

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0326

September Term, 2014

CARL H. BROWN

v.

COMMISSION ON COMMON
OWNERSHIP COMMUNITIES, ET AL.

Meredith,
Woodward,
Friedman,

JJ.

Opinion by Woodward, J.

Filed: May 1, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Carl Brown, filed an administrative complaint against appellee, Americana Finnmark Condominium Association (“Americana”), with the Montgomery County Commission on Common Ownership Communities (“CCOC”). Brown, a unit owner in Americana, alleged in his complaint that Americana’s financial record-keeping and budgeting processes were improper, and that Americana failed to produce or make available certain documents for Brown’s inspection. After a hearing, the Hearing Examiner issued a Report and Recommendation, which the CCOC adopted with one exception. The CCOC ordered Americana to make an unredacted version of its delinquency reports available for Brown’s inspection, but otherwise found in favor of Americana and dismissed the case. Both sides petitioned for judicial review in the Circuit Court for Montgomery County, which affirmed the CCOC’s decision.

On appeal, Brown raises two questions for our review,¹ which we have rephrased:

¹ Brown’s questions, as presented in his brief, are:

1. Did the Circuit Court [for] Montgomery [County] err when it mistakenly omitted Appellant’s petition on Production of Documents?
2. Did the Circuit Court [for] Montgomery [County] err when it holds that the Board of Directors of Americana Finnmark Condominium may do the following?
 - a. Improperly adopt the annual budgets.
 - b. Deny inspections of books and records.
 - c. Deny Production of Documents.

1. Did the circuit court err by not reviewing the CCOC's decision regarding the parties' discovery dispute?
2. Was the CCOC's decision supported by substantial evidence and not based on an erroneous conclusion of law?²

We answer the first question in the negative and the second question in the affirmative and, accordingly, affirm the judgment of the circuit court upholding the decision of the CCOC.

BACKGROUND

Brown owns a unit in Americana, a 316-unit condominium in Silver Spring, Maryland. On December 2, 2011, Brown filed a complaint against Americana with the CCOC. Brown alleged that Americana violated the Maryland Condominium Act ("MCA") and its own bylaws by (1) failing to honor Brown's requests for inspection of Americana's books and records, (2) failing to keep sufficiently detailed financial records, and (3) adopting its annual budget "without analyzing actual expenses."

Both parties served discovery requests on each other in November and December, 2012. Brown filed a Motion to Compel Production of Documents ("Motion to Compel"), alleging that his requests for year-to-date general ledgers for years 2011 and 2012, as well as "the complete Overpayment and Delinquency Report," with personal information

² Brown refers to the alleged error of the circuit court, not the CCOC, in his question presented; nevertheless, the argument in Brown's brief makes clear that he is referring to the CCOC. Furthermore, this Court is limited to reviewing the decisions of the agency, not the circuit court. *See Wilson v. Md. Dep't of Env't*, 217 Md. App. 271, 283 (2014).

identifying delinquent unit owners, were still outstanding. Brown requested that the Office of Zoning and Administrative Hearings (“OZAH”) Hearing Examiner (1) waive copying charges for the outstanding documents, and (2) order Americana to produce the outstanding documents on a CD. Americana responded that it had complied with Brown’s discovery requests by inviting Brown to review Americana’s records, including the delinquency report with personal information redacted, at its management company’s office, and to make copies at a cost of \$0.20 per page. Americana claimed that the redacted delinquency report it provided to Brown was the same version that it supplied to Americana’s Board of Directors. The Hearing Examiner held a pre-hearing conference on February 12, 2012, at which she ordered Americana “to make its records available to [] Brown by March 4, 2013.”

The parties appeared for a public hearing on March 19, 2013. At the hearing, Brown alleged that Americana continued to refuse to comply with his discovery requests, because, among other things, Americana failed to provide him with a year-to-date general ledger of expenses that contained a description of each expense. Gary Simon, the operations manager for Americana’s management company, testified regarding Americana’s record-keeping practices and its method for developing its annual budget. The Hearing Examiner summarized these practices as follows:

