

COMMISSION ON COMMON OWNERSHIP COMMUNITIES
Minutes of the Monthly Meeting
Executive Office Building, 101 Monroe Street, Main Lobby Conference Room
Rockville, MD
December 6, 2017

The monthly meeting of the Commission on Common Ownership Communities was called to order at 7:03pm by Chairman Dr. Rand H. Fishbein, PhD.

Commissioners Present: Branda, Ethier, Fine, Fishbein, Fonoroff, Gardner, Gelfound, Koonin, Majerle, Oxendine, Radcliffe, Winegar, Viney, & Valley

Commissioners Absent: Burrows

Also attending: Walter Wilson, Associate County Attorney

Visitors: Doug Braunstein, Avenel

1. Commissioner Winegar moved to request the Department of Housing and Community Affairs [DHCA] to hire a recording secretary to take and record the minutes of Commission meetings. After discussion, the motion was approved by unanimous vote.
2. Minutes: Commissioner Branda suggested that the “hearing calendar” [section 6] of the November meeting minutes be omitted due to changes made during the month. The Commission voted to accept the minutes of the November 2017 meeting as amended, with a majority in favor, none opposed, Commissioner Gelfound abstaining.
3. Open Forum: Mr. Braunstein introduced himself as a party to a complaint submitted for jurisdiction, and was in attendance to learn hearing date.
4. Chair’s Comments: Dr. Fishbein reported on the following:
 - a) For the foreseeable future, the Commission would be holding its monthly meetings in the conference room on the first floor of the Executive Office Building. Renovation of the Commission’s usual meeting space will be unavailable in 2018 while the second floor of the COB undergoes renovation.
 - b) The condition of former Commissioner, colleague and friend, Ken Zajic, continues to deteriorate. The Chair noted that several Commissioners as well as former Commission Staff Member, Peter Drymalski, have visited Mr. Zajic in recent days and communicated to Mr. Zajic’s wife, Lois, and family members, the best wishes and prayers of Commissioners. Mr. Zajic has been hospitalized at the Casey House Hospice in Montgomery County for the last three weeks. Dr. Fishbein circulated a card for Mr. Zajic’s family and asked that it be signed by all Commissioners. It will be presented to the family at the appropriate time. [Ken Zajic passed away December 12, 2017]
 - c) The Commission was notified by Tim Goetzinger, DHCA financial officer, that a new staff Investigator to replace the retired Peter Drymalski, is slated to begin work in the Commission office either “just before, or just after, Christmas.” This information, though, was contradicted by Jay Greene, who told Commissioners earlier this week that a contract with the new hire had not yet been signed and that a start date remains uncertain. The Commission has been given no information on who the individual is, his/her capabilities, work responsibilities or training schedule. Dr. Fishbein has requested that the Commission be fully engaged in training the new hire.
 - d) The Chair reported that at the request of Tim Goetzinger he submitted a six-page memorandum entitled “Accomplishments and Initiatives” for inclusion in the FY 2019 Budget Presentation being prepared for the Executive to send to the Council. The Chair was notified by Mr. Goetzinger that due to space

limitations, only two of the more than thirty bullet points in the memo would be included in the draft budget presentation.

