

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Brad W. Stevens,
4 Petitioner,

5 vs.

6 Mogollon Airpark, Inc.,
7 Respondent.

No. 18F-H1818054-REL-RHG

**ADMINISTRATIVE LAW JUDGE
DECISION**

8 **HEARING:** February 11, 2019

9 **APPEARANCES:** Brad W. Stevens on his own behalf; Greg Stein, Esq. for
10 Respondent

11 **ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

12 **FINDINGS OF FACT**

13 1. On January 2, 2019, the Arizona Department of Real Estate
14 ("Department") issued a Notice of Rehearing setting the above-captioned matter for
15 hearing on February 11, 2019 at the Office of Administrative Hearings in Phoenix,
16 Arizona.

17 2. Petitioner Brad W. Stevens appeared at the rehearing and testified on his
18 own behalf. Respondent Mogollon Airpark, Inc. was represented by counsel but
19 presented no witnesses.

20 3. On or about June 7, 2018, Mr. Stevens filed with the Department the
21 petition that gave rise to this matter. Mr. Stevens's matter was consolidated with two
22 others, with the hearing on the consolidated matters being conducted on September 28,
23 2018.

24 4. At the original hearing, Mr. Stevens acknowledged that he had filed a
25 single-issue petition and that the issue he was raising was whether Mogollon had
26 violated ARIZ. REV. STAT. section 33-1803(A) when it raised its assessment for 2018 by
27 \$325.

28 5. As pertinent to the facts of this matter, section 33-1803(A) provides that an
29 HOA cannot "impose a regular assessment that is more than [20%] greater than the
30 immediately preceding fiscal year's assessment"

1 6. Mr. Stevens's Exhibit 12 is a portion of the minutes from Mogollon's
2 November 2017 meeting at which the Board discussed increasing its dues to cover a
3 shortage in its operating budget and to replenish the reserve fund from which about
4 \$53,000 had been borrowed. The minutes show that several options were discussed,
5 with the Board ultimately voting to increase the dues by 14% to cover the budget
6 shortfall and to impose a one-time or special assessment of \$209, payable in two parts,
7 to replenish the reserve fund.

8 7. As such, the Board approved a \$116 increase in its dues, which will
9 continue to be assessed annually, and a \$209 one-time assessment, for a total increase
10 of \$325 for the year at issue. The previous year's assessment was \$825.

11 8. Because an increase of \$325 over \$825 is 39.4%, Mr. Stevens asserts
12 Mogollon violated section 33-1803(A). Mogollon argues that section 33-1803(A) applies
13 only to "regular assessments" and that the regular assessment was increased by only
14 14.1%, which is what an increase of \$116 over \$825 is.

15 9. In his request for rehearing, Mr. Stevens alleged that (1) there had been
16 an error in the admission or rejection of evidence or other errors of law during the
17 original hearing; and (2) that the findings of fact or decision was arbitrary, capricious, or
18 an abuse of discretion. In the portion of the form calling for a statement to substantiate
19 his claims, Mr. Stevens restated his basic allegation that Mogollon had violated section
20 33-1803(A), but he did not provide any details as to what evidentiary rulings were in
21 error, what errors of law had been made, or how the findings of fact or decision were
22 arbitrary, capricious, or an abuse of discretion.

23 10. On February 7, 2019, Mr. Stevens provided a response to Mogollon's
24 prehearing memorandum in which he did provide details as to the errors he believes
25 were made at the original hearing. Mr. Stevens asserted the definition of "special
26 assessment" found in *Northwest Fire District v. U.S. Home of Arizona*¹ was binding on
27 the Office of Administrative Hearings, and that the ALJ had failed to apply that definition
28 at the original hearing.

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30

¹ 215 Ariz. 492 (2007)

1 11. Mr. Stevens also took the seemingly contradictory position that the ALJ
2 could follow a definition of “special assessment” found in an on-line version of Black’s
3 Law Dictionary. During the rehearing, Mr. Stevens offered other definitions of “special
4 assessment” as well.

5 12. Mr. Stevens argues that Mogollon’s assessment of \$209 does not meet
6 *Northwest Fire District’s* definition of a special assessment because he did not receive
7 the particularized benefit that that case calls for. Mr. Stevens’s reliance on *Northwest*
8 *Fire District* is misplaced however because that case applies to special taxing districts
9 created under ARIZ. REV. STAT. Title 48, whereas Mogollon is not such a taxing district.

10 13. At the original hearing, Mr. Stevens argued that “regular assessment”
11 refers to the process by which assessments are created, not the type of assessment.
12 The undersigned Administrative Law Judge found that Mr. Stevens’s definition was not
13 supported by principles of statutory construction and ruled that Mr. Stevens had not
14 shown by a preponderance of the evidence that Mogollon violated section 33-1803(A).