Testimony at the public hearing and evidence submitted demonstrates that **[Americana’s] paper “books” include multiple financial records. To obtain a chronological list of all expenses**

with a detailed description of those expenses, one must cross-reference several separate files. [Americana] issues a “Monthly Statement” to the Board of Directors. This includes an income statement, balance sheet, receipts statement, cash disbursement report, a delinquency report, and a general ledger for the financial (i.e., monthly) period. **The monthly expenses are listed in the statement by account code, which also includes a separate year-to-date statement of expenses by account code. Account codes are numbers assigned to particular categories of expenses.** For instance, all expenses relating to “boiler maintenance” may be listed under the account code “58080.” **The monthly general ledger itemizes expenses by vendor, account code and check number. [Americana] does not compile a “year-to-date” general ledger for expenses, which according to [] Simon is an unusual record for a condominium association to keep.**

Detailed documentation for each expense is kept separately and organized in a single file by vendor name (“Expense Documentation File”). Expense information in this file includes a copy of the invoice or contract under which payment is made and a copy of the check. **Thus, in order to obtain a detailed description of each coded expense listed in the Monthly Statement, one must cross-reference the vendor’s name and check number listed in the monthly ledger with the vendor name and check number in the Expense Documentation File.**

As noted, there is no “year-to-date” general ledger kept in [Americana’s] ordinary course of business. To find the total amount expended during the fiscal year under a particular code, one must (1) look at the year-to-date total in the last Monthly Statement for that fiscal year or (2) add the expenses listed for that code in each Monthly Statement. To obtain a detailed description for all expenses in an account code for the fiscal year, one must cross-reference the check number and vendor name listed for the account code in each monthly general ledger with the same information in Expense Documentation File.

In addition to the paper account records, the management company uses a software accounting system known as Jenark. This system has the ability to generate reports on year-to-date expenses, which incorporates the vendor name, account number, and check number. When creating a report using Jenark, all of the checks listed under an account code will appear on the screen. The system enables the user to click on the checks listed and see the documentation for the expense (i.e., the invoice or contract, check number, and vendor).

According to [] Simon, the management company limits access to the Jenark system to particular employees based on job function. The management company does not permit even their auditors to have access to Jenark because if something happened to the system, it would require a tremendous amount of work to restore accurate information. Expense information included within the Jenark database is redundant of the paper documentation kept separately.

[] Simon testified that the Board employs the “**historical trend**” method of developing an annual budget and described how [Americana] prepares its annual budget. Preparation for the annual budget begins in June or July ([Americana’s] fiscal year is the calendar year). Documentation includes the year-to-date expenses by account code, year-to-date income, and anticipated year-end income and expenses. The documentation also includes 3-4 years of past income/expense information for the account codes shown in the budget.

[Americana] estimates the expenses for the upcoming fiscal year based on historical trends in preceding years. [] Simon testified that he gets the historic information from the prior statements for each financial period. He may average the past years by either mean or median. If on average he has spent \$3,000 a year in a particular category, he believes that it is prudent to budget for that amount unless a replacement fund is scheduled for the near future.

[] Simon testified that the historical trend method of budgeting will reveal management inefficiency. If one sees certain categories of expenses deviate from the historical norm, one should examine the reason and question whether they need a replacement program rather than a maintenance program. If a replacement program is needed, the Board may reallocate income from an operating account to a reserve fund. The historical trend method allows one to identify the amount spent in certain expense codes every year and base the estimated need for the future year on [] that trend. . . .

According to [] Simon, the “historical trend” method of estimating annual expenses is the standard method used by most homeowners and condominium associations, as well as many industries. The alternative “zero-based” method of budgeting requires construction and deconstruction of every line item to its root components. This requires an examination of every item purchased during the year and an independent estimation of what would be needed for the next year. This is very complicated and requires a lot of time and oversight that most volunteer Boards do not wish to undertake. In his opinion, were this method used, there would no longer be a volunteer Board.

(Bold emphasis added) (italics in original) (citations and footnotes omitted).

At the hearing, the Hearing Examiner denied Brown’s Motion to Compel, “because there is no law that requires the condo association to generate, physically generate reports . . . if they don’t keep them in the normal course of business[.]”

On April 29, 2013, the hearing examiner issued a Report and Recommendation to the CCOC. The hearing examiner concluded that (1) the “business judgment rule” governs [Americana’s] budget adoption procedures, and under that standard, [Americana] acted

within its discretion when it used the “historical trend” method to establish its budget; (2) Americana’s record-keeping does not violate its bylaws or the MCA; (3) Americana was not required to use its software to create a year-to-date general ledger for purposes of discovery; and (4) Americana acted within its discretion in withholding personal information in its delinquency report provided to Brown. The hearing examiner also denied Americana’s request for attorney’s fees, finding that there was insufficient evidence that, in bringing his complaint, Brown was “solely motivated by the desire to obtain computer-generated reports free of charge.”

