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BACKGROUND AND PROCEDURE

3. The Department is authorized by statute to receive and to decide petitions for hearings from members of homeowners' associations and from homeowners' associations in Arizona.

4. On July 14, 2022, Petitioner filed a single issue petition with the Department which alleged, overall, that the Association "interfered with the legitimate and accepted request for Wildfire Risk Assessment by the Green Valley Fire Department" in violation of Arizona Revised Statutes ("ARIZ. REV. STAT.") §§ 33-9 and 33-16 and the Quail Creek Villas Association Inc. Bylaws Art. III sec. 2.³

5. On July 15, 2022, the Department issued a HOA PETITION – DEFICIENCY NOTICE TO PETITIONER whereby the petition was returned as unprocessed because it was deemed outside the jurisdiction of the Department's HOA petition process, the Respondent had been incorrectly listed, Petitioner's identifying information was missing, the property at issue was not listed, Petitioner's narrative was deemed insufficient, Petitioner failed to remit payment for the petition, and the petitioner was deemed incomplete overall.⁴

6. On or about July 15, 2022, Petitioner resubmitted his petition in the substantially same manner, save the inclusion of a \$500.00 filing fee.⁵

7. On July 21, 2022, the Department returned the petition to Petitioner as deficient, noting that the petition "references two Arizona Revised Statutes that are not identifiable within our jurisdiction" and that Petitioner "failed to specify a one sentence statement that directly connects your allegation to a specific statute/law/bylaw/CC&R."⁶ Petitioner was also advised that his petition could not be made against specific Board Members.⁷

³ See Department's electronic file at 1st Dispute Form Completed.pdf.

⁴ See Department's electronic file at 1st Deficient Notice_.pdf.

⁵ See Department's electronic file at 2nd Dispute Form Completed.pdf.

⁶ See Department's electronic file at 2nd Deficient Notice.pdf.

⁷ *Id.*

8. On or about July 21, 2022, Petitioner resubmitted his petition for a third time in the substantially same manner.⁸ On July 22, 2022, the Department processed Petitioner's \$500.00 filing fee.⁹

9. On July 22, 2022, the Department issued a HOA NOTICE OF PETITION to Respondent.¹⁰

10. On August 11, 2022, Respondent returned its ANSWER to the Department whereby it denied Petitioner’s claim(s) and requested dismissal “because [the petition] fails to state a claim upon which relief may be granted” and because “Petition lacks standing” to make a claim.¹¹

11. On August 24, 2022, the Department referred this matter to the Office of Administrative Hearings (“OAH”), an independent state agency, for an evidentiary hearing on October 21, 2020.¹² Per the NOTICE OF HEARING¹³ the issue(s) to be determined at hearing are as follows:

Petitioner states that Respondent has violated Quail Creek Villas Association Inc ByLaws Article III Section 2 and Arizona Revised Statute § 10-3842. The Petitioner has explained that “[Respondent] stopped [Green Valley Fire Department] in progress Wildfire risk Assessment. ... To interfere and cause cessation of a [Green Valley Fire Department] Wildfire Risk Assessment is NOT good faith... nor in the best interests of the Corporation...”

(All errors in original.)

HEARING EVIDENCE

12. Petitioner testified on his own behalf.¹⁴ Lori Wuollet, John Messner, and Robert Jelen testified on behalf of Respondent.¹⁵

⁸ See Department's electronic file at Final Dispute Form Completed.pdf.

⁹ See Department's electronic file at Filing Fee.pdf.

¹⁰ See Department's electronic file at Notice of Petition .pdf.

¹¹ See Department's electronic file at Response to Dispute Petition.pdf.

¹² On September 27, 2022, the matter was continued and reset for December 12, 2022, whereby the case was heard.

¹³ See Department's electronic file at 23F-H004-REL Notice of Hearing.pdf.

14 On November 15, 2022, Petitioner disclosed proposed exhibits to the Office of Administrative Hearing. However, because said exhibits were not provided to Respondent's counsel they were deemed inadmissible.

¹⁵ Although Respondent disclosed proposed exhibits December 05-06, 2022, they were deemed inadmissible because they were submitted in a format inaccessible to the Office of Administrative Hearings.

