

COMMON INTERESTS



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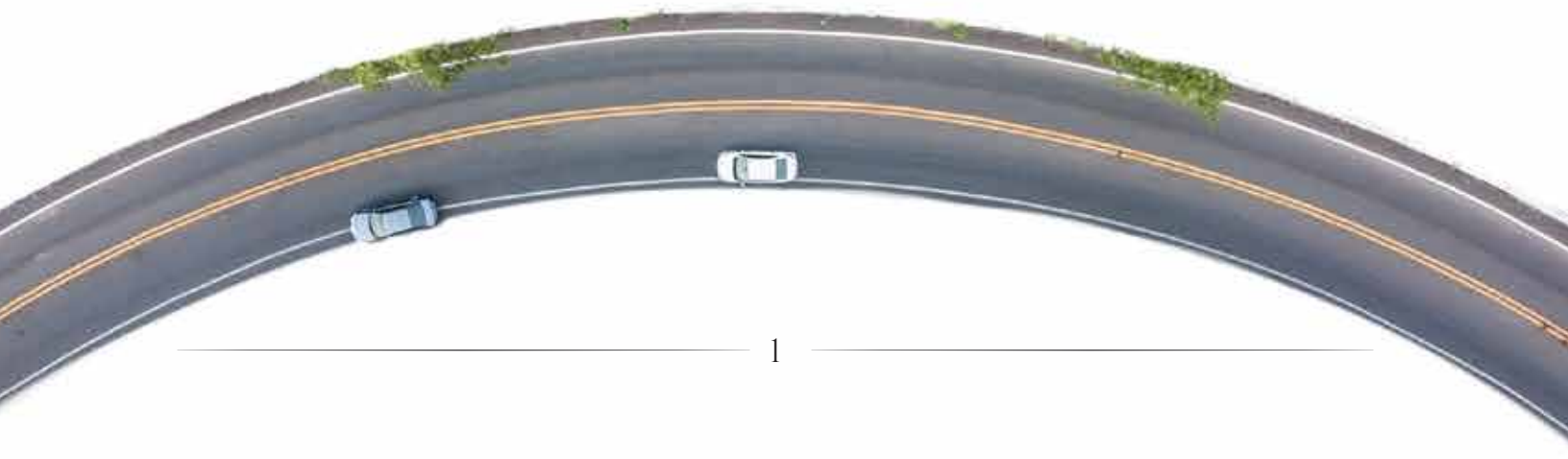