On July 26, 2013, the CCOC adopted the hearing examiner’s Report and Recommendation as its own, with the following exception: “The panel holds that under Md. Code Real Property Ann., § 11-116, a unit owner is entitled to examine the books and records of [Americana], including [Americana’s] delinquency reports, without redaction of the names.” The CCOC issued the following order:

That [Americana] shall, within 30 days of the date of this decision, make available for inspection by [Brown] its Delinquency Reports without redaction of the names involved; and it is further

ORDERED, that this case is hereby DISMISSED and [Americana’s] application for attorney fees is DENIED for the reasons stated in the Recommended Decision.

Both parties petitioned for judicial review of the CCOC’s ruling by the Circuit Court for Montgomery County, which held a hearing on February 12, 2014. At the hearing, the

court issued an oral ruling affirming the CCOC’s decision in its entirety. The court issued an order consistent with its oral ruling on March 4, 2014. Brown filed a motion to alter or amend, which was denied on April 2, 2014. Brown filed his notice of appeal on April 28, 2014.

STANDARD OF REVIEW

In reviewing an administrative decision, “[t]his Court looks ‘through the circuit court’s decision and evaluates the decision of the agency.’” (citation omitted). *Wilson v. Md. Dep’t of Env’t*, 217 Md. App. 271, 283 (2014). Such review “is limited to determining if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.” *Manor Country Club v. Flaa*, 387 Md. 297, 315 (2005) (citations and internal quotation marks omitted). “The substantial evidence test evaluates whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Motor Vehicle Admin. v. Lipella*, 427 Md. 455, 467 (2012) (citations and internal quotation marks omitted). The reviewing court may not “substitute its judgment for the [e]xpertise of those persons who constitute the administrative agency from which the appeal is taken.” (citation omitted). *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 513 (1978). “Our obligation is to review the agency’s decision in the light most favorable to the agency, since their decisions are *prima facie* correct and carry with them the presumption of validity.”

Grasslands Plantation, Inc. v. Frizz-King Enters., LLC, 410 Md. 191, 204 (2009) (citations and internal quotation marks omitted).

DISCUSSION

The Maryland Condominium Act, Md Code (1974, 2010 Repl. Vol.), §§ 11-101 et seq. of the Real Property Article (“RP”), “regulates the formation, management, and termination of condominiums in Maryland.” *Jurgensen v. New Phoenix Atl. Condo. Council of Unit Owners*, 380 Md. 106, 115 (2004). The MCA regulates condominiums’ budgeting and record-keeping practices, among other matters. *See* RP §§ 11-109, 11-109.2 and 11-116.

The Montgomery County Council established the CCOC to “promote an equitable balance between the powers of [condominium] governing bodies, owners, and residents.” Montgomery Cnty. Code (1984, 2014 Cum. Supp.), § 10B-1 (“MCC”). The CCOC consists of fifteen members who serve three-year terms. MCC § 10B-3(a) and (c). The CCOC may hear disputes between parties involving a council of unit owners’ authority, including its authority to “properly adopt a budget” or “maintain . . . books and records.” MCC §§ 10B-8(4), 10B-8(6) and 10B-9(a). The CCOC “may designate [OZAH] to conduct the hearing”; if so, “the hearing examiner must forward a recommended decision and order to a [CCOC] panel,” which “may adopt, reverse, modify, or remand the recommended decision before issuing its final order[.]” MCC §§ 10B-12(d) and 13(f). A CCOC decision may be appealed; the decision must be sustained unless it is “(1) inconsistent with applicable law;

(2) not supported by substantial evidence on the record; or (3) arbitrary and capricious, considering all facts before the hearing panel.” MCC § 10B-13(h).

I. Discovery Dispute

Brown argues that the circuit court never reviewed the CCOC’s decision regarding the parties’ discovery dispute, even though Brown filed a separate memorandum with the court addressing that alleged error. In his memorandum to the circuit court, Brown argued that “the CCOC erred in its decision to deny Brown his Request for Production of Documents including year to date books, electronically stored information (invoices), and the Prepaid and Delinquency Report.” We disagree.

