

Board Special Meeting/Conference Call (Closed Meeting)
February 10, 2017 2:00 PM
Report

On February 3, 2017, the [Montgomery County Office of Common Ownership Communities \(CCOC\)](#) announced that it is a violation of the New Mark Commons Homes' Association, Inc's. Covenants to charge residents the Storm Water Management Fee as a pass through. After a full hearing and examination of our documents the CCOC arrived at this conclusion because Article VI, Section 2 of the Declaration of Covenants for NMCHA, the annual assessments levied by the Association are to be used to maintain the common areas and community facilities on the property owned by the Association, "including the payment of taxes and insurance. .
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The CCOC ordered a refund of the disproportionate amount of the Storm Water Management fee to the townhouse owners. The CCOC's order puts single family homes and townhomes on equal footing with both paying the same amount over the years that were contested.

The Board met in closed session via conference call to discuss the CCOC's decision. There were two aspects of the decision that were discussed. First, was the damage calculation. We believed that the CCOC incorrectly figured the damage calculation. The CCOC calculated damages by taking the amount of money townhouse owners paid and subtracted from the amount that single family homeowners paid. This was probably not the best calculation because it does not split all of the Storm Water Management Fees incurred over the period equally since the single family homes SWM fee excluded the townhouse parking lot parcels.

Although requesting a review of the damage calculation could have yielded significant savings, the Board chose not to request a rehearing on this issue because we believed it could have yielded further orders requiring NMCHA to bill homeowners that were under-billed during the same period. It is important to the Board to restore peace in the community.

The second issue discussed was related to Article VI, Section 5(a) of the Covenants. Based on the CCOC's conclusions, we were trying to determine the impact of the Board's ability to use Article VI, Section 5(a) in the future or if a rehearing on this issue was necessary. Along with counsel, we have determined that the CCOC's decision is limited to the Storm Water Management Fee and does not hinder the Board's ability to raise assessments in accordance with Article VI, Section 5(a). As a result, we decided that a rehearing on this issue was not necessary.

Finally, though not on the initial agenda, the Board briefly discussed during the closed session a settlement offer received on February 10, 2017 from Richard Berman in connection with a second case that he has filed, CCOC Case No. 80-16, Berman v.

NMCHA. We decided to more fully review and discuss the settlement offer at our next regularly scheduled board meeting on March 2, 2017 at which time a board member will be designated and given decision making authority to negotiate a settlement with Mr. Berman. Following this decision a member of the board emailed Mr. Berman and asked him to extend his settlement response deadline so that the board can act on his offer.

A [copy of the CCOC decision](#) and the [Written Notice to Close the Meeting](#) are attached to this message. The CCOC decision is also available in the [Resident Area/Board Minutes and Agenda](#) page of the New Mark Commons website.