GET AHEAD OF THE CURVE

*Don't be left unprepared for your
2020 annual meeting*

by **DONNA M. MASON**

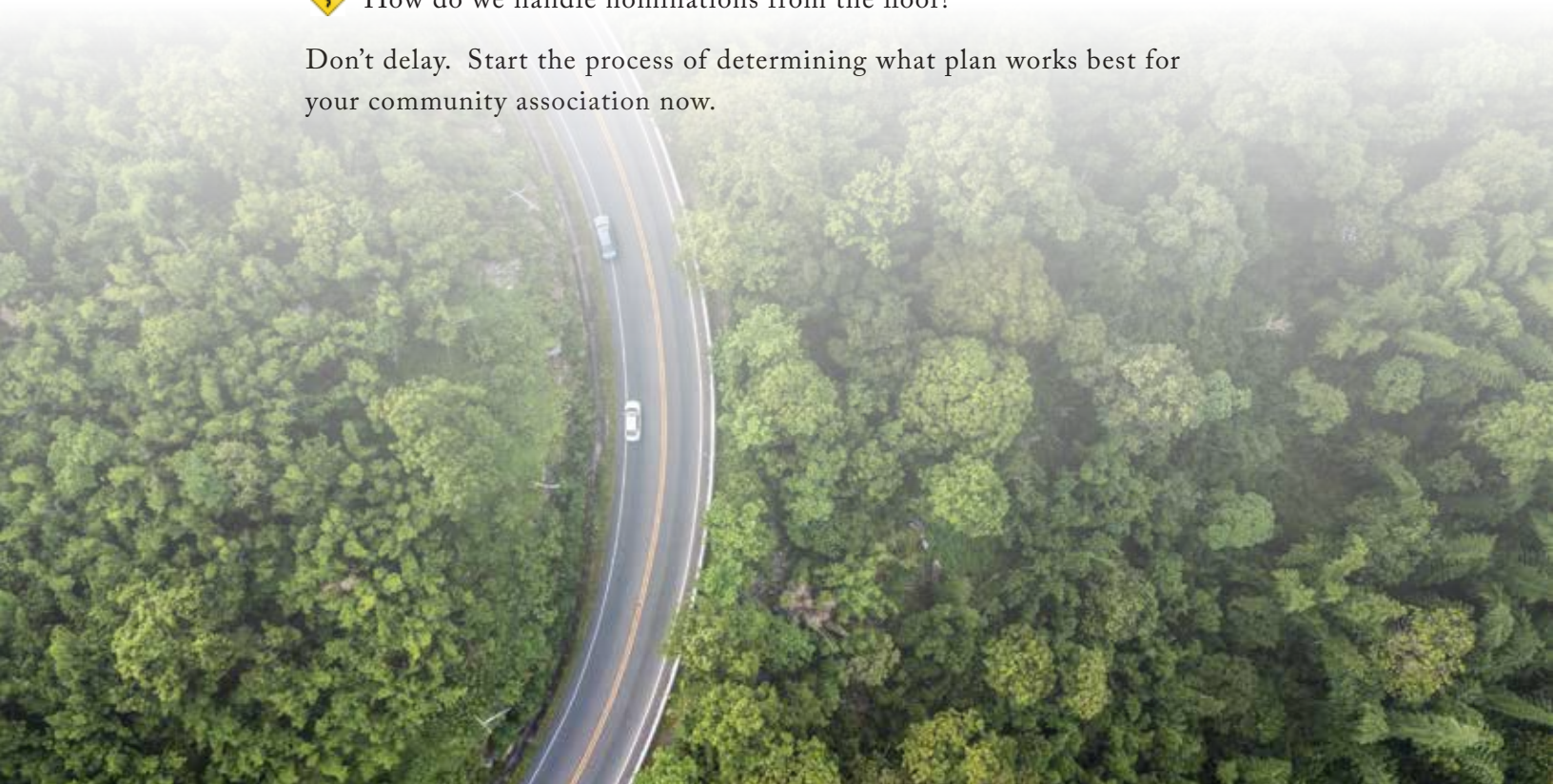
As Northern Virginia waits and hopes for the COVID-19 curve to decline, community association Boards have the onerous task of deciding when to go forward with their Association's annual meetings. Factors such as the size of the community, the meeting location and governing document requirements are just a few things Boards must consider when balancing the safety of the community with the importance of holding the annual meeting. It's important that Boards start planning now for the "how" and "when" annual meetings will take place in their communities.



There are many questions that must be answered to fully design the plan. Each community has unique issues, so working with legal counsel is essential to making sure that the plan aligns with the parameters of the community's governing documents, state statutes, Governor's Executive Orders and local county or city restrictions. Below are just a few of the questions that must be answered:

- 💡 Can we conduct our annual meeting virtually?
- 💡 Do we have to have a physical meeting site or can it be totally virtual?
- 💡 Do the Board members have to attend at the meeting site?
- 💡 Can we restrict the number of people attending at the meeting site?
- 💡 Can members vote virtually or electronically, or do they have to vote personally or by proxy?
- 💡 Does the proxy holder have to be at the meeting physically? Virtually? At all?
- 💡 Can we modify the notice requirements?
- 💡 How do we maintain social distancing?
- 💡 Do we require those attending the annual meeting to wear face masks?
- 💡 How do we handle nominations from the floor?

Don't delay. Start the process of determining what plan works best for your community association now.