At the hearing on February 12, 2014, the circuit court heard argument on the discovery dispute, asking Brown “what [documents] are you asking for and what do[es] [Americana] have?” Brown responded that he was seeking “year-to-date” ledgers for 2011 and 2012, as well as the corresponding electronically scanned files. Americana responded that the CCOC correctly found that Americana produced the records for Brown in the form of monthly ledgers, and that Americana did not have to create year-to-date ledgers or a report “that is not actually in existence, but that could be created by the management software” to comply with Brown’s Motion to Compel.

The court issued an oral ruling at the hearing:

Okay. Well I think on the second issue, I believe that the CCOC found that it was the responsibility of [Americana] to provide any records and data [Americana] itself had, **but they were not required to produce any—they were not required to create any new type of document and they were not required to obtain the data and/or information stored by the management company, that being a separate entity.** Now, at the hearing, there was not any—there was no evidence produced to the contrary that it was the responsibility of [Americana’s] board to produce that, and under the law, there’s no requirement that the [Americana] actually go to the effort of creating a document that it doesn’t ordinarily keep in the ordinary course of business, and because the—I believe it was **based upon the fact that it was the software owned by the management company that would be necessary to create this new document, which software [Americana] doesn’t own or control, that the commission, I think properly found that that was not their responsibility to produce for the purposes of discovery,** so I don’t believe there was any error committed by the commission in making that ruling.

(Bold emphasis added).

Thus the circuit court clearly reviewed the CCOC’s decision regarding the parties’ discovery dispute, and affirmed the CCOC’s decision that Americana was not required to create new documents for purposes of discovery. As a result, Brown’s contention that the circuit court failed to review the CCOC’s discovery decision is without merit.

II. CCOC’s Decision & Order

Americana’s Financial Records

Brown argues that the CCOC erred in finding that Americana did not have to produce or make available for Brown’s inspection year-to-date ledgers for 2011 and 2012, as well as

electronically stored invoices, because the MCA and Americana’s bylaws require Americana to make its books and accounts available to unit owners.³ Brown claims that he is requesting the electronically stored invoices “because they meet the detailed requirements of the Bylaws and can easily be organized within accounts to meet Bylaws requirement[s] and [are] less burdensome for [Americana] to store, review, and copy.” As for the 2011 and 2012 year-to-date ledgers, Brown contends that, because he provided examples of Americana’s year-to-date ledgers for past years at the CCOC hearing, he “prove[d] that year-to-date books are produced [by Americana] during normal course of business.”

Americana responds that the CCOC correctly found that Americana’s books met the requirements of the MCA and its own bylaws. According to Americana, Brown wants Americana to produce records in a format that Americana does not produce in the ordinary course of business. Americana contends that, although Brown can use the available documents to reformat the data to his liking, Brown “cannot, however, require [Americana] to make a document that it does not possess in its files.”

The MCA requires the council of unit owners to “keep books and records in accordance with good accounting practices on a consistent basis.” RP § 11-116(a). These

³ To the extent the Brown also argues that the CCOC erred in denying his Motion to Compel Production of Documents, we treat Brown’s discovery argument as an argument on the merits of Americana’s obligations regarding inspection and production of documents under its bylaws and the Maryland Condominium Act, because Brown’s requests under discovery and on the merits are identical.

records must be annually audited by an independent certified public accountant and made available to unit owners for examination or copying. RP §§ 11-116(b) and (c)(1)(i). The council of unit owners may impose a reasonable copying charge. RP § 11-116(d)(1).

Americana's bylaws include the following relevant provisions:

Section 2. Books and Accounts. **Books and accounts of [Americana] shall be kept under the direction of the Treasurer in accordance with good accounting practices, consistently applied. The same shall include books with detailed accounts, in chronological order, of receipts and of the expenditures affecting the condominium project and its administration and shall specify the maintenance and repair expenses of the general and limited common elements and services and any other expenses incurred.** That amount of any assessment required for payment on any capital expenditures of [Americana] may, in the discretion of the Board of Directors, be credited upon the books of the [Americana] to the "Paid-in-Surplus" account as a capital contribution by the members.

Section 4. Inspection of Books. **The books and accounts of [Americana] and vouchers accrediting the entries made thereupon, shall be available for examination by the members of [Americana], and/or their duly authorized agents or attorneys, and to the institutional holder of any first mortgage on any condominium unit and/or its duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their respective interests.**

(Bold emphasis added). In summary, Americana is required to keep its financial records, including detailed accounts of receipts and expenditures, "in accordance with good

accounting practices,” and these records must be made available to the condominium unit owners and their first mortgagors. RP §§ 11-116(a) through 116(b) and (c)(1)(i).

