

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Vicky Glover,
4 Petitioner,

5 vs.

6 Foothills Community Association,
7 Respondent.

No. 19F-H1919046-REL

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARING: May 10, 2019

APPEARANCES: Petitioner Vicky Glover appeared on her own behalf.
Respondent Foothills Community Association was represented by B. Austin Baillio.

ADMINISTRATIVE LAW JUDGE: Tammy L. Eigenheer

11 **FINDINGS OF FACT**

12 1. Foothills Community Association (Respondent or FCA) is an association
13 of homeowners located in Phoenix, Arizona.

14 2. On or about January 23, 2019, Vicky Glover (Petitioner) filed a petition
15 with the Arizona Department of Real Estate (Department), alleging that Respondent had
16 violated the provisions of A.R.S. Title 33, Chapter 16, Sections 33-1801 to 33-1818.
17 Petitioner specifically alleged that Respondent violated state statutes when it held
18 unannounced email meetings and voted on non-emergency open-meeting subject
19 matters during those “email meetings” and when it would not allow members of the
20 community to speak at an appropriate times during the Design Review Committee
21 (DRC) meetings.

22 3. On or about January 28, 2019, the Department issued a notice to
23 Respondent regarding the petition.

24 4. At hearing, the parties did not dispute the events underlying the petition.

25 5. The DRC is appointed by the Board of Directors. The DRC meets at 2:00
26 p.m. on the second Wednesday of the month. The Board of Directors meets at 6:00
27 p.m. on the fourth Wednesday of the month. The Board of Directors is comprised of
28 seven members. Two of the Board of Directors are also members of the DRC. The
29 DRC is comprised of five members.
30

1 6. On December 13, 2018, and January 9, 2019, Petitioner attended and
2 recorded DRC meetings. At different points in the DRC meetings, Petitioner was not
3 allowed to speak on the issues being discussed. Petitioner wished to speak on other
4 members' pending requests.

5 7. During the meetings, members of the DRC also mentioned that additional
6 information was needed on certain requests, that the additional information would be
7 shared with the members of the DRC via email after the meeting, and that the members
8 could then approve or deny the request based on the additional information via email.
9 Any decisions made via email between DRC meetings was "ratified" by the members at
10 the next DRC meeting. Pat Wontor, Manager, denied that the DRC ever took any initial
11 action via email and only gathered additional information related to matters that had
12 already been discussed in a meeting.

13 8. DRC policies provide that if a request is not denied within 60 days, it is
14 deemed approved.

15 **CONCLUSIONS OF LAW**

16 1. The Department has jurisdiction to hear disputes between a property
17 owner and a condominium owners association. A.R.S. § 32-2199 *et seq.*

18 2. In this proceeding, Petitioner bear the burden of proving by a
19 preponderance of the evidence that Respondent violated A.R.S. § 33-1804. A.A.C. R2-
20 19-119.

21 3. A preponderance of the evidence is "[e]vidence which is of greater weight or
22 more convincing than the evidence which is offered in opposition to it; that is, evidence
23 which as a whole shows that the fact sought to be proved is more probable than not."
24 BLACK'S LAW DICTIONARY 1182 (6th ed. 1990).

25 4. A.R.S. § 33-1804 provides, in relevant part, as follows:

26 A. Notwithstanding any provision in the declaration, bylaws or other
27 documents to the contrary, all meetings of the members' association and
28 the board of directors, and any regularly scheduled committee meetings,
29 are open to all members of the association or any person designated by a
30 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.
The board may place reasonable time restrictions on those persons

speaking during the meeting but shall permit a member or member's designated representative to speak once after the board has discussed a specific agenda item but before the board takes formal action on that item in addition to any other opportunities to speak.

....

F. It is the policy of this state as reflected in this section that all meetings of a planned community, whether meetings of the members' association or meetings of the board of directors of the association, be conducted openly and that notices and agendas be provided for those meetings that contain the information that is reasonably necessary to inform the members of the matters to be discussed or decided and to ensure that members have the ability to speak after discussion of agenda items, but before a vote of the board of directors or members is taken. Toward this end, any person or entity that is charged with the interpretation of these provisions, including members of the board of directors and any community manager, shall take into account this declaration of policy and shall construe any provision of this section in favor of open meetings.

5. When construing a statute, the primary goal is to ascertain the legislature's intent. *State ex rel. Thomas v. Contes*, 216 Ariz. 525, 527, 169 P.3d 115, 117 (App. 2007). This is accomplished by first looking to the text of the statute. *Id.* If the language is clear, its plain meaning is ascribed, unless it would lead to absurd results. *Id.*; *Marsoner v. Pima County*, 166 Ariz. 486, 488, 803 P.2d 897, 899 (1991). If ambiguity exists, secondary principles of statutory construction are used to determine the intent. *Contes*, 216 Ariz. at 527.

6. Petitioner asserted that because the DRC meetings were regularly scheduled committee meetings, the meetings had to be open to the members and the members had to be allowed to speak at the meetings based on her reading of A.R.S. § 33-1804.

7. The plain language of the statute provides that all regularly scheduled committee meetings must be open to the members and that members "shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings." Nothing in the statute defines what constitutes "an appropriate time" during the meetings. While Petitioner asserted that the provision that the board may place reasonable time restrictions and shall permit a member to speak after an agenda item is discussed but before a formal action is taken should be read to apply to committee meetings, the plain language of the statute does not support that

1 interpretation. Rather, that portion of the statute applies only to Board meetings, not
2 committee meetings.

3 8. It was reasonable for the DRC to determine that deliberation regarding a
4 different member's request was not an appropriate time for Petitioner to speak during
5 the committee meeting. As such, the DRC's decision to not allow Petitioner to speak
6 during those portions of the December 13, 2018, and January 9, 2019 meetings was not
7 a violation of A.R.S. § 33-1804.

8 9. As to the deliberations, discussions, and decisions made via email, those
9 do not constitute "regularly scheduled committee meetings." Those communications do
10 not occur at a set time on a weekly, monthly, quarterly, or annual basis; therefore, while
11 they may be considered a meeting of the DRC, they do not fall under the open meeting
12 requirements of A.R.S. § 33-1804.

13 10. The general policy statement in favor of open meetings set forth in A.R.S.
14 § 33-1804(F) does not override the specific provisions of A.R.S. § 33-1804(A) that only
15 "regularly scheduled" committee meetings must be open to the members.

16 11. The Administrative Law Judge concludes that Petitioner did not establish
17 any violation of A.R.S. § 33-1804.

18 ORDER

19 IT IS ORDERED that Petitioner's petition is denied.

20 NOTICE

21 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the**
22 **parties unless a rehearing is granted pursuant to A.R.S. § 32-**
23 **2199.04. Pursuant to A.R.S. § 41-1092.09, a request for rehearing in**
24 **this matter must be filed with the Commissioner of the Department of**
25 **Real Estate within 30 days of the service of this Order upon the**
26 **parties.**

27 Done this day, May 30, 2019.

28 /s/ Tammy L. Eigenheer
29 Administrative Law Judge
30

Transmitted by either mail, e-mail, or facsimile May 30, 2019 to:

Judy Lowe, Commissioner
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