TINKER, TAILOR, LAWYER, LEGISLATOR

Legislative Changes from the 2020 Virginia General Assembly Session

by AIMÉE T.H. KESSLER

Like the person you know with an old car sitting in the garage, getting worked on every Saturday, never to be finished, the General Assembly just can't stop tinkering with community association laws that are on the books. Here are some of the most important tinkering measures that came out of the 2020 session:

The time that a purchaser has to review resale disclosures and cancel a contract was amended for both condominium and homeowner associations. **House Bill 176 and Senate Bill 672** made changes to certain terms of the disclosure packet (Section 55.1-1808)



and resale certificate (Section 55.1 -1990). If provided for in the ratified real estate contract, which includes any addendums, the time that the purchaser has to cancel the contract can be

- i. from 3 to 7 days after the date of the contract if, on or before the date that the purchaser signs the contract, the purchaser receives the association disclosure packet or resale certificate, is notified that it will not be available, or receives a disclosure packet or resale certificate that is not in conformity with requirements of the Code;
- ii. from 3 to 7 days after receiving the association disclosure packet or resale certificate or after being notified that it will not be available, or receiving one that is not in conformity with requirements of the Code when such disclosure packet or resale certificate is hand delivered, delivered by electronic means, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt is obtained; or
- iii. within 6 to 10 days after the postmark date if the association disclosure packet or resale certificate itself, notice that it will not be available, or an association disclosure packet or resale certificate that is not in conformity with the requirements of the Code is sent by United States mail.

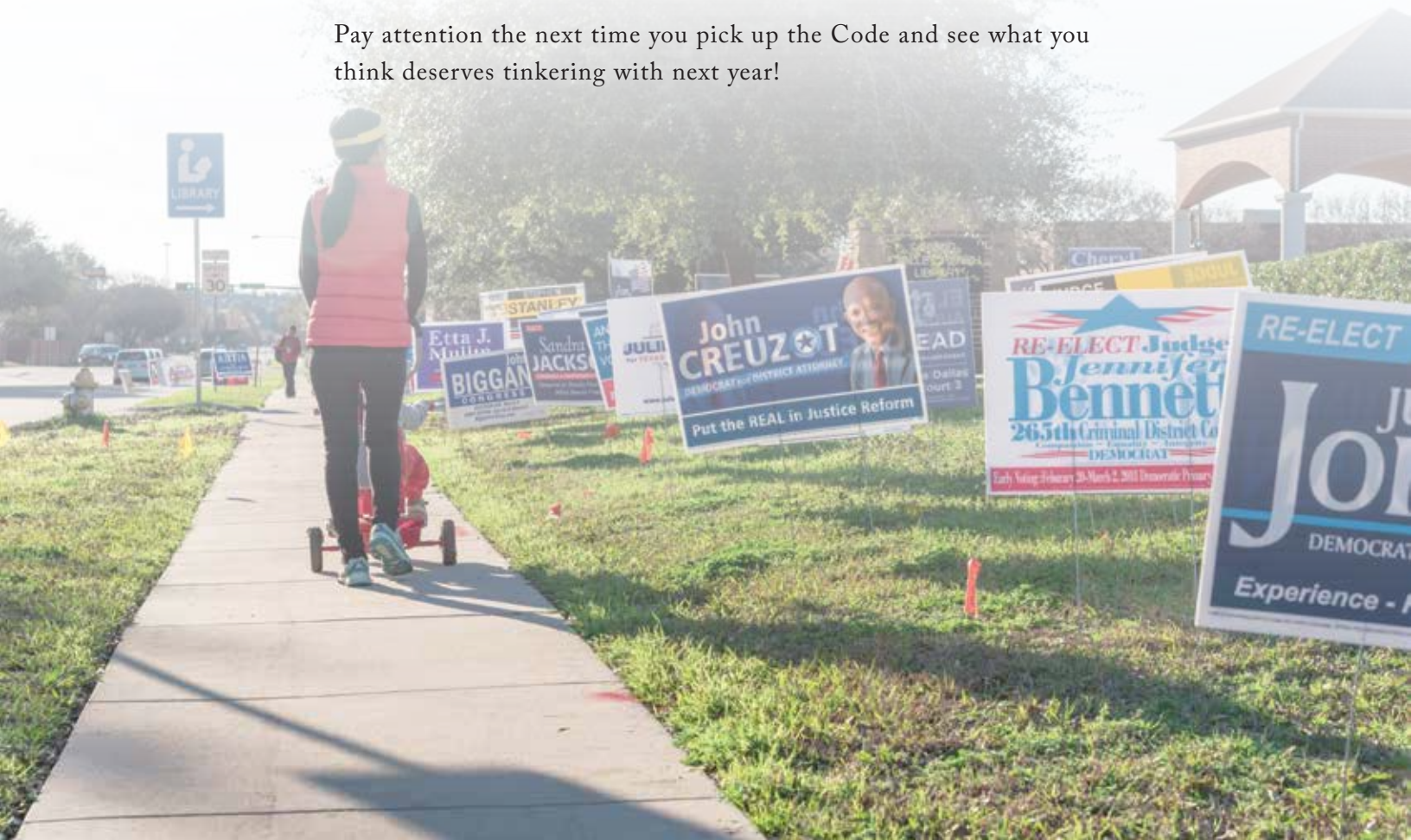
For HOAs, but not condominiums, **HB 720** amends Section 55.1 – 1809 to require that the resale disclosure packet cover sheet include a statement as to the association’s restrictions on displaying political signs. This includes restrictions as to the size, place, duration, or manner of placement or display of political signs by a lot owner on the lot.