The CCOC’s Decision and Order stated the following findings of fact and conclusions of law regarding Americana’s book-keeping practices and disclosure policies:

The [MCA] requires Americana to keep its financial records, “in accordance with good accounting practices on a consistent basis.” The Condominium’s By-Laws similarly require the Condominium to keep its books and accounts “under the direction of the Treasurer in accordance with good accounting practices consistently applied. The By-Laws further mandate that[:]

The same shall include books with detailed accounts, in chronological order, of receipts and of the expenditures affecting the condominium project and its administration and shall specify the maintenance and repair expenses of the general and limited common elements and services and other expenses incurred.

As noted, [Americana’s] paper “books” include multiple financial records. Collectively, these records do meet the requirements of the By-Laws. The Monthly Statements are issued chronologically to the Board of Directors at the close of each financial period (i.e., each month). While the detailed documentation for each expense is kept separately, it is possible to obtain this information by using the general ledger included in each Monthly Statement. **Testimony also reveals that auditors use these documents in the regular course of performing their financial audits, thus demonstrating that the records are kept in a manner acceptable by accounting standards.**

[] Brown asserts the “books” of [Americana] should be a single document listing expenses in chronological order with a description of the detailed documentation for each expense. Because this type of report is available if one of the management company employees generates a report through Jenark, he believes it should be provided. This report is not, however, produced in the normal course of [Americana’s] business; rather, it must be created by management company staff. [] Simon contends that responding to generalized requests for a large number of financial records is time-consuming and a burden on staff.

The business judgment rule, which governs the internal operating affairs of [Americana], vests in the Board the discretion to determine its method of keeping [Americana’s] financial records and whether to mandate that management staff utilize the Jenark system to produce reports. **The evidence demonstrates that the records are kept in a manner consistent with the [MCA] and [Americana’s] By-Laws. As indicated, nothing in the record demonstrates that [Americana] has acted in bad faith. For these reasons, the [CCOC] finds that the Board’s actions fall within the scope of the business judgment rule and that the Complaint should be dismissed.**

The [CCOC] finds that [] Brown has been offered the opportunity to review all of [Americana’s] records that are kept in the normal course of business. These include the Monthly Statements as well as the corresponding Expense Documentation File. The record contains repeated offers from [Americana] to make the records available for his review and demonstrates that, at times, [] Brown did attend meetings to review these financial records, although he continued to assert that the records were not forthcoming. **The [CCOC] finds that [] Brown’s dissatisfaction with the records produced does not stem from being denied access or a failure of discovery. Rather, his discontent stems from the format of [Americana’s] “books,” which he finds difficult to negotiate. He**

looks longingly to the “year-to-date” ledger that may be generated by the management company’s software accounting system, which can search [Americana’s] financial records to create a year-to-date ledger. He also insists that a detailed description of the expense should be incorporated into the year-to-date ledger which should be available in a searchable CD format.

The [CCOC] concludes that [] Brown’s desire, while understandable, falls outside the scope of the disclosure requirements in the [MCA] and the discovery requirements in County law. This is because, to fulfill his request, [Americana] must *create* a document that does not exist. By their terms, the [MCA] and the APA require [Americana] to permit owners to review [its] existing records; they do not require [Americana] to produce or create a report in the format that is most desirable to a unit owner.

While not technically applicable to this case, such a request under the Maryland Rules of Civil Procedure would yield a similar result. Those Rules require a party to produce only what is in their “custody and control.” While this includes access to electronic records, it still does not affirmatively require a party to generate a record that does not exist. Moreover, the Rules do not create an absolute right to view electronic records that already exist; provision of these may be limited where burdensome or difficult. The [CCOC] finds reasonable the management company’s position that unit owners may not individually use the database, thus requiring staff time to generate and copy year-to-date reports with the accompanying detail of expenses.

(Italics in original) (bold emphasis added) (footnotes and citations omitted).

