

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Vance Gribble,
4 Petitioner,

No. 22F-H2221004-REL

5 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 Legend Trail Community Association,
7 Respondent.

8 **HEARING:** October 15, 2021

9 **APPEARANCES:** Petitioner Vance Gribble appeared on behalf of himself. Josh
10 Bolen, Esq. appeared on behalf of Respondent Legend Trail Community Association.

11 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

12
13 **FINDINGS OF FACT**

14
15 1. The Arizona Department of Real Estate (Department) is authorized by statute
16 to receive and to decide petitions for hearings from members of homeowners'
17 associations and from homeowners' associations in Arizona.

18 2. Respondent Legend Trail Community Association (Association) is a
19 homeowners' association whose members own lots and parcels in Legend Trail, a
20 development in Scottsdale, Arizona. The Association is an Arizona non-profit
21 corporation.

22 3. Legend Trail includes Parcels A and E that are private communities.

23 4. Petitioner Vance Gribble owns a lot in Parcel A.

24 5. On March 31, 2021, the Association sent the following e-mail to its
25 homeowners:

26 This is to inform you that ATV's [sic] and motorized vehicles
27 (scooters) are not allowed to be driven on the Legend Trail
28 streets. Thank you.

29 6. On June 21, 2021, the Association sent the following e-mail to its residents:

1 To Legend Trail Residents, This is to clarify a previous Legend
2 Trail email regarding motorized vehicles was only applicable
3 to private streets. Parcel A and E have their own guidelines
4 and rules that regulate their private streets, because private
5 streets are Common Area. Parcel A and E Associations have
6 a legal duty to maintain the Common Areas under their
7 exclusive control in a safe condition and protect owners,
8 tenants and their guests from dangerous conditions or
9 activities. If motorized vehicles are causing a safety issue, the
10 Association must do something to regulate it.

11 On the rest of the Legend Trail streets, which are public
12 streets, Legend Trail Community Association may only
13 enforce public street restrictions that are contained in the
14 CC&R Declaration. For example, Article X, Section 19 of the
15 CC&R Declaration prohibits Owners and Occupants from
16 parking on the public streets unless there is an outlined
17 exception. Legend Trail has the power and the obligation to
18 enforce these public street restrictions only because they exist
19 in the CC&R Declaration.

20 With that said, the Association does not have the authority to
21 address any moving violations or safety concerns on the
22 public streets. If you believe a moving violation or safety
23 concern exists, please immediately contact the Scottsdale
24 Police Department (Non-emergency 480-312-5000) or City of
25 Scottsdale – Transportation (Traffic Engineering 480-312-
26 7250, Street Operations 480-312-5620 or Traffic
27 Management Center 480-312-7777).

28 7. On or about July 26, 2021, Petitioner Vance Gribble filed a single-issue
29 petition with the Department alleging that through the March 31, 2021 and June 21,
30 2021 e-mails, the Association violated Arizona Revised Statutes (A.R.S.) § 33-1808(E),
Article 1 §18 the Declaration of Covenants, Conditions, and Restrictions for Legend
Trail (Declaration), and Article 3 § 5 of the Declaration.

8. The Association filed a timely response to Gribble's petition denying the
allegations.

9. The matter was referred to the Office of Administrative Hearings for an
evidentiary hearing.

1 10. On August 24, 2021, the Department issued a Notice of Hearing setting the
2 matter for hearing on October 15, 2021.

3 11. A hearing was held on October 15, 2021.

4 12. At hearing, Gribble argued that the Association prohibited the use of ATVs
5 and scooters on Association streets through the March and June e-mails.

6 13. Gribble further contended that due to the March 31, 2021 and June 2021 e-
7 mails, children ceased to drive their scooters on Association streets.

8 14. At hearing, the Association presented the testimony of Terri Klein.
9 Ms. Klein is the President of the Association's Board of Directors. See Ms. Klein's
10 testimony on the hearing audio record at 46:00-47:37 minutes. Ms. Klein explained that
11 the March e-mail was erroneously sent to the Association and was only intended for
12 Parcel A. Therefore, the June e-mail was sent to clarify that the March e-mail did not
13 apply to the public streets. See *id.* Ms. Klein clarified that the Association did not intend
14 for the June 21, 2021 e-mail to be a rule. See Ms. Klein's testimony on the hearing
15 audio record at 1:01-1:02:03 minutes.

16 15. The Association contended that it has not adopted a rule related to the
17 use of ATVs and scooters on the streets of Legend Trail. Furthermore, the Association
18 contended that it has not adopted a rule or otherwise prohibited children from using
19 ATVs or scooters on the Association streets. The Association contended that A.R.S. §
20 33-1808(E) is inapplicable to the petition.¹

21 16. Article 1 § 18 of the Declaration defines "Common Area" and "Common
22 Areas." See Exhibit 4, pg.10.