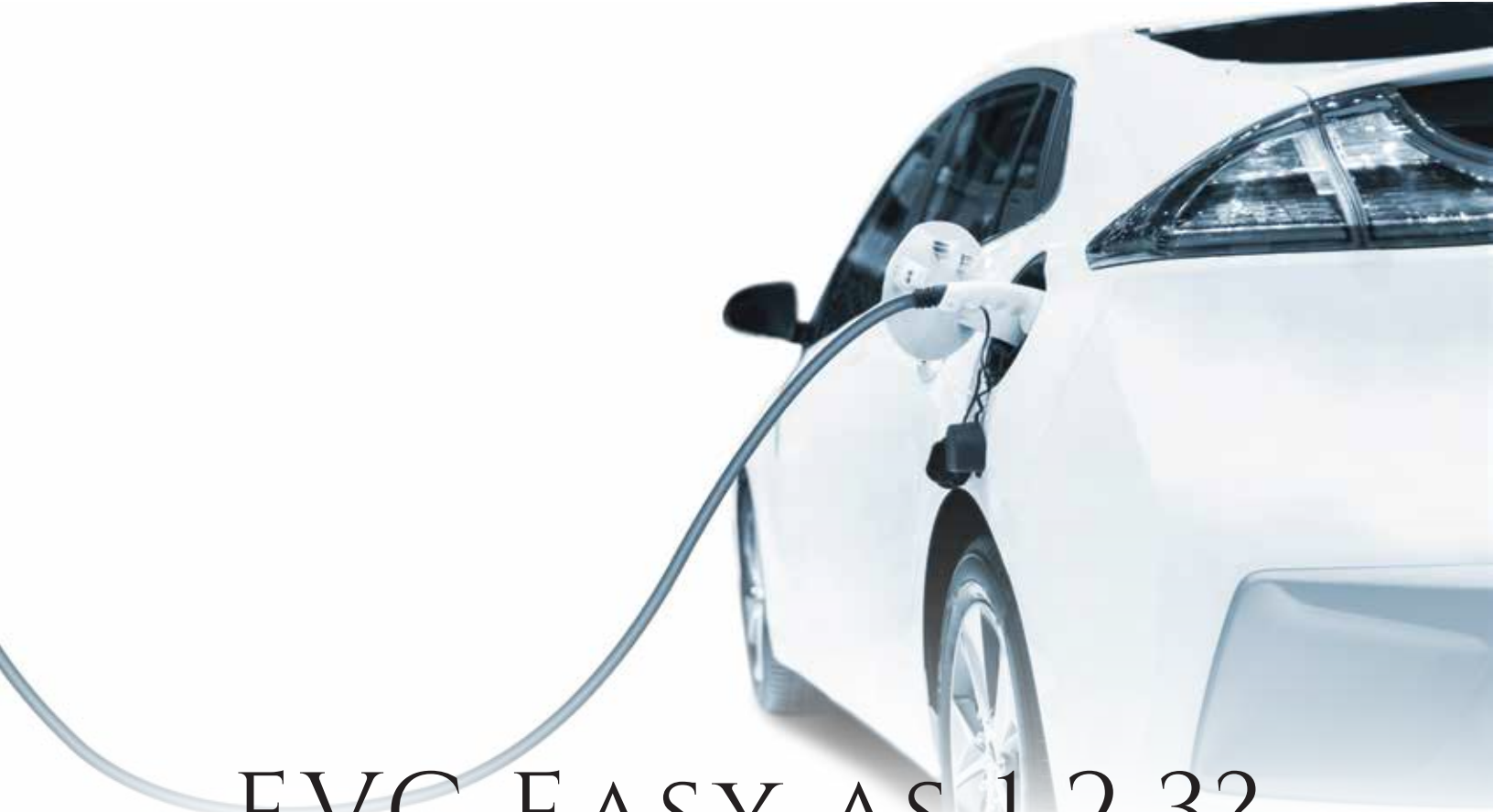
HB 1340 tweaks the recodification of Title 55 of the Code of Virginia in a number of specific ways, including the definition of "common interest community" in Section 54.1 -2345, what constitutes “pending or probable litigation” under Section 55.1-1815(c)(3) of the Condominium Act and Section 55.1-1945(c) (3) of the POAA, and distribution of payment for amending a condominium Declaration (Section 55.1-1919 (C)).

