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No. 23F-H008-REL

ADMINISTRATIVE LAW JUDGE DECISION

V.

Respondent.

APPEARANCES: Petitioner Amy Hilburn appeared on her own behalf. Melissa Doolan, Esq. represented Respondent Stetson Valley Owners Association. Danielle Miglio and Ann Renee Wilsey appeared as witnesses for Respondent.

FINDINGS OF FACT

2. On or about September 28, 2022, the Department issued a Notice of Hearing in which it set forth the issue for hearing as follows:

3. At hearing, Petitioner testified on her own behalf and Respondent presented the testimony of Danielle Miglio, Community Manager, and Ann Renee Wilsey,

Architectural Review Committee Member. Based on the evidence presented at hearing, the following occurred:

- a. From 2011 until February 2022, the Architectural Review Committee (“ARC”) held regularly scheduled meetings on the first Tuesday of every month. Respondent’s Meeting Minutes from June 22, 2017, June 28, 2018, January 30, 2019, July 15, 2020, and July 21, 2021, demonstrate that the ARC had regularly scheduled meetings.¹
- b. Respondent’s online calendar demonstrated that the ARC had regularly scheduled meetings in 2021.²
- c. Respondent’s online Paint Architectural Change Request Form states on the bottom: “The Architectural Committee reviews applications on the first Tuesday of every month.”³
- d. On April 4, 2022, June 8, 2022, and July 12, 2022, open meetings of the ARC were held.⁴
- e. Danielle Miglio has been Respondent’s Community Manager since February 2022, when Respondent hired Oasis Community Management “Oasis.” Ms. Miglio testified that since August 2022, the ARC has not held regularly scheduled meetings because the ARC conducts its business through an online portal. Ms. Miglio clarified that the current Paint Architectural Change Request Form should not contain language concerning regularly scheduled meetings, and that this language would be removed from the form as it is inaccurate information.
- f. Ann Renee Wilsey testified that she has been an ARC member for seven years. Ms. Wilsey testified that beginning in March 2022, the ARC began processing ARC requests through an online portal based on the recommendation of Oasis. This change was made in order to provide homeowners with a faster turnaround time of their requests.

¹ See Petitioner’s Exhibits 1-5.

² See Petitioner’s Exhibit 7.

³ See Petitioner’s Exhibit 8.

⁴ See Respondent’s Exhibit 1-3.

1 g. Ms. Wilsey explained that the members are notified of an ARC request
2 via email. Each ARC member can view the request in their own time and
3 vote based upon the provisions of the CC&Rs. If an ARC member has a
4 question regarding the request, the member emails Ms. Miglio who
5 contacts the homeowner to seek clarification. Members of the ARC
6 have the ability to comment to each other through the portal and vote on
7 the requests through the portal.

8 h. Ms. Wilsey testified that there is no regularly scheduled time to look at
9 the requests, comment, and/or vote.

10 4. Petitioner argued that the ARC members' ability to comment outside of a
11 public meeting is in contradiction to the legislation.

12 5. Respondent argued that because the ARC no longer has regularly
13 scheduled meetings, there can be no violation.

14 **CONCLUSIONS OF LAW**

15 1. Arizona statute permits an owner or a planned community organization to
16 file a petition with the Department for a hearing concerning violations of planned
17 community documents or violations of statutes that regulate planned communities.⁵ That
18 statute provides that such petitions will be heard before the Office of Administrative
19 Hearings.

20 2. Petitioner bears the burden of proof to establish that Respondent committed
21 the alleged violation by a preponderance of the evidence.⁶ Respondent bears the burden to
22 establish affirmative defenses by the same evidentiary standard.⁷

23 3. "A preponderance of the evidence is such proof as convinces the trier of fact
24 that the contention is more probably true than not."⁸ A preponderance of the evidence is
25 "[t]he greater weight of the evidence, not necessarily established by the greater number of
26 witnesses testifying to a fact but by evidence that has the most convincing force; superior

27 ⁵ A.R.S. § 32-2199.

28 ⁶ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74 Ariz. 369,
372, 249 P.2d 837 (1952).

29 ⁷ See A.A.C. R2-19-119(B)(2).

30 ⁸ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
2 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
3 the other.”⁹

4 4. A.R.S. § 33-1804(A) provides the following:

5 Notwithstanding any provision in the declaration, bylaws or other
6 documents to the contrary, all meetings of the members' association and
7 the board of directors, and ***any regularly scheduled committee meetings***,
8 are open to all members of the association or any person designated by a
9 member in writing as the member's representative and all members or
designated representatives so desiring shall be permitted to attend and
speak at an appropriate time during the deliberations and proceedings.

10 Emphasis added.

11 5. Article 6.2 of Respondent's Bylaws pertaining to Committees of the Board,
12 states the following: “The provisions of the Bylaws governing meetings, action without
13 meetings and notice, waiver of notice, quorum and voting requirement of the Board shall
14 also apply to committees and their members.”

15 6. The credible and probative evidence of record established that in the instant
16 matter, prior to the ARC utilizing the online portal system, the ARC was holding regularly
17 scheduled meetings. However, since March 2022, the ARC has not been holding
18 regularly scheduled meetings and nothing in the provisions cited by Petitioner require the
19 ARC to hold regularly scheduled meetings. If the ARC resumes regularly scheduled
20 meetings, those meetings would be required to be open to all members of the association.

21 7. Accordingly, Petitioner failed to sustain her burden to establish a violation by
22 Respondent of A.R.S. § 33-1804(A) or Article 6.2 of Respondent's Bylaws.

23 **ORDER**

24 IT IS ORDERED that Petitioner's Petition is dismissed.

26 **NOTICE**

27 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties**
28 **unless a rehearing is granted pursuant to A.R.S. § 32-2199.04.**

29 ⁹ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter must be filed with the Commissioner of the Department of Real Estate within 30 days of the service of this Order upon the parties.

Done this day, November 17, 2022.

/s/ Sondra J. Vanella
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile November 17, 2022 to:

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