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**No. 18F-H1818023-REL**

# ADMINISTRATIVE LAW JUDGE DECISION

Rancho Del Oro Homeowners Association,

**APPEARANCES:** Petitioner Michael J. Stoltenberg appeared on his own behalf. Linsmeier, Esq. appeared on behalf of Del Oro Homeowners Association.

## FINDINGS OF FACT

2. The Notice of Hearing shows that the issue is whether Respondent violated Community Governing Document CC&Rs section 1.13, 1.19, and 2.5.<sup>1</sup>

4. Through his petition, Mr. Stoltenberg alleged that Respondent violated the Community Governing Document CC&Rs by installing pipes through his lot in connection with installation of a well.<sup>2</sup>

<sup>1</sup> Rancho Del Oro Homeowners Association Community Governing Document CC&R sections 1.13 and 1.19 are definitions. See Exhibit 1. The issue is whether Respondent violated CC&R section 2.5.

Office of Administrative Hearings  
1740 West Adams Street, Lower Level  
Phoenix, Arizona 85007  
(602) 542-9826

1           6.     Respondent also contended that CC&R section 2.5 does not apply  
2 because the section refers to additional easements and Respondent did not grant or  
3 convey an additional easement to a third party.

4           7.     Respondent installed pipes in an easement which already existed at the  
5 time that the well and pipes were installed. See Exhibit 1.

6           8.     There was no evidence presented at hearing that the well or the well pipe  
7 were installed on Mr. Stoltenberg's lot.

#### 8                           **CONCLUSIONS OF LAW**

9           1.     The Department of Real Estate has authority over this matter. ARIZ. REV.  
10 STAT. Title 32, Ch. 20, Art. 11.

11          2.     Mr. Stoltenberg bears the burden of proof to show that Respondent  
12 committed the alleged violation. The standard of proof on all issues in this matter is that  
13 of a preponderance of the evidence. ARIZ. ADMIN. CODE § R2-19-119.

14          3.     A preponderance of the evidence is:

15                 The greater weight of the evidence, not necessarily established  
16 by the greater number of witnesses testifying to a fact but by  
17 evidence that has the most convincing force; superior  
18 evidentiary weight that, though not sufficient to free the mind  
19 wholly from all reasonable doubt, is still sufficient to incline a fair  
20 and impartial mind to one side of the issue rather than the other.  
21 BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

22          4.     Homeowners "may petition the department for a hearing concerning  
23 violations ... of the statutes that regulate condominiums or planned communities." ARIZ.  
24 REV. STAT. § 32-2199.01.

25          5.     If the petitioner proves the alleged violation, "The administrative law judge  
26 may order any party to abide by the statute ... and may levy a civil penalty on the basis  
27 of each violation.... If the petitioner prevails, the administrative law judge shall order the  
28 to pay to the petitioner the filing fee...." ARIZ. REV. STAT. § 32-2199.02.

29          6.     ARIZ. REV. STAT. section 12-550 provides:

30                 Actions other than for recovery of real property for which no  
limitation is otherwise prescribed shall be brought within four  
years after the cause of action accrues, and not afterward.

1           7.     Community Governing Document CC&Rs section 2.5 applies to  
2 easements granted to a third party by the Respondent.

3           8.     The weight of the evidence presented at hearing shows that the pipes  
4 were installed in an existing easement and that Respondent did not grant or convey an  
5 easement to a third party.

6           9.     Therefore, Mr. Stoltenberg failed to establish that Respondent violated  
7 Community Governing Document CC&R section 2.5.

8           10.    Furthermore, the installation occurred in 2013 and Mr. Stoltenberg filed his  
9 petition after the four year statute of limitations period in Ariz. Rev. Stat. 12-550 had  
10 expired.

11          11.    Mr. Stoltenberg's petition should be dismissed and  
12 Respondent be deemed the prevailing party in this matter.

13                               **ORDER**

14               **IT IS ORDERED** that Mr. Stoltenberg's petition is dismissed.

15               **NOTICE**

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

21  
22  
23               Done this day, April 17, 2018.

24  
25                               /s/ Velva Moses-Thompson  
26                               Administrative Law Judge

27  
28               Transmitted electronically to:

29               Judy Lowe, Commissioner  
30               Arizona Department of Real Estate

1 Transmitted U.S. Mail to:

2 Michael J. Stoltenberg  
3 11777 E. Calle Gaud  
4 Yuma, Arizona 85367

5 Rancho Del Oro Homeowners Association  
6 c/o Lydia Peirce Linsmeier, Esq.  
7 Nicole Payne, Esq.  
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