- e) The Chair noted that once again, staff was unable to provide Commissioners with the monthly case packet at least five days prior to the monthly meeting as requested. Instead, an incomplete packet was provided 48 hours prior to the meeting leaving little time for a number of Commissioners to complete the required reading. The Chair reported that at a meeting with Jay Greene, and Staff Members Mark Anders and Larita Carney on December 5th, Commissioners Winegar, Fine and Fishbein expressed their dissatisfaction with the delay. They requested, again, that in the future the completed packet be provided to Commissioners no less than five business days before a meeting and preferably earlier.
- f) **Elections for the positions of Commission Chair and Vice-Chair will be held at the January, 2018 monthly meeting. The Chair asked all Commissioners to notify him in the coming weeks if they wish to be nominated for either position.**
- g) The Chair testified on November 13, 2017 before the MOCO Delegation to Annapolis at a public hearing (Joint House and Senate Priorities Hearing) at the Stella Werner Council Office Bldg., 100 Maryland Ave., Rockville, MD 20850. The testimony centered on the plight of distressed common ownership communities in the County and the recommendations developed by the Task Force on Distressed Communities on how to address the problem. Commissioners Fishbein, Winegar, Branda and Ethier sit on this ad hoc Task Force along with former Commissioner Vicki Vergagni.
- h) The Chair reported that the upgrades/fixes to the Commission's digital Case Management System recommended by the IT Committee in May 2017 have yet to be acted upon by DHCA IT staff despite repeated urging by IT Chair, Burrows, Education Chair, Fine and Commission Chair, Fishbein.
- i) The Chair reported that the revisions to the Commission's case processing procedures developed by the Process and Procedures over a period of two years still have not been approved by DHCA leadership despite the regular urging of the Chair and other Commissioners. The revisions were first submitted to Jay Greene and Director Snuggs in February 2017, and have languished ever since. The revisions were an outgrowth of recommendations made in the 2015 report on CCOC operations by the Office of Legislative Oversight (OLO) and were strongly supported by the County Council.
- j) The latest tracking report of CCOC Revenue and Expenditures for November 2017, was produced by DHCA and provided to Commissioners by the Chair in advance of the December meeting. Commissioners are urged to review the document and forward any comments or questions to the Chair for communication to Tim Goetzinger for response.
- k) At least nine mediation cases have been referred by Commission Staff to the MOCO Conflict Resolution Center over the last month. None of these cases were presented to the Commission for a vote on jurisdiction. Neither was the Commission notified by DHCA that Jay Greene had directed the referral of cases to the MOCO CRC. The Chair was informed by Mr. Greene that he reached an agreement with the CRC to handle CCOC mediations. No one on the Commission was consulted about, or participated in, the drafting of this agreement. The Chair raised concerns that the CCOC was receiving filing fees of \$50 per case from complainants under the false pretense that it was handling these cases. In fact, this is not what is happening. Until the CCOC takes formal jurisdiction of case, it has no authority over the case. It cannot enforce a decision. Moreover, any legal protections or guidelines available in Chapter 10B do not apply in the case of a mediation that has not been formally assigned by a CCOC hearing panel. The Chair noted that the CRC has no core competency in common ownership law, a fact attested to by Vice-Chair Winegar who recently participated in a CRC mediation. The Chair expressed his dissatisfaction with the use of the CRC and called for an immediate dialog with DHCA about this situation and urged that the practice be discontinued. All complainant's whose cases have been referred to the CRC should be immediately notified that the Commission has no association with the CRC and no authority over any aspect of their mediation program, including the enforcement of CRC mediation agreements.

- I) Commissioners Fine, Burrows and Fishbein met with representative of the Maryland National Capital Park and Planning Commission at their headquarters in Silver Spring at 8787 Georgia Ave Silver Spring MD 20910 first floor Baldwin Room for a 1.5 hour discussion on November 27th. The purpose was to explore areas of possible cooperation, particularly with respect to collecting data on common ownership communities in Montgomery County for the CCOC/DHCA Communities' Database. Representing M-NCPPC were: Rose Krasnow, Caroline McCarthy and Lisa Govoni. The following items were addressed to at the meeting:

- ✓ M-NCPPC representatives offered to synchronize the information in their COC database with the M-NCPPC GIS system to see if unrecorded COC's can be identified,
- ✓ Commissioners asked that M-NCPPC consider adding some additional questions to the M-NCPPC developer form that provides essential data on the community association they intend to create. Commissioners suggested that M-NCPPC require written confirmation from developers that they, in fact, have has established an association, registered with DHCA and paid the required fee, and communicated to DHCA the terms and conditions relating to the creation of a COC.
- ✓ M-NCPPC agreed to contact the senior leadership teams at the Department of Permitting Services (DPS), M-NCPPC and other departments/agencies to see what additional information on COC's can be gleaned from County databases outside of the M-NCPPC Planning Division, and
- ✓ M-NCPPC representatives were asked by the Commissioners to consider joining in the establishment of an informal inter-agency working group to develop ways in which disparate County agencies/departments with an interest in COC's could share their special capabilities, employ their authorities and contribute their data for the benefit of the County's 1,200-plus common ownership communities. A "fusion" of this information into a centralized database would be a great leap forward in the oversight of this important County constituency.