Existing law bars associations from prohibiting installing solar energy collection devices on their property unless the Declaration expressly prohibits it. Section 67-701 allows the association board to establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices. This year the General Assembly (**HB 414 and SB 504**) added language stating that a restriction is not reasonable if it causes either 1) an increase in the cost of installation by 5% over the initially projected cost or 2) a 10% reduction in the energy production from the initially proposed installation. The owner making the installation request must provide documentation from an independent solar panel design specialist, certified by the North American Board of Certified Energy Practitioners and licensed in Virginia, that is satisfactory to the community association, to establish one of these factors making the restriction unreasonable.

Additional procedural requirements were clarified in **HB 1548** regarding termination of a condominium, including consent to termination, valuation of units, and release of liens - something that has been rare, but we may be seeing more and more as buildings age.

Pay attention the next time you pick up the Code and see what you think deserves tinkering with next year!





EVC EASY AS 1,2,3?

CHARGE of the Electric Cars!

by WILLIAM B. MASON, JR.

This past session, the Virginia General Assembly crafted a bill that provides that a community association cannot prohibit an owner from installing an electric vehicle charging station (“EVCS”) unless the recorded declaration or condominium instruments specifically establishes such a prohibition.

The permitted location varies. For condominium owners, the EVCS must be installed within the boundaries of the unit or limited common element parking space appurtenant to the owner’s unit. For members of a homeowners’ association, the EVCS must be installed within the boundaries of the owner’s lot.

Condominium Associations

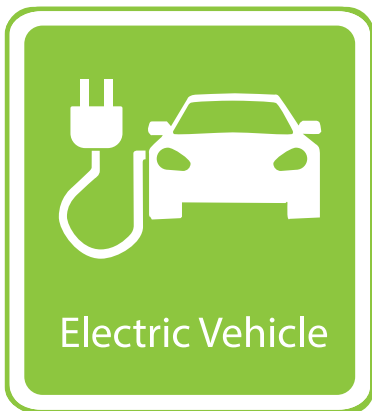
Condominiums come in all shapes and sizes. Garden-style units, piggy-back units, high rises and even some comprised totally of

single-family homes. Whether a unit owner is connecting an EVCS located in a garden-style unit to an electronic vehicle or linking to an EVCS located on a limited common element parking space, wires, cables, or a hose are involved. Condominium associations are allowed to prohibit the installation of an EVCS if such installation “is not technically feasible or reasonably practical due to safety risks, structural issues, or engineering conditions.”

Compliance with the statute will require ingenuity, creativity and a lot of engineers and electricians. But if wires for cable television could be encased with wires for electric power running through the same maze of easements, compliance may be “technically feasible” in many instances. Afterall, is access to Netflix as important as the ability to charge one’s electronic vehicle? (Perhaps, this is a question best asked after the stay-at-home executive orders are lifted!)

The statute is bursting with potential assurances for condominium associations approving an application for an EVCS installation and describes the information the applicant may be required to provide the association, including detailed plans and drawings prepared by a licensed and registered electrical contractor or engineer familiar with EVCS installation and operation.

