

1. That the 2005 - 2006 budget was adopted without proper input of the unit owners and without following proper procedures.

2. That the candidates listed on the proxy/ballot and ballot for the 2005 elections for the Board of Directors were not listed in alphabetical order.

3. That the Respondent improperly disregarded a petition filed by the Complainant and a number of unit owners on or about July 5, 2005. (Commission Exhibit, page 36)

4. That the Respondent maintains incomplete, inaccurate and inadequate meeting minutes and records of voting.

FINDINGS OF FACT

1. The Complainant is the owner of a unit in Camelback Village Condominium Association, Inc. The Respondent Camelback Village Condominium Association, Inc. is the governing body of a condominium created under the Maryland Condominium Act consisting of 193 units.

2. The Maryland Condominium Act, Section 11-109.2(a), Real Property Article, Maryland Annotated Code, requires that the council of unit owners of a condominium cause to be prepared and submitted to the unit owners an annual proposed budget at least 30 days before its adoption. The By-laws of the condominium, Article VII, Section 4, provide that it is the duty of the Board of Directors to prepare and adopt a budget

covering the estimated costs of operating the condominium during the coming year. The Board is required to cause the adopted budget, and assessments proposed to be levied against each unit in accordance with the budget, to be delivered to each unit owner at least 21 days prior to the beginning of the new fiscal year. The fiscal year of the condominium is August 1 - July 31.

3. The Respondent submitted a proposed budget for the fiscal year beginning August 1, 2005 to the unit owners on May 20, 2005 and scheduled a meeting for the Board to review and approve the budget for June 20, 2005. The Board of Directors consists of five members.

4. A number of unit owners, including the Complainant, appeared at the June 20, 2005 meeting of the Board of Directors and voiced objections to the proposed budget. As a result, the Board adjourned the regular Board meeting and went into a Board work session to attempt to further reduce the budget. The testimony of both parties was that this was an open work session. All Board members except the President were at the Board work session on June 20, 2005. The President left earlier, when the regular Board meeting was adjourned.

5. The Respondent scheduled the annual membership meeting for July 19, 2005, at which it conducted an election to the Board of Directors. Sometime after the June 20, 2005 work session, the Respondent also submitted to the unit owners the revised budget which was the product of the June 20, 2005 Board work session. The date on

which the Respondent submitted the revised budget to the unit owners is not clear. While it was clearly delivered to the unit owners at least 21 days prior to the beginning of the new fiscal year, in accordance with Article VII, Section 4 of the By-laws, it is equally clear that it could not have complied with Section 11-109.2(a), Real Property, of the Maryland Condominium Act since the revised budget could not have been submitted to the unit owners sooner than June 21, 2005 and the annual meeting was set for July 19, 2005.

6. The President of the Respondent, James Bogar testified that at the outset of the July 19, 2005 annual membership meeting the Board of Directors voted unanimously to adopt the revised budget which had been produced as a result of the June 20, 2005 Board work session. Thereafter the Respondent conducted the membership meeting. No minutes of the July 19, 2005 vote or meeting were offered into evidence.

7. Three positions on the Board of Directors were up for election at the July 19, 2005 meeting. Initially, four candidates ran for those three positions and the Respondent printed mail-in proxy ballots identifying those four candidates. Section 10B-17, Montgomery County Code 1994, as amended, requires that the candidates for election to the Board of Directors be listed on all ballots in alphabetical order. Respondent did not do so, and candidly concedes that it did not do so.

8. There was testimony that in addition to distributing mail-in proxy ballots,

there were

regular ballots available at the July 19, 2005 meeting. There was no testimony with regard to how the candidates were listed on the regular ballots and no copy of a regular ballot was submitted into evidence.

9. Just hours before the July 19, 2005 annual meeting, one of the candidates for election to the Board of Directors withdrew, leaving three candidates for the three openings.

10. Neither party submitted documents establishing the number of proxies collected or of persons present in person, or the vote count of the election. However the testimony was that there was a quorum present, either in person or by proxy, at the July 19, 2005 meeting and that there were sufficient votes to elect the three candidates running for the three offices.

11. On or about July 5, 2005 Complainant submitted a petition dated July 3, 2005 to the condominium “in accordance with Sections 11-109(c)(6), 11-109.2 and Section 11-109.1 of the Real Property Article of the Annotated Code of Maryland.” Commission Exhibit 1, page 36 et seq. Section 11-109(c)(6) requires that a meeting of a governing body be open and held at a time and location as provided in the notice or by-laws. Section 11-109.2 deals with adopting the annual proposed budget. Section 11-109.1 deals with closed meetings of the Board of Directors.

12. The July 3, 2005 petition requested the Board of Directors to hold a special meeting “as prescribed by Section 11-111(a)(3)(b)(1)(i).” Commission Exhibit 1, page 37 et seq. This appears to be an incorrect citation. In any event, Section 11-111, Real Property Article, deals with the adoption of rules and regulations by a condominium. It does not deal with elections or with budgets.

13. While Complainant stated that the Respondent has incomplete, inaccurate and inadequate meeting minutes and voting records, her testimony did not indicate that she made any serious effort to examine the books and records of the condominium to substantiate this assertion. The community manager for the condominium, Annie Geralis, testified that minutes are always taken of Board of Directors meetings and that currently she, Ms. Geralis, personally takes those minutes. She further testified that at Board meetings one of the first orders of business is to approve the minutes of the preceding meeting.