We hold that the CCOC’s decision regarding Americana’s financial record-keeping is supported by substantial evidence and not premised on an erroneous conclusion of law. Considering all of the evidence regarding Brown’s requests and Americana’s book-keeping

practices, the CCOC reasonably concluded that Americana’s book-keeping practices were in accordance with good accounting practices, because “auditors use these documents in the regular course of performing their financial audits[.]” Brown did not introduce any expert testimony or other evidence to demonstrate that Americana’s books were *not* kept in accordance with good accounting practices; he simply preferred a different method of book-keeping that would have made it easier to obtain the information that he wanted. As a result, a reasoning mind reasonably could conclude that Americana’s book-keeping met the requirements of the MCA and Americana’s own bylaws.

In addition, the CCOC reasonably concluded that Americana complied with the disclosure requirements found in the MCA and its own bylaws, because Americana made available all of the records that it maintained in the normal course of business, in the format that they were kept. The CCOC is correct that Americana was not required to run the accounting software system to create records in Brown’s desired format, even though the management company had the technical capability to do so, because the MCA and the bylaws only require Americana to make its financial records “available” for examination or copying. It is clear that Americana made its financial records available to Brown on multiple occasions; Americana is not required to go any further. Accordingly, substantial evidence supports the CCOC’s decision that Americana complied with its financial record-keeping and

disclosure requirements of the MCA and its bylaws, and the CCOC's decision was not premised on any error of law.

Americana's Budgeting Practices

Finally, Brown argues that Americana "improperly adopted its 2011 annual budget" by using the "historical trend" method. According to Brown, Americana's budgeting practice is improper, because the Board only relied on Americana's "books," which "do not list the identification of line item expenses, only accounts expenses." Americana responds that "Brown presented no evidence and no expert to indicate the historical trend method employed by the Board and management company for budgeting was incorrect, let alone a decision exercis[ed] [in] bad faith and/or abuse of discretion."

Under the MCA, the council of unit owners, the condominium's governing body, must prepare and submit an annual proposed budget to the unit owners. *See* RP §§ 11-109 and 109.2. The annual budget must contain the following categories: income, administration, maintenance, utilities, general expenses, reserves, and capital items. RP § 11-109.2(b). The statute, however, is silent as to any specific format or process the budget must take. RP § 11-109.2.

The CCOC's Decision and Order stated the following findings of fact and conclusions of law regarding Americana's budgeting practices:

Neither the Master Deed nor the By-Laws mandate that [Americana] adopt a budget *per se*. Article IX, Section II of the By-Laws does, however, require unit owners to pay, on a monthly basis, their proportionate share of [Americana's] expenses, "*as estimated by its Board of Directors . . .*" **Thus, the By-Laws vest the Board with the discretion to decide how to estimate its annual expenses to determine the amount of its assessment. The [MCA] requires that this estimate of expenses be included in an annual budget.**

The [CCOC] finds convincing [] Simon's testimony that the "historical trend" method of estimating future income and expenses is a standard method used in many industries (and particularly by homeowners and condominium associations) and is an efficient way of estimating future expenses. While [] Brown argues that [Americana] must know all of its "inventory" or supplies on hand at the end of the fiscal year to avoid redundant expenses, the evidence demonstrates that this is not the case. Averaging prior year's expenses in particular expense categories eliminates redundant purchases because an unnecessarily large purchase in a prior year will be offset by lower costs in subsequent years. This method also reveals trends that may determine whether operating expenses for certain maintenance items are increasing, thus signaling the need to shift that expense to a replacement or reserve fund.

Nothing in this record indicates that the Board's decision to use of [sic] the "historical trend" method to develop [Americana's] budget was in bad faith. The testimony demonstrates that the alternative method of estimating future expenses, the "zero-based" budget method, is time-consuming and requires a great deal of oversight; the [CCOC] finds credible [] Simon's statement that, were this method used, "he would no longer have a volunteer board."

(Italics in original) (bold emphasis added) (citations omitted).

Again, we hold that the CCOC’s decision was supported by substantial evidence and was not premised on an erroneous conclusion of law, because there is no evidence in the record that refutes Simon’s testimony “that the ‘historical trend’ method of estimating future income and expenses is a standard method used in many industries (and particularly by homeowners and condominium associations) and is an efficient way of estimating future expenses.” Although Brown may prefer that Americana use a “zero-based” budgeting method that delves deeper into the details of each invoice and expenditure, neither the MCA nor its bylaws require Americana to take such action. *See* RP §§ 11-109 and 109.2. Accordingly, we uphold the CCOC’s decision that Americana complied with its budgeting obligations under the MCA and its bylaws.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED; APPELLANT TO PAY
COSTS.**