

IN THE
COMMONWEALTH OF VIRGINIA
COMMON INTEREST COMMUNITY BOARD

In Re: Briarwood Condominium
Pegasus Development, LLC

Registration No.: 0517090122

TEMPORARY CEASE AND DESIST ORDER

On December 8, 2022, the Common Interest Community Board (“the Board”) met and reviewed a memorandum from staff dated November 29, 2022, to consider issuance of a temporary cease and desist order against Pegasus Development, LLC, the declarant of Briarwood Condominium, Registration Number 0517090122.

The Board considered its applicable law: Chapter 23.3 of Title 54.1 (§ 54.1-2345 et seq.) and Chapter 19 of Title 55.1 (§ 55.1-1900 et seq.) of the Code of Virginia. After reviewing the facts and information presented in the memorandum at the Board meeting, the Board determined that the declarant has failed to file an annual report within thirty (30) days of the condominium registration anniversary date as required by § 55.1-1979 of the Code of Virginia.

The declarant's failure to comply with § 55.1-1979 of the Code of Virginia does not assure the public that the declarant is in compliance with the Virginia Condominium Act (§ 55.1-1900 et seq.) and the Condominium Regulations, and would cause irreparable harm to the public interest.

ORDER

In the interest of protecting the public from harm, the Board hereby enters a temporary cease and desist order in accordance with § 55.1-1986(B) of the Code of Virginia. The Board orders Pegasus Development, LLC, the declarant of Briarwood Condominium, to **cease and desist** from the sale of units in the condominium until an annual report is submitted and determined to be acceptable by the Board. Further, the Board orders that Pegasus Development, LLC submit the required annual report to the Board within 30 days of the effective date of this order.

If the declarant of Briarwood Condominium fails to comply with the terms of this order, the Board may refer the matter for enforcement pursuant to § 54.1-306 of the Code of Virginia, and/or impose sanctions and take other actions permitted by Chapter 19 of Title 55.1 (§ 55.1-1900 et seq.) of the Code of Virginia.

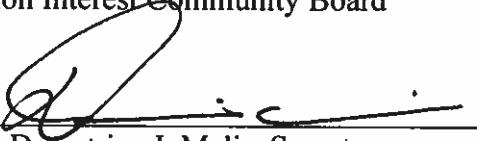
This order remains in effect until the declarant submits acceptable documentation to the Board that it has taken the affirmative actions necessary to correct the deficiencies above or the matter is adjudicated, whichever is later.

AS PROVIDED BY § 55.1-1986(B) OF THE CODE OF VIRGINIA, UPON REQUEST A HEARING WILL BE HELD PROMPTLY TO DETERMINE WHETHER OR NOT THE TEMPORARY CEASE AND DESIST ORDER BECOMES PERMANENT.

SO ORDERED:

Entered this 8th day of December, 2022.

Common Interest Community Board

BY: 

Demetrios J. Melis, Secretary

MEMORANDUM

TO: **Members**
Common Interest Community Board

FROM: **Joseph C. Haughwout, Jr., Board Administrator**
Common Interest Community Board

DATE: **November 29, 2022**

SUBJECT: **Referral for Consideration of Temporary Cease and Desist Order**

Declarant Name:	Pegasus Development, LLC
Condominium Name	Briarwood Condominium
Registration No.	0517090122

On August 24, 2009, Briarwood Condominium (“Briarwood”) became registered as a condominium in Virginia. Pegasus Development, LLC (“Pegasus LLC”) is the Declarant for Briarwood. There are 70 registered units in the condominium. (Exh. 1)

As part of the registration for Briarwood, Pegasus LLC submitted a Bond to Insure Payment of Assessments (“assessment bond”) issued by North American Specialty Insurance Company, in the amount of \$70,000.00, in favor of the unit owners’ association for Briarwood. The expiration date of the assessment bond is July 19, 2021. On November 29, 2022, the issuer of the assessment bond verified the bond is current. (Exh. 1)

Failure to File Required Annual Report

Section 55.1-1974 of the Code of Virginia states, in part:

Unless exempt by § 55.1-1972

1. No declarant may offer or dispose of any interest in a condominium unit located in the Commonwealth, nor offer or dispose of in the Commonwealth any interest in a condominium unit located outside of the Commonwealth prior to the time the condominium including such unit is registered in accordance with this chapter.