14. The condominium is currently operating under the budget revised at the Board work session after the June 20, 2005 meeting and adopted at the beginning of the membership meeting on July 19, 2005. The Board of Directors currently in place is the Board elected at the July 19, 2005 annual meeting of the members. That election

resulted in a change in only one position on the Board.

15. Complainant also testified that the Respondent failed to observe the automatic stay provisions of Chapter 10B-9(e) of the Montgomery County Code, 1994, as amended. That section states that when a dispute is filed with the Commission a community association must not take any action to enforce or implement the association's decision except filing a civil action in the Circuit Court, until the process before the Commission is completed.

16. The testimony established that the Complainant filed her complaint with the Commission on Common Ownership Communities on July 19, 2005. The Respondent was not aware of the filing of this complaint at the July 19, 2005 annual meeting when the Board of Directors took the action to approve the budget for the year beginning August 1, 2005 and when the election of Board members took place. On July 21, 2005 the Commission on Common Ownership Communities notified the Respondent of the filing of this complaint. By that time the new Board had been installed and had its organizational meeting. The budget for the next fiscal year had been adopted, although not implemented.

17. The condominium's By-laws, Article VII, Section 4, provide that in the

event that the

Board fails for any reason to adopt a budget for the next fiscal year then until such time as a budget has been adopted the budget and assessments in effect for the current year continue for the succeeding year. There was no testimony as to what the monthly assessments are, but the new budget did involve a 6.89% increase and therefore presumably the monthly assessments also increased.

18. On August 22, 2005 counsel for the Respondent requested expedited relief from the stay pursuant to Section 10B.06.01.03(c) of the Code of Montgomery County Regulations. The Panel could not determine that this request had been acted upon.

CONCLUSIONS OF LAW

1. A strict review of the events of this case calls for the conclusion that the Board of Directors of Respondent did not adopt the 2005 -2006 budget at a regularly called Board meeting. The Board intended to adopt this budget at the June 20, 2005 Board meeting. Instead, it revised the budget in a Board work session and circulated the revised budget to the members. Arguably, the Board voted on the revised budget at the June 20, 2005 Board work session. However this Board work session occurred after the Board meeting scheduled for that night had been adjourned. The unit owners therefore did not have reasonable notice that the Board was meeting to adopt a budget in the Board work session. Section 11-109.2(c), of the Real Property Article requires

that the budget be adopted at an open meeting.

2. The Board did vote and adopt the budget at the outset of the July 19, 2005 membership meeting. However, this was a membership meeting and not a Board meeting and therefore technically not the proper place for the Board to adopt the budget. Nevertheless, the effect of the Board's actions was that the Board considered a proposed budget, revised it after input of the unit owners and adopted it at an open meeting where the unit owners had an opportunity to be present. The Board should observe more carefully the technical requirements for adopting a budget, since they are in place to assure that the unit owners have ample notice and an opportunity to participate regarding Board actions. However, any shortcomings in this case, the Panel finds, are harmless error.

3. The Respondent candidly admits it failed to list the candidates on the mail-in proxy/ballot in alphabetical order as required under Chapter 10B-17 Montgomery County Code, 1994, as amended. Since as it turned out only three persons were running for the election to fill three spots, this also results in harmless error.

4. The Respondent ignored Complainant's petition filed on or about July 5, 2005. Since the events in this case did not involve adoption of a rule or regulation, that petition had no legal effect. The Board could have treated that petition as a request for

a special meeting of the unit owners under Article III, Section 2 of the condominium's By-laws. However, the petition was signed by 35 unit owners, and there are 193 unit owners in the condominium. This is approximately 18% of the unit owners. Votes are determined in accordance with percentage interest in the condominium, and the percentage interest represented by those 35 signatories was not in the record. However, those 35 signatures represent 18% of the unit owners and not 25%. So it is reasonable to conclude that those 35 unit owners also do not represent 25% of the total votes in the condominium.

5. There was insufficient evidence to determine that the Respondent is keeping incomplete, inaccurate and inadequate meeting minutes and voting records.

6. By the time Respondent learned of the filing of this Complaint, the Board election and adoption of the new budget had occurred. Respondent asked for relief from the stay of Chapter 10B-9(e), Montgomery County Code, as amended. Apparently the request was not acted upon. In light of this decision, there appears to be no reason to pursue this particular issue further.

7. In sum, Complainant has identified some irregularities and shortcomings in the Respondent's adherence to its own documents and applicable law, but not such as to require the panel to vacate the actions of the Respondent in this case.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law it is

ORDERED:

1. The relief requested by Complainant is denied to the extent that Complainant requests that the Respondent's actions be vacated and to the extent of any affirmative relief except as stated below .
2. Because the actions of the Respondent were not strictly in accordance with applicable law, even though the Panel has determined that any error was harmless, the Panel orders the Respondent to pay to Complainant all of her filing fee, in the amount of \$50.00 within 30 days from the date this decision is issued. The relief requested by Complainant is therefore granted to the extent that she requests a refund of her filing fee.
3. The Respondent shall deliver a copy of this Memorandum Decision and Order to each of its members.

Panel Members Robert Gramzinski and Jeffrey Williams concurred in this Memorandum Decision and Order.

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 of

this Order, pursuant to the Maryland Rules of Procedures governing administrative appeals.

John F. McCabe, Jr., Panel Chair