

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 in the Matter of:

No. 23F-H033-REL

4 Clifford S. Burnes,

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 Petitioner,

6 v.

7 Saguaro Crest Homeowners' Association,

8 Respondent.
9

10 **HEARING:** March 30, 2023

11 **APPEARANCES:** Petitioner Clifford S. Burnes appeared on his own behalf. John Crotty,
12 Esq. represented Respondent Saguaro Crest Homeowners' Association. Sarina Martinez
13 appeared as a witness for Respondent Saguaro Crest Homeowners' Association.

14 **ADMINISTRATIVE LAW JUDGE:** Sondra J. Vanella
15

FINDINGS OF FACT

16 1. On or about December 12, 2022, Clifford S. Burnes ("Petitioner") filed a
17 Homeowners Association (HOA) Dispute Process Petition ("Petition") with the Arizona
18 Department of Real Estate ("Department") alleging a violation of the Articles of
19 Incorporation, Section XV, by Saguaro Crest Homeowners' Association ("Respondent").
20 Petitioner indicated a single issue would be presented and paid the appropriate \$500.00
21 filing fee.

22 2. On or about February 7, 2023, the Department issued a Notice of Hearing in
23 which it set forth the issue for hearing as follows:

24 "[O]n December 11, 2021 the [Respondent] held a vote at the Annual
25 Meeting that did not satisfy the voting requirement of Section XV (15) of the
26 Articles of Incorporation of the [Saguaro Crest Homeowners' Association]."

27 3. At hearing, Petitioner testified on his own behalf. Respondent presented the
28 testimony of Sarina Martinez, President of Respondent's Board.
29
30

1 4. Respondent's Articles of Incorporation, Article XV states the following:¹

2 The Association may be dissolved with the assent given in writing and
3 signed by Owners representing not less than two-thirds (2/3) of the
4 authorized votes of each class of the Association membership. Upon
5 dissolution of the Association, other than incident to a merger or
6 consolidation, the assets of the Association shall be dedicated to an
7 appropriate public agency to be used for purposes similar to those for which
8 this Association was created, as the Board of Directors shall determine. In
9 the event that such dedication is refused acceptance, such assets shall be
10 granted, conveyed, or assigned to any nonprofit corporation, association,
11 trust or other organization to be devoted to such similar purpose as the
12 Board of Directors shall determine.

13 5. Petitioner asserted at hearing that the ballots for the December 11, 2022
14 vote for dissolution did not comply with Section XV of the Articles of Incorporation. There
15 were nine (9) ballots that were cast as two homeowners each own two lots. There were
16 eleven (11) votes in favor of dissolution submitted on (9) ballots, one (1) vote against
17 dissolution, and one (1) abstention. Petitioner contended that the dissolution was
18 improperly declared passed by a majority vote. Petitioner testified that because the
19 ballots were not signed, the vote for dissolution did not comply with Section XV of the
20 Articles of Incorporation.

21 6. Petitioner submitted into evidence copies of the ballots cast and the
22 corresponding envelopes.² The envelopes contain the lot number(s) and signature of the
23 voting homeowner, as well as the date, and the envelopes contain the following verbiage:
24 "I have read the Saguaro Crest HOA Board of Directors Summary of Dissolution Plan and
25 have voted via the ballot enclosed in this envelope."³

26 7. Petitioner further testified that there should have been separate ballots for
27 each vote for homeowners who own two lots. However, Petitioner did not cite to any
28 authority establishing such.

29 8. Petitioner asserted that 2/3 of the votes were not achieved.

30

¹ See Petitioner's Exhibit B.

² See Petitioner's Exhibits G and H.

³ See Petitioner's Exhibit H.

1 9. The parties agreed that ten (10) or more votes equated to 2/3 or more of the
2 authorized votes.

3 10. Ms. Martinez testified that the ballots and envelopes were distributed to
4 eligible homeowners as a package and the required signatures were obtained on the
5 envelopes that contained the ballots. Ms. Martinez testified that there were eleven (11)
6 votes for dissolution, meeting the 2/3 requirement.

7 **CONCLUSIONS OF LAW**

8 1. Arizona statute permits an owner or a planned community organization to
9 file a petition with the Department for a hearing concerning violations of planned
10 community documents or violations of statutes that regulate planned communities.⁴ The
11 statute provides that such petitions will be heard before the Office of Administrative
12 Hearings.

13 2. Petitioner bears the burden of proof to establish that Respondent committed
14 the alleged violation by a preponderance of the evidence.⁵ Respondent bears the burden to
15 establish affirmative defenses by the same evidentiary standard.⁶

16 3. “A preponderance of the evidence is such proof as convinces the trier of fact
17 that the contention is more probably true than not.”⁷ A preponderance of the evidence is
18 “[t]he greater weight of the evidence, not necessarily established by the greater number of
19 witnesses testifying to a fact but by evidence that has the most convincing force; superior
20 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
21 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
22 the other.”⁸

23 4. Petitioner has asserted a violation by Respondent of the Articles of
24 Incorporation, Article XV, which states in pertinent part: “[t]he Association may be
25 dissolved with the assent given in writing and signed by Owners representing not less
26 than two-thirds (2/3) of the authorized votes of each class of the Association

27 ⁴ See A.R.S. § 32-2199.

28 ⁵ See ARIZ. REV. STAT. section 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazzano v.*
Superior Court, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

29 ⁶ See A.A.C. R2-19-119(B)(2).

30 ⁷ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁸ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 membership.” In this case, eleven (11) votes were cast on nine (9) ballots, which
2 represents at least 2/3 of the owners authorized to vote. The votes were cast on ballots
3 that were in writing and were contained in envelopes that contained the lot number(s) and
4 signature of the voting homeowner, as well as the date, and the envelopes contained the
5 following verbiage: “I have read the Saguaro Crest HOA Board of Directors Summary of
6 Dissolution Plan and have voted via the ballot enclosed in this envelope.” Article XV of the
7 Articles of Incorporation does not specify that the ballot itself must signed, and in this
8 case, the signatures are contained on the envelopes that held the corresponding ballots,
9 thereby satisfying the language of the charged provision.

10 5. Petitioner failed to prove by a preponderance of the evidence that
11 Respondent violated Article XV of the Articles of Incorporation as alleged in the Petition.

12 **ORDER**

13 IT IS ORDERED that Petitioner’s Petition is dismissed.

14 **NOTICE**

15 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties**
16 **unless a rehearing is granted pursuant to A.R.S. § 32-2199.04.**
17 **Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter**
18 **must be filed with the Commissioner of the Department of Real Estate**
19 **within 30 days of the service of this Order upon the parties.**

20
21 Done this day, April 14, 2023.

22 /s/ Sondra J. Vanella
23 Administrative Law Judge
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Transmitted by either mail, e-mail, or facsimile April 14, 2023, to:

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