The statute also provides that a condominium association may require a unit owner to (1) comply with building codes and applicable safety standards, (2) comply with reasonable architectural standards regarding dimensions, placement or external appearance of the EVCS, (3) pay the costs of installation, maintenance and operation, (4) indemnify the association for claims made by a contractor or supplier, (5) separately meter the power being used—at the owner’s expense—and pay the operational costs, (6) retain a licensed electrician for engineer for installation, (7) reimburse the association for related costs, including increases in its insurance premium, (8) maintain insurance against claims and provide a certificate of insurance naming the association as an additional insured, and (9) pay the cost of removal and restoration of the area if the EVCS is no longer needed.



Condominium associations are strongly encouraged to adopt a resolution conditioning approval of an EVCS on the unit owner complying with the statutory requirements detailed above. These requirements are not automatic as the statute merely empowers the association to convert the statutory suggestions to an approval requirement.

Homeowners Associations

Because many single family or townhouse homes have garages and/or driveways, locating the EVCS, including any cables or hoses connecting the EVCS to the electronic vehicle, entirely within the boundaries of the lot is not a logistical challenge. Homeowners associations are authorized to adopt reasonable restrictions on the number, size, place, and manner of placement of the EVCS on the exterior of the dwelling. As with condominium associations, these reasonable rules must be adopted by the homeowner association to be required for approval of an application for an EVCS. Most of the specific requirements included in condominium statute are omitted from the more abbreviated version in the Virginia Property Owners' Association Act.

The architectural standards and scope of review included in the homeowners' association's recorded declaration are also applicable. However, as a practical matter, it will be difficult to convince a trial judge that an EVCS is not in harmony with the dwelling or adjacent structures when the same community routinely approves of central air conditioning units on the lot. The standards for review should be similar.

The challenge to homeowner's association is when the EVCS is located on a lot that does not have a garage or parking space for the electronic vehicle ("ungaraged lot"). This situation normally requires a cable and/or hose to extend from the EVCS located on the ungaraged lot across the common area in order to connect to the electronic vehicle. The dilemma may be magnified by the distance of a parking space available on a first-come, first serve basis. However, the Condominium Act addition serves as reasonable guideline for drafting approval

conditions, particularly when addressing cables connecting the EVCS that have to cross the common area to reach the electronic vehicle. The EVCS bill, which will be codified as § 55.1-1823.1, permits homeowners associations to prohibit the installation of an EVCS on the common area. Perhaps, the association review ends there.

The statute provides the association may require insurance with the association named as an insured from those owners installing an ECVS. Mandating such insurance should be part of the association's approval policy. The legislation also states that the owner of an EVCS shall indemnify and compensate the association in the event of a claim, but this alone does not erase the safety concerns. Until the homeowner association can limit the safety risk, rather than paper it over with insurance, the prudent choice is to deny access to the common area to the applicant for the running of connections to the ECVS on the lot. Homeowner associations were not provided a similar "out" for safety risks or structural issues as are condominium associations.

But what if the safety concerns of crossing the common area can be sufficiently addressed by burying or covering the cable or hose? The association is not required by the statute to permit the ECVS on the common area, but perhaps many of its members have also concluded "our house is on fire"* and want to know what the association can voluntarily do to clear these legal hurdles while still respecting the rights of the owner and community in which one lives.

The first question is whether the association is empowered by the declaration to grant one or more reserved parking spaces to each and every owner and determine the location of that parking space? The distance from an EVCS located on an ungaraged Lot to an electronic vehicle could be reduced, but not eliminated, if the owner is granted exclusive use of a parking space closer to the lot.

The next question is whether the homeowners association is authorized by its declaration to grant an exclusive license to an owner for access to the common area for the purpose of connecting an EVCS on the ungaraged lot to the

electronic vehicle located on the common area. Recorded documents rarely envisioned the installation of electrical vehicle charging stations and often provide the association inadequate power for adapting to this change. Declaration amendments may be necessary.

Another possible option is to authorize the owner to install an EVCS on the parking space reserved to the owner of a lot as if the reserved parking space were similar to a condominium limited common element parking space. This is not typically included in the scope of the grant authorized in the association's declaration, but the declaration could be reviewed for any applicable authority and amended if necessary. It would have to be done uniformly and offered to owners of garaged lots and ungaraged lots unless the Declaration, as it may be amended, allowed owners of garaged lots and ungaraged lots to be treated differently in terms of EVCS. There is a legal current in the courts which may be at odds with granting exclusive use of any portion of the common area to an owner when it was not specifically granted to an owner in the declaration (or the board of directors empowered to grant an exclusive use). Without specific declaration language to the contrary, "common" means common to all owners.