15 14. At this rehearing, Mr. Stevens asserted that “regular” means: “[a]ccording
16 to rule; as distinguished from that which violates the rule or follows no rule. According to
17 rule; as opposed to that which constitutes an exception to the rule or is not within the
18 rule.” Mr. Stevens’s Exhibit 1.

19 15. At this rehearing, Mr. Stevens argued, as he did at the first hearing, that
20 Mogollon has no authority to issue special assessments.² As such, he asserts that
21 because Mogollon cannot impose special assessments, the entire \$325 must be a
22 regular assessment and that Mogollon has violated section 33-1803(A) by assessing a
23 regular assessment more than 20% greater than that of the previous year.³
24

25 ² Mr. Stevens’s Exhibit 10, an excerpt from the Bylaws, shows that the Board shall assess dues for certain
26 purposes, but does not on its face appear to limit those dues to recurring annual assessments, and
27 appears broad enough to allow for one-time or special assessments.

28 ³ Under Mr. Stevens’s reasoning a regular assessment is one adopted following the appropriate rules, but
29 at the same time a special assessment that was adopted without authority under the rules is also a
30 “regular” assessment. Moreover, under his reasoning, an unauthorized special assessment would
apparently be allowable provided that it did not result in an increase of greater than 20% of the regular
assessment. This position is not a sensible interpretation of the statute or the governing documents. More
reasonably, if Mogollon has no authority to issue a special assessment, any such assessment would be
void.

16. But whether Mogollon has authority to impose special assessments is not at issue because Mr. Stevens's petition is a "single-issue petition," limiting the hearing to his allegation that Mogollon violated section 33-1803(A) by increasing the regular assessment by more than 20%.⁴

CONCLUSIONS OF LAW

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

2. Mr. Stevens bears the burden of proof, and the standard of proof on all issues in this matter is that of a preponderance of the evidence. ARIZ. ADMIN. CODE § R2-19-119.

3. A preponderance of the evidence is:

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

BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

4. 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.").

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

6. The Bylaws and CC&Rs are a contract between the parties and the parties are required to comply with its terms. See *McNally v. Sun Lakes Homeowners Ass'n #1, Inc.*, 241 Ariz. 1, 382 P.3d 1216 (2016 App.). In exercising its authority under the Bylaws and CC&Rs, Mogollon must act reasonably. See *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 165 P.3d 173 (App. 2007).

⁴ Consequently, the various definitions of "special assessment" put forth by Mr. Stevens have no substantial probative value.

7. ARIZ. REV. STAT. section 33-1803(A) provides in pertinent part:

Unless limitations in the community documents would result in a lower limit for the assessment, the association shall not impose a regular assessment that is more than twenty percent greater than the immediately preceding fiscal year's assessment without the approval of the majority of the members of the association....
(Underscoring added.)

8. Mr. Stevens has not shown by a preponderance of the evidence that Mogollon violated section 33-1803(A) because his definition of “regular assessment” is not supported by principles of statutory construction.

9. The reasonable assumption is that all assessments must be passed following the “regular” process (i.e., in conformity with all applicable rules), whereas under Mr. Stevens’s interpretation, the word “regular” is rendered trivial or void in section 33-1803(A). Further proof that “regular” does not refer to the process by which the assessment was implemented is seen in that in section 33-1806, the legislature explicitly references “regular assessments,” and “special assessment[s] or other assessment[s],” which shows that these are different types of assessments.

10. In addition, Mr. Stevens's arguments led the nonsensical result that an unauthorized special assessment could become a regular assessment, which presumably would be allowable provided that this new regular assessment did not increase the existing regular assessment by more than 20%.

11. Finally, although the question of whether Mogollon can issue special assessments is not properly before this tribunal, Mr. Stevens's reliance on *Northwest Fire District* is misplaced because that case applies to special taxing districts created under ARIZ. REV. STAT. Title 48, whereas Mogollon is not such a taxing district.

12. Mr. Stevens's petition should be dismissed and the Mogollon Airpark, Inc. be deemed to be the prevailing party in this matter.

ORDER

IT IS ORDERED that Petitioner Brad W. Stevens's petition is dismissed.

NOTICE

This administrative law judge order, having been issued as a result of a rehearing, is binding on the parties. ARIZ. REV. STAT. section 32-2199.02(B). A party wishing to appeal this order must seek judicial review as prescribed by ARIZ. REV. STAT. section and title 12, chapter 7, article 6. Any such appeal must be filed with the superior court within thirty-five days from the date when a copy of this order was served upon the parties. ARIZ. REV. STAT. section 12-904(A).

Done this day, March 1, 2019.

/s/ Thomas Shedden

Thomas Shedden

Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile March 4, 2019 to:

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