23
24 ¹ A.R.S. § 1803(E) applies to prohibitions related to signs.

25 A.R.S. § 1803(F) provides:

26 Notwithstanding any provision in the community documents, an
27 association shall not prohibit children who reside in the planned
28 community from engaging in recreational activity on residential
29 roadways that are under the jurisdiction of the association and on
30 which the posted speed limit is twenty-five miles per hour or less.

17. Article 3 § 5 of the Declaration provides that the Association may regulate the use of Common Areas that it owns though “Association Rules” and “Design Guidelines.” See Exhibit 4, pgs. 17-18.

CONCLUSIONS OF LAW

1. A.R.S. § 32-2199(B) permits an owner or a planned community organization to file a petition with the Department for a hearing concerning violations of planned community documents under the authority Title 33, Chapter 16.² Such petitions will be heard before the Office of Administrative Hearings, an independent state agency.

2. Arizona non-profit organizations are governed by Chapters 24 through 40 of Title 10, the Arizona Non-Profit Corporation Act, A.R.S. §§ 33-3101 to 33-11702.

3. Petitioners bear the burden of proof to establish that Respondent violated the Act or Respondent’s CC&Rs by a preponderance of the evidence.³ Respondent bears the burden to establish affirmative defenses by the same evidentiary standard.⁴

4. “A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not.”⁵ A preponderance of the evidence is “[t]he 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.”⁶

5. In Arizona, if a restrictive covenant is unambiguous, it is enforced to give effect to the intent of the parties.⁷ “Restrictive covenants must be construed as a whole

² See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce the development’s CC&Rs.

³ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁴ See A.A.C. R2-19-119(B)(2).

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

⁶ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

⁷ See *Powell v. Washburn*, 211 Ariz. 553, 556 ¶ 9, 125 P.3d 373, 376 (2006).

1 and interpreted in view of their underlying purposes, giving effect to all provisions
2 contained therein.”⁸

3 6. A.R.S. §10-3140 defines an "Act of the board of directors" as “either: (a) An
4 act of the majority of the directors present at a duly called meeting at which a quorum is
5 present, unless the act of a greater number is required by chapters 24 through 40 of this
6 title, the articles of incorporation or the bylaws. (b) Action taken by written consent of the
7 directors in accordance with chapters 24 through 40 of this title.”

8 7. A.R.S. §10-3140 defines an "Act of the members" means as “either: (a) An
9 act adopted or rejected by a majority of the votes represented and voting at a duly held
10 meeting at which a quorum is present where affirmative votes also constitute a majority
11 of the required quorum unless a greater number of votes is required by chapters 24
12 through 40 of this title, the articles of incorporation or the bylaws. (b) An action taken by
13 written consent of the members in accordance with chapters 24 through 40 of this title.
14 (c) An action taken by written ballot of the members in accordance with this chapter.”

15 8. There was no evidence that the Association adopted a rule or took
16 enforcement action against the residents regarding the use of ATVs and scooters on the
17 streets of Legend Trail. There was no evidence presented that the Association took
18 formal action pursuant to A.R.S. §10-3140. Additionally, the preponderance of the
19 evidence does not show that Association prohibited children from engaging in
20 recreational activity within Legend Trail.

21 9. Petitioner has failed to establish by a preponderance of the evidence that
22 the Association violated A.R.S. § 33-1808(E), A.R.S. § 33-1808(F), or Article 3 § 5 of
23 the Declaration. The Association cannot violate Article 1 § 18 of the Declaration as it
24 defines “Common Area” and “Common Areas.”

25 10. Because Petitioner has not established by a preponderance of the evidence
26 that the Association violated A.R.S. § 33-1808(E), A.R.S. § 33-1808(F), Article 1 § 18,
27 or Article 3 § 5 of the Declaration, his petition must be dismissed.

28 **RECOMMENDED ORDER**

29 ⁸ *Lookout Mountain Paradise Hills Homeowners' Ass'n v. Viewpoint Assocs.*, 867 P.2d 70, 75 (Colo. App.
30 1993) (quoted in *Powell*, 211 Ariz. at 557 ¶ 16, 125 P.3d at 377).

IT IS ORDERED that Petitioner Vance Gribble's petition against Respondent Legend Trail Community Association is dismissed.

NOTICE

Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties unless a rehearing is granted pursuant to A.R.S. § 32-2199.04. Pursuant to A.R.S. § 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.

Done this day, November 4, 2021.

/s/ Velva Moses-Thompson
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile November 4, 2021 to:

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