

To: Ron Shepard, Community Advocate
cc: Community Manager

Re: Formal Complaint

In accordance with the SLWLA By Laws Section 5 Covenant Enforcement Procedure (Sub-Section 5.1), I am formally registering a complaint with the Community Manager(CM) and the Community Advocate(CA). This complaint is against the Board for violating our governing documents specifically the NC Planned Community Act Section § 47F-3-108 - Meeting.

(c) Except as otherwise provided in the bylaws, meetings of the association and the executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

Robert's Rules of Order

Newly Revised 12th Edition-2020 (Chapter IV Section 9 p86 Executive Session)

An executive session in general parliamentary usage has come to mean any meeting of a deliberative assembly, or a portion of a meeting, at which the proceedings are secret.

At the February 23rd Board meeting the President clearly stated the subject matter and reasons the Board met in ES on February 15th. This statement was also printed in the February 26 Eblast. The President listed three subjects that were discussed in Executive Session, none of which could be classified as “secret”, and in doing so clearly documents the Board’s violation.

Subject 1: “The purpose was to become more educated on the proposed Lake study which is on the agenda”.

The Lake study has been discussed in Open Session, albeit with minimal specifics, and therefore it is not secret. Since the subject was on the agenda for the regular Board meeting any discussion or clarification on the study should have been heard by the entire community. My understanding is that NC State was invited to the meeting specifically to answer questions about the study. I’m sure the membership would have liked to have heard that information and have had the opportunity to ask questions.

Subject 2: “have a confidential discussion about the contract, how to fund the study, and how to administer the study if approved to ensure the most community support”.

The member who set up NC State’s attendance at the meeting indicated the invitation was to the professors who would be conducting the study. The professors were there to answer questions about the study and had no say in the cost of the project. The pricing is a fixed cost study with the cost being determined by the university grant office. Even if you were going to have a discussion about a contract it would not be confidential because it was not a service put out to bid. Also, how could you discuss a contract for a study that has not been approved or funded? The funding issue must be discussed in public because the funds are not in the budget and the community needs to understand where the money will come from. Administration of the study certainly does not qualify as secret and ensuring community support is done through open discussions.

Subject 3: “The discussion about getting the community to buy in to any approved study was a very sensitive and confidential conversation, specifically because we called out members by name that should be included in the managing of the study and as important, those members who should not be involved in any way.

The only time you should discuss members by name in ES is for foreclosure issues or legal actions. Any other time the member should be invited and present. The community needs to know who is managing the study and why, and if someone is excluded we also need to know the basis for that exclusion. The fact that the individuals who designed the project with NC State were not invited is also somewhat disconcerting. There is nothing sensitive or confidential about this discussion unless the reasons for such decisions could be challenged or questioned.

It is very apparent the Board, as documented by their published statement, is discussing issues and making decisions in Executive Session that should be made in public. They appear to very concerned with community by in for the study. The way you achieve support is through open discussions.

The Board also decided at the Feb 23rd meeting that they would declare the issue a matter of significant interest. There was no discussion by Directors on this motion which would lead one to believe this subject was probably already discussed outside of open session. Once again a violation.

I am sending this complaint to the Community Advocate with a copy to the Community Manager because the CM may be a witness since she may have attended the Executive Session.

The issue of confidentiality has been raised in reference to Executive Sessions and this complaint. The discussions in ES are confidential but the topics are not. Many Boards have listed the topics for ES on the agenda or stated them when making a motion to go into ES. This clarification should be included in any decision.

I am requesting the Community Advocate investigate this complaint and publicly issue his findings. If the complaint is decided to have merit, I am requesting the CA consider three options.

- Refer the matter to Judicial Panel.

- Issue a reprimand/censure to the Board. If this action is deemed appropriate, I respectfully request the findings and actions be made public in our Eblast.

- The Board owes the Herdrichs and the community a public apology. The Board used our community newsletter as a means to mass distribute a personal attack on myself and my spouse. My original post was neither erroneous or libelous nor was it an attempt to stir up members of this community. Our governing documents give members the right to challenge the Board on actions we believe are wrong and the Board has no right to maliciously attempt to discredit a member.

In closing, Executive Session needs to be clearly defined in our governing documents (By-Laws) as it is in the Directors Orientation Manual. The Community Advocate may want to consider recommending that the LAC draft a proposal, have it approved by outside counsel and then approved in open session.

Thank you for your prompt attention to this issue.

Mick Herdrich