

Judge: official's actions rise to criminality

Stanardsville mayor, second man accused in Dogwood Valley association case

BY TERRY BEIGIE
Record Editor

Last month, a judge in the 16th Judicial Circuit upheld a 2019 decision ruling that two Greene County men are personally liable regarding actions taken by a homeowners' association in Greene.

Dogwood Valley Citizen's Association (DVCA), which has faced numerous court

battles since its incorporation in the late 1970s, was shuttered in May 2019 by Judge Dale Durrer. Last month, he upheld his previous ruling from Oct. 3, 2019, stating that Stanardsville Mayor Gary Lowe and Dogwood Valley resident Matthew Brown were personally accountable for funds collected through DVCA.

Brown and Lowe were the

only members of the DVCA board of directors from 2010-2018, according to court records.

Neither Brown nor Lowe, nor their attorney, was available for comment after repeated attempts.

Six homeowners from the 300-lot residential development in Stanardsville testified in August 2019 that when they asked how they could serve on

the DVCA board, both Brown and Lowe "attempted to sell DVCA board memberships for \$5,000 and the DVCA for \$300,000," according to court records.

Judge Durrer said in his 2021 opinion that the court finds that each lot owner possessed a vote for each lot owned when the association held an annual meeting and membership to the board of

directors for the association is voluntary.

"The attempted sale of board positions and the DVCA rises to the level of a violation of several criminal statutes," Judge Durrer wrote in his April 23 decision. "In this case, Brown and Lowe attempted to sell memberships on the DVCA board and DVCA itself.

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There is no evidence that either Brown or Lowe possessed even implicit authorization to sell any membership to DVCA. The defendants' evidence demonstrates that there is probable cause to believe that Brown and Lowe violated several Virginia penal statutes, including, without limitation, obtaining money by false pretenses, solicitation/attempt to commit embezzlement and solicitation to enter into a conspiracy to commit embezzlement and money laundering.

"Further, had the witnesses accepted the offer of \$5,000 or \$300,000, they would have been co-conspirators, accessories before the fact or principals in the second degree to Brown and Lowe's attempts to commit various crimes," Judge Durrer continued.

The judge further discussed in his decision what the commonwealth would have to prove to sustain a criminal conviction on the charges above.

At press time, Greene County Commonwealth's Attorney Edwin Consolvo said he was looking into whether to bring charges, but because the case involves another elected official, a special prosecutor will need to be assigned.

Additionally, Judge Durrer upheld his decision that the corporate veil had been pierced and no longer held personal protections for either Lowe or Brown.

"Evidence the court received in the previous hearings indicated that Brown and Lowe prominently represented the alter egos of DVCA,"

Judge Durrer said. "The evidence is also undisputed that Brown and Lowe commingled personal funds with DVCA funds, including, without limitation, the payment of attorney's fees from Brown's personal checking account. The commingling of funds buttresses the finding that the accounting records of DVCA were not properly maintained. Further, the commingling of corporate and personal funds is a factor to consider when assessing the piercing of the corporate veil."

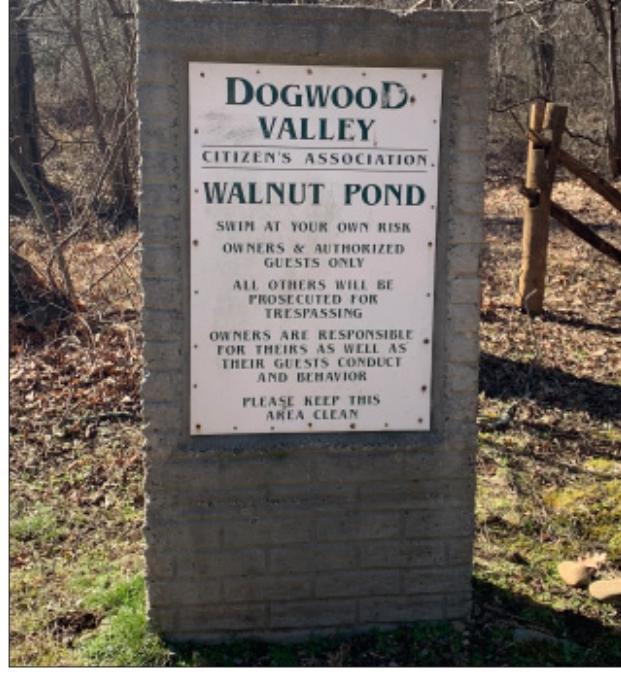
The case has required multiple hearings in three different circuit courts since 2018—including Greene, Madison and Culpeper—stemming from a 2017 warrant in debt case against Samuel Miller, represented by Culpeper attorney Michael Sharman, for nonpayment of dues.

Judge Durrer ruled against DVCA in 2019 for that case due to the fact that in 2004, a Supreme Court of Virginia ruling said DVCA was not a proper homeowners'

association and could not levy special assessments. It also ruled that DVCA did not have the authority to put liens on property. DVCA continued to collect regular assessments, which varied by lot and have included a 10% increase each year since 2006, according to meeting minutes found within older court cases. However, work on roads was sparse, if done at all, according to residents who testified in the most recent warrant in debt case in April 2019.

Judge Durrer noted in 2019 that Lowe and Brown did not do basic research before allowing the warrant in debt to be filed and "pierced the corporate veil," making them personally liable for funds, bringing about the shutting of the corporation with the state corporation commission.

However, both Brown and Lowe were on the board of directors in 2004 when the Supreme Court of Virginia ruling came down.



PHOTOS BY TERRY BEIGIE/GREENE COUNTY RECORD

Top, the Dogwood Valley Citizen's Association was incorporated to maintain public areas, such as Walnut Pond, and to maintain the roadways. Above, this photo was taken in 2020 of one of the roadways in Dogwood Valley subdivision in Stanardsville. Even with a four-wheel-drive car, roadways are nearly impossible much of the time.