13. The Department's electronic file, including the NOTICE OF HEARING, and September 27, 2022, MINUTE ENTRY – GRANTING CONTINUANCE were all admitted into the hearing record as exhibits. The substantive evidence of record is as follows:

- a. After being afforded a brief recess after the commencement of hearing, Petitioner testified that he believed the Association was in violation of ARIZ. REV. STAT. § 33-1802, though he did not specify which subsection.
- b. Per Petitioner, his dispute arose out of his need for homeowner's insurance for secondary residential property he purchased in the Quail Creek Villas subdivision. At that time Petitioner had great difficulties finding an insurance agency to provide coverage due to alleged concerns regarding fire hazards in the area. Nevertheless, he was ultimately able to locate a carrier.
- c. On an unknown date Petitioner broached the subject wild fire hazards to a Board Member, Matt Tittle. Mr. Tittle expressed a personal interest to Petitioner in obtaining further information on the issue.
- d. On or about April 21, 2022, Petitioner contacted John O'Campo, Fire Inspector ("Inspector O'Campo") of the Green Valley Fire Department ("GVFD") to perform a fire inspection for the entirety of the Quail Creek Villas subdivision, because Petitioner opined that his property could and inevitably would be impacted by neighboring properties in the subdivision due to wildfire(s).¹⁶
- e. On April 28, 2022, Inspector O'Campo agreed to perform a complimentary fire inspection the following week of "the south side on N Broken Hills Dr west of the arroyo bridge ... all way to the Labyrinth in the wash" per Petitioner's request.¹⁷
- f. Though an the inspection had yet to commence, on May 03, 2022, Inspector O'Campo notified Petitioner that a Board Member had informed him that

¹⁶ See Department's electronic file at 2_Apr 28 O Campo Specifics ..., Wildfire defense space.pdf.

¹⁷ *Id.*

1 “this and other such issues should be addressed to the management
2 company of the Villas.”¹⁸

- 3 g. On or about May 12, 2022, Petitioner emailed the Board to inquire why the
4 fire inspection had been halted.
- 5 h. On or about May 18, 2022, Petitioner emailed the master developer with his
6 concerns.
- 7 i. On an unknown date Petitioner formed an Ad Hoc Committee of
8 homeowners to discuss potential wildfire hazards within the subdivision.
9 Petitioner also uploaded a “video study” he conducted to a popular social
10 media platform for public viewing.
- 11 j. At a Board meeting held June 20, 2022, Petitioner had raised his concerns
12 regarding potential wildfire hazards within the subdivision. Due to
13 insufficient time remaining in the meeting, Petitioner’s concerns were not
14 addressed by the Board or any other Association member(s).

15 **ADDITIONAL EVIDENCE**

16 14. On an unknown date the Board asked the master developer to thin and/or
17 remove any vegetation in an effort to perform fire abatement within the Quail Creek Villas
18 subdivision. The master developer declined.

19 15. Later, on or about November 03, 2022, the Association had the Arizona
20 State Department of Forestry & Fire Management perform an assessment through its
21 Firewise program, led by inspector Corey Guerin (“Inspector Guerin”).

- 22 a. It is unclear whether, and to what extent, the Association has made
23 Inspector Guerin’s findings available to its members.

24 **CLOSING ARGUMENTS**

25 Respondent’s closing argument

26 16. In closing, Respondent argued that Petitioner did not have the authority to
27 request GVFD to perform a fire inspection in the Quail Creek Villas subdivision, and that
28 the community documents had not granted any such authority to Petitioner.

29 ¹⁸ See Department’s electronic file at 3_May 3 reply O CAMPO on Tittle Action.pdf.

Petitioner's closing argument

17. In closing, Petitioner argued that he acted, in large part, due to his belief that his property could be adversely impacted by a neighbor's home should it fall victim to a wild fire, and that he did so knowing he had Mr. Tittle's support. Petitioner asked that an order be issued instructing Respondent to abide by state law and community documents, and that a civil penalty be imposed against Respondent.

CONCLUSIONS OF LAW

1. This matter lies within the Department's jurisdiction pursuant to ARIZ. REV. STAT. §§ 32-2102 and 32-2199 et seq., regarding a dispute between an owner and a planned community association. The owner or association may petition the department for a hearing concerning violations of community documents or violations of the statutes that regulate planned communities as long as the petitioner has filed a petition with the department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(A), 32-2199.01(D), 32-2199.02, and 41-1092 et seq. OAH has the authority to hear and decide the contested case at bar. OAH has the authority to interpret the contract between the parties.¹⁹

3. In this proceeding, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-1805.²⁰ Respondent bears the burden of establishing any affirmative defenses by the same evidentiary burden.²¹

4. "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."²² A preponderance of the evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable

¹⁹ See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

²⁰ See Arizona Administrative Code ("ARIZ. ADMIN. CODE") R2-19-119.

²¹ *Id.*

²² MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”²³

5. In Arizona, when construing statutes, we look first to a statute's language as the best and most reliable index of its meaning. If the statute's language is clear and unambiguous, we give effect to that language and apply it without using other means of statutory construction, unless applying the literal language would lead to an absurd result. Words should be given “their natural, obvious, and ordinary meaning.”²⁴

6. Statutes should be interpreted to provide a fair and sensible result. *Gutierrez v. Industrial Commission of Arizona*; see also *State v. McFall*, 103 Ariz. 234, 238, 439 P.2d 805, 809 (1968) (“Courts will not place an absurd and unreasonable construction on statutes.”).