Obviously, problems and potential solutions will vary based on the physical relationship between the lots and the common area parking spaces. For example, there may be portion of the common area that could be dedicated for installation of several EVCS available to the community for the use of all owners in the community. In all cases, homeowner associations need to adopt rules permitted by the statute or its declaration that are unique to reviewing EVCS applications.

The House of the Future

Over 108 years ago, one of my ancestors penned an article about the house of the future published in *The Saturday Evening Post*: "The Dwelling House of the Twentieth Century." He forecast central air conditioning in most modern day homes cooled by "liquid air" hidden in the ceilings of a room and controlled by a "governor" so that the temperature could be kept at the same point.** He envisioned a time "when a residence without cooling apparatus for use in summer

would be considered as incomplete as if it lacked heating arrangements for winter, the one being as much a matter of course as the other.”

Today, the existence of central air conditioning units located outside of the home or on the condominium roof is so commonplace it escapes attention. In Virginia, the house of the twenty-first century may have a satellite dish and solar energy collection devices on the roof, an EVCS located on the lot—all of which escapes our attention. Inside, the owner may be working in a home office or at a home business. And occasionally, watching Netflix as the electric car charged.

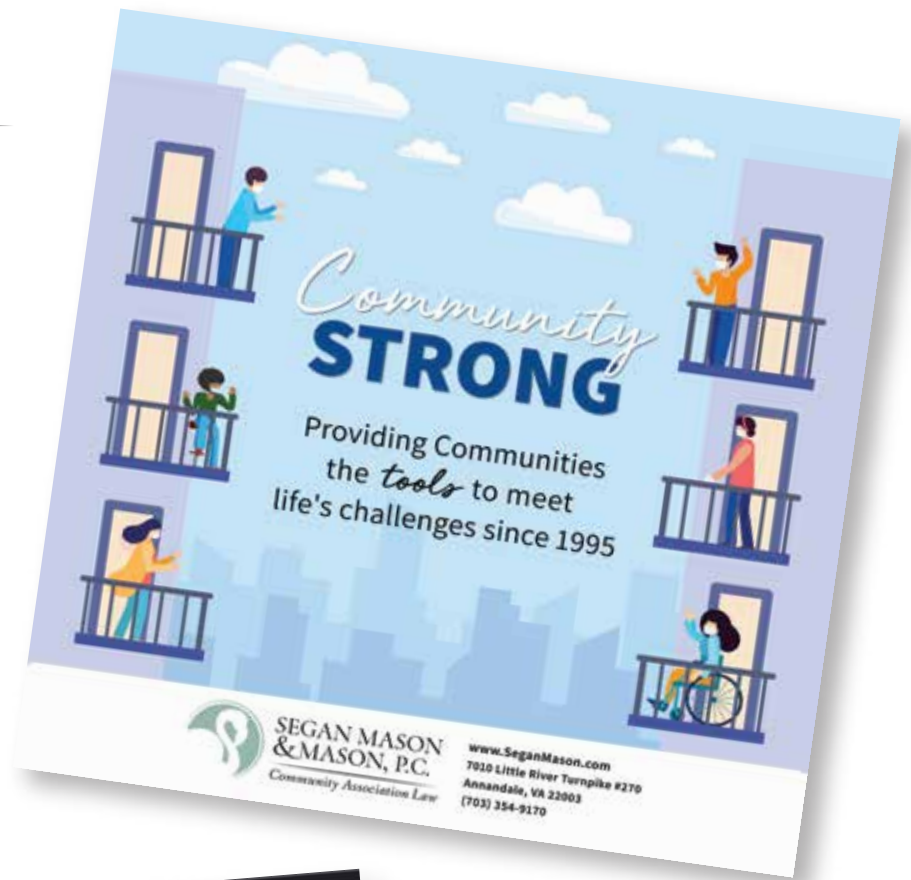
**Greta Thunberg.*

***The Dwelling House of the Twentieth Century, Otis T. Mason, Saturday Evening Post, 1912.*



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