5. Submission of disputes for consideration of jurisdiction:

- a) **#55-17 Braunstein v. Avenel Community Association:** Commissioner Majerle moved to accept jurisdiction re the authority of a governing body to require an action involving a unit. The Commission approved the motion by majority vote, Commissioner Ethier against, Commissioner Oxendine abstaining, and referred the matter to a hearing panel.
- b) **#41-17 [2018-16] Greencastle v. Bezabeh:** Respondent did not reply to complaint.
- c) **#42-17 [2018-17] Greencastle v. Lee:** Respondent did not reply to complaint.
- d) **#43-17 [2018-008] Longmead v. Nguyen:** Respondent did not reply to complaint.
- e) **#44-17 [2018-009] Longmead v. Bayou:** Respondent did not reply to complaint.
- f) **#2018-27 Greencastle v. Singh:** Respondent did not reply to complaint.

Commissioner Gelfound moved to accept jurisdiction on these five (5) complaints re the authority of a governing body to require an action involving a unit. The Commission approved the motion by unanimous vote. Because the Respondents did not reply to the complaint, Complainants have been invited to request an Order of Default. The matters will proceed to a hearing panel for default judgment upon receipt of Order(s) of Default. Commissioners Winegar and Viney are the customary panelists for Longmead complaints.

6. Hearing Calendar: Hearing panels and dates were chosen. As the panels and dates are subject to change, details will not be recorded in the meeting minutes. Commissioners should refer to the CCOC's "team-up" calendar.
7. Decisions and Orders Issued: n/a

8. Decisions and Orders on Appeal:
#72-13 Potomac Preserve v. Ball: remains in Court of Special Appeal
#73-16 Creitz v. Meadow Ridge Villas Condo Association
9. County Attorney's Report:
 - a) Several decisions and defaults under review.
 - b) Changes to 10B proposed by the Commission under review.
 - c) Mr. Wilson asked if the Commission wished to intervene on #73-16 Creitz v. Meadow Ridge Villas Condo Association. It was accepted that the Commission would only intervene if there was a county-wide issue at stake. Commissioner Majerle moved that the Commission take no action; the motion was accepted by unanimous vote.
10. DHCA Staff Report: Staff was not present at meeting. Commissioner Fine said he is working (volunteering) together with Jay Greene to organize office administration, paper flow, notifications to parties and attorneys, etc. He answers directly to Mr. Greene until new hire starts. There will be no other changes or additions to staff for the foreseeable future.
The Commission held a lengthy discussion about the staff's inability to support the mission, and especially the legal processes of the Commission. Suggestions were made to contact Connie Latham, Council Liaison for Commissions, or Ike Leggett, but no decisions were made.
11. Committee Reports:
 - a) Education (Mark Fine, Chair):
Committee continues to review edits to Board training module, including manual and PowerPoint slides, Complaint Form, and FAQs on Meeting and Hearings.
Commissioner Fine has been contacted by Parks & Planning. They want to create a working group to collect and share data on common ownership communities.
 - b) Lift/Stay (Marietta Ethier, Chair):
Re #2018-40 Dillin v. Willoughby of Chevy Chase [complaint involves contract for fire-suppression system and procedural errors in the contract bidding process]. Committee lifted stay at request of Respondent.
 - c) Process & Procedures (Marietta Ethier, Chair):
Torres v. Top of the Park Condominium: Complainant received citation and is complying with the order. Discussion followed re including language in all future decisions whereby the onus will be on the prevailing party to inform staff if the other party is not complying with the Commission's order. It would then be up to staff to investigate or to accept the prevailing party's evidence of non-compliance; it will also be up to staff to determine whether or not to issue a citation. An online form for requesting a citation was discussed but no further action was taken.
 - d) Information Technology (Mike Burrows, Chair):
Commissioner Fine informed members that upgrades to the Case Management System have stalled. While staff will continue to enter information into CMS, the more convenient "Team-up" calendar will be updated by Commissioners Fine & Burrows.
12. Adjournment: the meeting was adjourned at 9:30pm. **The next monthly meeting of the Commission will be held on January 3, 2018 at 7:00pm.**

Minutes submitted by:
Kathy Viney
Commissioner & Recording Secretary