7. When the legislature uses a word or words in one section of a statute, but not another, the tribunal may not read those words into the section where the legislature did not include them.²⁵ Unless defined by the legislature, words in statutes are given their ordinary meanings.²⁶

8. Each word, phrase, clause, and sentence of a statute or rule must be given meaning so that no part will be void, inert, redundant, or trivial.²⁷

9. ARIZ. REV. STAT. § 10-3842, Corporations and Association – Standards of Conduct for Officers, is outside the jurisdiction of the Department and inapplicable to this matter.

10. ARIZ. REV. STAT. § 33-9 does not exist.

11. ARIZ. REV. STAT. § 33-16 does not exist.

12. ARIZ. REV. STAT. § 33-1802(1) defines Association, in pertinent part, as “[A] nonprofit corporation or unincorporated association of owners that is created pursuant to a declaration to own and operate portions of a planned community and that has the power

²³ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

²⁴ *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

²⁵ See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

²⁶ *Id.*

²⁷ See *Deer Valley, v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

1 under the declaration to assess association members to pay the costs and expenses
2 incurred in the performance of the association's obligations under the declaration."

3 13. ARIZ. REV. STAT. § 33-1802(2) defines Community documents as an
4 Association's "declaration, bylaws, articles of incorporation, if any, and rules, if any."

5 14. ARIZ. REV. STAT. § 33-1802(3) defines Declaration as "any instruments,
6 however denominated, that establish a planned community and any amendment to those
7 instruments."

8 15. ARIZ. REV. STAT. § 33-1802(4) defines Planned community, in pertinent part,
9 as "a real estate development that includes real estate owned and operated by a nonprofit
10 corporation that is created for the purpose of managing, maintaining or improving the
11 property and in which the declaration expressly states both that the owners of separately
12 owned lots, parcels or units are mandatory members and that the owners are required to
13 pay assessments to the association for these purposes."

14 16. Association Bylaws Art. III, Board of Directors, Section 2. Powers and
15 Duties, provide, in pertinent part, that the Board shall have the powers and duties
16 necessary for the administration of the affairs of the Corporation, and may exercise and
17 perform all of the rights, duties, privileges, obligations and responsibilities of the Board
18 and/or the extent permitted by law, the Board may delegate to one or more committees,
19 officers, employees, managers, agent or other persons such duties and powers as
20 appears, to the Board, to be in the best interest of the Corporation.²⁸

21 17. The conundrum of Petitioner's confusing reliance on statutes that do not
22 exist and/or are outside the jurisdiction of the Department is solved, in large part, based on
23 the substantive evidence of record. Accordingly, the undersigned finds that Petitioner has
24 failed to sustain his burden of proof in this matter.

25 18. Here, the record reflects that Petitioner did not have the authority or
26 permission to act on behalf of the Association to request that GVFD perform a wild fire
27 inspection in and for the Quail Creek Villas subdivision. More importantly, Petitioner
28 conceded that Inspector O'Campo had not commenced any such inspection by May 03,

29 ²⁸ See Department's electronic file at 4_Villas – ByLaws Partial.pdf.

2022, when he was instructed not to by the Board. Lastly, Petitioner has not established any dereliction of duty on the Board's part regarding wild fire abatement, as the record also establishes that the Association had the State perform an inspection last month.

19. Because Petitioner did not establish a statutory and/or community document violation by a preponderance of the evidence, the underlying petition must be denied as Petitioner did not sustain his burden of proof.

ORDER

Based on the foregoing,

IT IS ORDERED that Petitioners' petition be denied.

IT IS FURTHER ORDERED all pending post-hearing motions are denied as moot.²⁹

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the ORDER will be five days from the date of that certification.

NOTICE

Pursuant to ARIZ. REV. STAT. §32-2199.02(B), this ORDER is binding on the parties unless a rehearing is granted pursuant to ARIZ. REV. STAT. § 32-2199.04. Pursuant to ARIZ. REV. STAT. § 41-1092.09, a request for rehearing in this matter must be filed with the Commissioner of the Arizona Department of Real Estate within 30 days of the service of this ORDER upon the parties.

Done this day, December 29, 2022.

Office of Administrative Hearings

/s/ Jenna Clark
Administrative Law Judge

²⁹ On December 16, 2022, submitted a MISCELLANEOUS MOTION regarding "mishandled evidence" which he alleged "compromised" his hearing. The evidence in question, originally submitted to OAH November 15, 2022, was copied to a nonexistent email address for Respondent's counsel, as Petitioner had misspelled Ms. Goldschmidt's first name. Thus, Petitioner bore the onus of any mishandling/compromise of his proposed hearing exhibits. Nonetheless Respondent was afforded an opportunity to reply to Petitioner's motion, which it did via objection on December 20, 2022, after Petitioner resubmitted his originally proposed hearing exhibits to counsel's correct email address. By issuance of this Order, Petitioner's motion is denied per ARIZ. ADMIN. CODE R2-19-108(E).

Transmitted electronically to:

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