c. Article XV of the By-Laws then provides the following language regarding the manner in which the aforesaid spaces shall be maintained:

"Section 1. Management and Common Expenses. The Corporation, acting by and through its Board of Directors, shall manage, operate and maintain the condominium project and, for the benefit of the condominium units and the owners thereof, shall enforce the provisions hereof and shall pay out of the carrying charges hereinelsewhere provided for, the following:

(f) The cost of any and all other materials, supplies, labor services, maintenance, repairs, taxes, assessments or the like, which the Corporation is required to secure or pay for by law, or otherwise, or which in the discretion of the Board of Directors shall be necessary or proper for the operation of the common elements; provided, however, that if any of the aforementioned are provided or paid for the benefit of a particular condominium unit or units, the cost thereof shall be specially assessed to the owner or owners thereof in the manner provided in subsection (g) of Section 1 of this Article.

(g) The cost of maintenance or repair of any condominium unit in the event such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the common elements or to preserve the appearance or value of the condominium project or is otherwise in the interest of the general welfare of all owners of the condominium units; provided, however, that no such maintenance or repair shall be undertaken without a resolution by the Board of Directors without reasonable written notice to the owner of the condominium unit proposed to be maintained and provided further that the cost thereof shall be assessed against the condominium unit on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then owner of the condominium at which time the assessment shall become due and payable and a continuing lien and obligation of said owner in all respects as provided in Article VIII of these By-Laws." (emphasis added)

d. Finally, Section 4 of the By-Laws sets forth the owners' duty to maintain their condominium units as well as the common elements, as follows:

"Section 4. Duty to Maintain. Except for maintenance requirements herein imposed by the Corporation, if any, the owner of any condominium unit shall, at his own expense, maintain the interior of his condominium unit and any and all equipment, appliances or fixtures therein situate, and its other appurtenances (including, without limitation, the balcony and railing thereof, appurtenant to such condominium unit) in good order, condition and repair, free and clear of ice and snow, and in a clean and sanitary condition, and shall do all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of his condominium unit and such appurtenances, except for the painting of the balconies, which shall be a common expense. In addition to the foregoing, the owner of any condominium unit shall, at his own expense, maintain, repair or replace any plumbing and electrical fixtures, filters, plenums, heating and air-conditioning, convectors and equipment, lighting fixtures, refrigerators, freezers, dishwashers, disposals, ranges, range hoods, and/or other equipment that may be located within such condominium unit, and that service only such unit. The owner of any condominium unit shall also, at his own expense, keep any other limited common elements which may be appurtenant to such condominium unit and reserved for his exclusive use in a clean, orderly and sanitary condition. From and after the recording of these By-Laws, no clothes washers or dryers may be installed in any condominium unit." (emphasis added)

5. The Complainants own nine of the ten sets of reserved parking spaces in the Condominium. According to the testimony of the condominium representatives the reserved parking spaces are the only limited common elements in the Condominium.

6. In October of 1990, the Condominium mailed its proposed FY 1991 budget to the members of the Condominium. This proposed budget contained a proposal to assess a \$15.00 monthly fee on the owners of the reserved spaces for the cost of maintaining said spaces. This was the first notice received by the owners of the spaces that any fees or charges would be levied against them for the use or maintenance of the spaces.

7. During its regular monthly meeting in December of 1990, the Board of Directors for the Condominium unanimously adopted the proposed FY 1991 budget which included the \$15.00 monthly assessment on the owners of the reserved parking spaces.

8. Before adopting this resolution, the Board sought and obtained an opinion from its legal counsel that it had authority to impose a separate fee on the owners of the reserved parking spaces for the maintenance of the spaces, and Lew Hages, Board President, testified that the Board relied upon Article XV, Section 1(f) of the Bylaws as the basis for the assessment. He further testified that the Board had obtained a rough estimate of the costs of the services provided by the condominium for the maintenance of the reserved spaces, and that the Board selected \$15.00 as the amount of the monthly assessment after first considering an assessment of either \$15.00, \$20.00 and \$25.00.

9. Neither Mr. Hages nor any other witness produced any written estimates of expenses which were used by the Board in adopting the monthly assessments. The only written document which was offered by the condominium at the hearing to substantiate the expenses was a written list of expenses prepared for the hearing as Respondent's Exhibit 2, which contains bid proposals as recent as December 9, 1992, and was obviously prepared for the hearing and did not exist when the assessment was first imposed in December of 1990.

10. Since imposing the \$15.00 maintenance fee, the Condominium has stopped maintaining the reserved parking areas because none of the Complainants have paid the fee and the Condominium therefore believes it has no obligation to clean or maintain the parking areas. As a result, the floors have accumulated grease and oil and leaves have been blown into the garage which have not been removed by the condominium. The Condominium has also taken no action to repair damage to certain columns in the parking garage or to the ceiling drywall which was apparently installed shortly after the Condominium was converted in order to prevent overhead pipes in the garage from freezing.

#### CONCLUSIONS OF LAW

The first issue raised in this case is whether or not the Condominium has authority to impose an annual fee against the owners of the reserved parking spaces for the maintenance thereof. If the answer to this question is in the affirmative then a subsidiary question arises, namely, whether the fee may include all of the maintenance items set forth in Respondent's Exhibit 2.