Section 55.1-1979 of the Code of Virginia states:

The declarant shall file a report in the form prescribed by the regulations of the Common Interest Community Board within 30 days of each anniversary date of the order registering the condominium. The report shall reflect any material changes in information contained in the original application for registration.

In addition, Board Regulation 18 VAC 48-30-540 states, in part:

- A. A declarant shall file an annual report on a form provided by the board to update the material contained in the registration file at least 30 days prior to the anniversary date of the order registering the condominium.
- B. The annual report shall contain, but may not be limited to, the following:
 11. Whether the declarant is current in payment of assessments; and
 12. Current evidence from the surety or financial institution of any bond or letters of credit, or submittal of replacement bonds or letters of credit, required pursuant to §§ 55.1-1921, 55.1-1968, and 55.1-1983 of the Code of Virginia.

On June 30, 2022, the office of the Common Interest Community Board (“the Board”) sent an Annual Report solicitation to the Declarant’s attorney for the 2022 Declarant Annual Report for Briarwood. The 2022 Declarant Annual Report for Briarwood was due to the Board prior to August 24, 2022. On August 29, 2022, the Board issued a reminder notice to the Declarant’s attorney. However, no response was received from the Declarant or anyone on its behalf. (Exh. 1 and 3)

Board Regulation 18 VAC 48-30-690 states, in part:

The following acts are prohibited and any violation may result in action by the board, including issuance of a temporary cease and desist order in accordance with § 55.1-1986 B of the Code of Virginia:

1. Violating, inducing another to violate, or cooperating with others in violating any of the provisions of any of the regulations of the board, Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia, or Chapter 19 (§ 55.1-1900 et seq.) or Chapter 20 (§ 55.1-2000 et seq.) of Title 55.1 of the Code of Virginia.

7. Failing to comply with the post-registration requirements of 18VAC48-30-460, 18VAC48-30-470, 18VAC48-30-480, 18VAC48-30-490, 18VAC48-30-500, 18VAC48-30-510, 18VAC48-30-520, 18VAC48-30-530, and 18VAC48-30-540.

Section 55.1-1986 of the Code of Virginia states, in part:

- A. The Common Interest Community Board may issue an order requiring a person to cease and desist from any of the unlawful practices enumerated in subdivisions 1 through 5 and to take such affirmative action as in the judgment of the Common Interest Community Board will carry out the purposes of this chapter if the Common Interest Community Board determines after notice and hearing that such person has:
 1. Violated any provision of this chapter;
 5. Violated any lawful order or regulation of the Common Interest Community Board.
- B. If the Common Interest Community Board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary order to cease and desist or to take such affirmative action as may be deemed appropriate by the Common Interest Community Board. Prior to issuing the temporary order, the Common Interest Community Board shall give notice of the proposal to issue a temporary order to the person. Every temporary order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether it becomes permanent.

On November 4, 2022, staff sent a Final Notice to the Declarant's attorney and the Declarant notifying Pegasus LLC that it may be in violation of the Virginia Condominium Act and the Board's regulations. The notice further specified that a proposal to issue a temporary cease and desist order would be presented to the Board on December 8, 2022. The notice to the Declarant's attorney was delivered on November 8, 2022. The notice to the Declarant was delivered on November 7, 2022 (Exh. 4)

Staff requests that the Board consider a proposal to issue a temporary cease and desist order in accordance with § 55.1-1986(B) of the Code of Virginia against the Declarant. Staff requests the Board to find that the Declarant's failure to comply with § 55.1-1979 of the Code of Virginia does not assure the public that the Declarant is in compliance with the Virginia Condominium Act (§ 55.1-1900 et seq.) and the Condominium Regulations, and would cause irreparable harm to the public interest. Further, staff requests the Board require Declarant to submit the required annual

report in accordance with the Code of Virginia and the Board's regulations within 30 days of the order's effective date.

This memorandum and attached supporting documentation contain information that is being presented to you for your consideration and determination as to whether the issuance of a temporary cease and desist order is appropriate.

EXHIBIT
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Description of Exhibit

1	Registration information for Briarwood Condominium
2	State Corporation Commission record for Pegasus
	Development, LLC
3	Board letters to Declarant requesting 2022 Declarant
	Annual Report
4	Temporary Cease and Desist Notification, dated November
	4, 2022