

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Victor L Pattarozzi
4 Petitioner,

No. 19F-H1919047-REL

5 vs.

6 Estrella Vista Homeowners Association,
7 Respondent.

**ADMINISTRATIVE LAW JUDGE
DECISION**

8 **HEARING:** May 16, 2019

9 **APPEARANCES:** Victor L. Pattarozzi on his own behalf; Andrew Apodaca, Esq. for
10 Respondent

11 **ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

12 **FINDINGS OF FACT**

13 1. On March 18, 2019, the Arizona Department of Real Estate issued a
14 Notice of Hearing setting the above-captioned matter for hearing on May 16, 2019 at the
15 Office of Administrative Hearings in Phoenix, Arizona.

16 2. The Notice of Hearing shows that Petitioner Victor L. Pattarozzi alleges
17 that Respondent Estrella Vista Homeowners Association violated ARIZ. REV. STAT.
18 sections 33-1804 and 33-1805.

19 3. Mr. Pattarozzi appeared and testified on his own behalf. Respondent
20 presented the testimony of Board president Stuart Glenn.

21 4. On or about February 11, 2019, Mr. Pattarozzi filed with the Department
22 the single-issue petition that gave rise to this matter.

23 5. Mr. Pattarozzi alleges that Respondent is in violation of section 33-1804
24 based on its failure to hold open meetings of its Architectural Committee, which the
25 parties referred to as the Architectural Review Committee or ARC.

26 6. As pertinent to this matter, ARIZ. REV. STAT. section 33-1804 provides that
27 "all meetings of the members' association and the board of directors, and any regularly
28 scheduled committee meetings, are open to all members of the association...."

29 7. Respondent takes the position that the ARC meetings are not required to
30 be open to the members because these meetings are not regularly scheduled.

1 8. The ARC consists of five members; it does not meet on a set schedule but
2 rather considers applications as they are received. As of the hearing date, ARC had
3 received twelve applications in 2019.

4 9. Respondent's management company forwards the applications to Mr.
5 Glenn who then determines how these should be processed.

6 10. ARC previously approved a "rubber stamp" process in which requests for
7 solar panels and requests to repaint using a preapproved color are approved without
8 further review. For any application that does not meet the rubber-stamp criteria, Mr.
9 Glenn forwards the application to the other four members of ARC, who then report back
10 as to their agreement or disagreement with approving the application.

11 11. Of the twelve applications received in 2019, eight were subject to rubber-
12 stamp approval.

13 12. Mr. Pattarozzi argues that Respondent could schedule ARC meetings on a
14 weekly basis and then cancel the meetings if there were no applications pending.

15 13. Mr. Pattarozzi offered a definition of "regularly" taken from an online
16 version of Merriam-Webster dictionary: (1) "in a regular manner [;]" and (2) "on a regular
17 basis: at regular intervals [.]".

18 14. Mr. Pattarozzi offered a definition of "regular" taken from an online version
19 of Merriam-Webster dictionary: (1) "constituted, conducted, scheduled, or done in
20 conformity with established or prescribed usages, rules, or discipline[;]" and (2)
21 "recurring, attending, or functioning at fixed, uniform, or normal intervals[.]".

22 **CONCLUSIONS OF LAW**

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

25 2. Mr. Pattarozzi bears the burden of proof, and the standard of proof on all
26 issues in this matter is that of a preponderance of the evidence. ARIZ. ADMIN. CODE § R2-
27 19-119.

28 3. A preponderance of the evidence is:

29 The greater weight of the evidence, not necessarily established
30 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. 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. *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

6. Unless defined by the legislature, words in statutes are given their ordinary meanings. *Id.*

7. 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).

8. ARIZ. REV. STAT. section 33-1804 provides in relevant part:

A. Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, all meetings of the members' association and the board of directors, and any regularly scheduled committee meetings, are open to all members of the association....

* * * *

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 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.

9. Because the legislature has mandated that “all” meetings of the members’ association and board of directors must be open to the members, but only those committee meetings that are “regularly scheduled” must be, it is clear that not all committee meeting must be open to the members.

10. Considering the definitions of regularly and regular, the appropriate conclusion is that only committee meetings that are scheduled on a recurring basis at uniform intervals are required to be open to the members. This conclusion conforms to Mr. Pattarozzi's second definition of "regular" (i.e., "recurring, attending, or functioning at fixed, uniform, or normal intervals").

11. Mr. Pattarozzi's first proposed definition of "regular" (done in conformity with the rules) is not appropriate because the presumption is that all committee meetings must be scheduled in conformity with the rules set out in the statutes and the association's governing documents. As such, if the first definition of "regular" was used, that word be would redundant or trivial when applied to committee meetings.

12. Mr. Pattarozzi argues that subsection 33-1804(F)'s policy statement in favor of open meetings should be construed to require that the ARC meetings be open to the members. But that subsection explicitly references only the meetings of the members' association and the board of directors, and not committee meetings, consequently his argument fails.

13. Respondent's Architectural Committee does not hold "regularly scheduled" meetings within the meaning of ARIZ. REV. STAT. section 33-1804. Consequently, Mr. Pattarozzi has not proven that Respondent has violated that statute and his petition should be dismissed.

ORDER

IT IS ORDERED that Victor L. Pattarozzi's petition is dismissed.

NOTICE

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

1
2 Done this day, June 5, 2019.

3
4 /s/ Thomas Shedden
5 Thomas Shedden
6 Administrative Law Judge

7 Transmitted by either mail, e-mail, or facsimile to:

8 Judy Lowe, Commissioner
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