In order to answer these questions, it is necessary to first review the provisions of the Master Deed and By-Laws quoted hereinabove. If the language in them is clear, as the Panel Commission concludes it is, then these documents are to be applied to the facts of the case.

1. According to Article 1, Section 1(f) of the Master Deed, the limited common elements include the reserved parking spaces at issue in this case.

2. Plat No. 657, which is the only document on record which defines the reserved parking spaces, only shows the floor space occupied by the parking spaces themselves and does not define said spaces as including the walls, ceilings or other areas in the garage. Accordingly, the Commission concludes that the reserved parking spaces include only the floor of the spaces themselves and enough airspace to park a car within the space shown on Plat No. 657.

3. The reserved parking spaces are limited common elements reserved for the exclusive use of the Complainants and they are therefore required, under Article XV, Section 4 of the By-Laws, to maintain the spaces in a clean, orderly and sanitary condition. The Complainants have no further duty to maintain said spaces.

4. The Condominium has argued that it has authority, under Article XV, Section 1(f) of the By-Laws, to maintain the reserved parking spaces in such manner as it deems necessary and proper and to pass an annual assessment for the anticipated cost thereof against the owner of any unit which is benefitted by the space. The Commission disagrees with this analysis. Under Article XV, Section 1(f) of the By-Laws, the Condominium does indeed have discretion to maintain the common elements in such manner as the Board believes to be necessary and proper. However, it may not assess the cost of maintaining said space against the owner of the reserved parking spaces unless it follows the provisions of subsection (g), which require that the owners be given reasonable written notice of the maintenance or repair to be done, that only the cost thereof may be assessed against the unit owner, and that afterwards a statement of the actual amount expended be provided to the unit owner.

5. The Condominium failed to comply with any of the three prerequisites stated in Article XV, Section 1 (g) in this case. First, the condominium did not provide reasonable written notice of the maintenance or repair to be done when it listed the monthly reserved parking fee in its FY 1991 Budget. Second, the cost of the repairs were never assessed against the unit owner because the Condominium did not know the cost at the time the budget was prepared. In fact, to this day the Condominium is still unclear as to the cost of the maintenance of the spaces. By its own admission, the Condominium stopped performing the maintenance and repairs when the Complainants refused to pay the assessment. And third, no statement has been given to the unit owners because the maintenance and repairs were never performed. Accordingly, the Commission finds that any reserved parking space assessment included in the FY 1991, 1992 or 1993 budgets are invalid.

6. The parties to this case have also requested that the Commission provide guidance as to future charges which may be levied on the owners of reserved parking spaces, in order to avoid returning to the Commission with a new complaint on this issue in the future. While it is not the role of this Commission to issue advisory opinions on issues which are not before the Commission, in the course of this decision the Commission has reached a conclusion regarding the definition of the reserved parking spaces which should assist the parties in resolving this issue for themselves. As stated in paragraphs 2 and 3 of these Conclusions of Law, the reserved parking spaces include only the floor of the garage itself and the owners of said spaces have an obligation only to maintain said area in a clean, orderly and sanitary condition. Without deciding which of the various items listed in Respondent's Exhibit 2 may be assessed against the owners of said spaces, it should be clear from the above discussion that only the unit owner's duty to maintain the spaces is limited and that the Condominium is also required to first notify the owners that they are not maintaining the area properly, and only then may the cost of performing those services be assessed against the owner thereof. In this case, the Condominium not only failed to comply with these prerequisites, but its attempted assessments were also for numerous services which the unit owner is not required to perform.

7. Both parties have also requested that attorney's fees be assessed against the other party. The Commission finds that the Condominium did not impose the contested fee in bad faith nor did it engage in the type of "intentional misconduct" which would permit the imposition of attorney's fees in this case. See Black, et ux. v. Fox Hills North Community Association, Inc., 90 Md. App. 75, 599 A.2d 1228, 1232 (1992). Accordingly, the Commission declines to assess attorney's fees against the Condominium.

#### ORDER

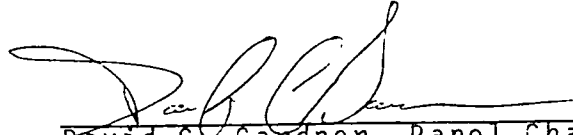
In view of the foregoing, and based on the evidence of record, the Commission orders the following:

1. That the fee for the reserved parking spaces imposed by the Respondent in its FY 1991, 1992 and 1993 budgets are invalid and that the Complainants are not required to pay any such assessment.

2. That the Complainants are entitled to a refund of any fees for their reserved parking spaces which have been collected by the Respondent pursuant to its FY 1991, 1992 and 1993 budgets.

The foregoing was concurred in by Panel members Pruitt and Gardner. Commissioner Cohen recused himself from the deliberations and 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 (30) days from the date of this Order pursuant to Chapter 1100, Subtitle B, Maryland Rules of Procedure.



David C. Gardner, Panel Chairperson  
Commission on Common Ownership  
Communities

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