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No. 22F-H2221017-REL-RHG

ADMINISTRATIVE LAW JUDGE DECISION

REHEARING: August 1, 2022

APPEARANCES: Petitioner Anthony T. Horn appeared on behalf of himself.

FINDINGS OF FACT

1. Petitioner Anthony T. Horn owns property in and is a member of Respondent Sun Lakes Shadows Homeowners Association, Inc. (Sun Lakes).

3. The petition was referred to the Office of Administrative Hearings (OAH) for an evidentiary hearing.

5. The Administrative Law Judge granted the Motions and dismissed the petition.

1

7. On April 6, 2022, the Department issued a Notice of Rehearing setting the petition for rehearing on May 26, 2022.¹

8. A hearing was conducted on August 1, 2022.

9. At hearing, Mr. Horn testified on behalf of himself and presented the testimony of a Sun Lakes homeowner, Ralph Howlen. Sun Lakes presented the testimony of its general manager, Kelly Haynes.

RELEVANT STATUTE

10. A.R.S. § 33-1804(F) provides, as follows:²

.....

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.

.....

HEARING EVIDENCE

11. On July 2, 2021, Sun Lakes notified its members that it would discuss and vote on the following motion at its July 6, 2021 board meeting:

Motion 3: Tennis Courts Upgrade & Repair – Fiscal Impact
\$76,439 from the Reserve Fund

12. On July 6, 2021, Sun Lakes held an open session board meeting.

¹ The rehearing date was continued to August 1, 2022.

² See Respondent's Exhibit 1.

1 13. During the July 6, 2021 board meeting, the board reviewed a bid proposal
2 from Elite Sports Builders that included the conversion of the Sun Lakes tennis court to
3 four pickle ball courts (tennis court conversion).

4 14. The board allowed Sun Lakes members to speak on Motion 3 after
5 discussion.

6 15. After the homeowners in attendance provided commentary on Motion 3,
7 the Board voted unanimously to approve Motion 3, including the tennis court
8 conversion.

9 16. Mr. Horn subsequently complained to the board that Sun Lakes failed to
10 properly notify the homeowners that the tennis court conversion would be discussed at
11 the July 6, 2021 board meeting.

12 17. On November 5, 2021, Sun Lakes provided notice of a November 9, 2021
13 board meeting to Mr. Horn and the other Sun Lakes members. The notice included the
14 agenda for the November 9, 2021 board meeting. The agenda provided that the
15 following resolution would be discussed before a board vote:
16

17 Motion #3 – Clarification of Motion 3 of the July 6, 2021 Board
18 Meeting – Conversion of Court 1 to four Permanent Pickleball
19 Courts..”

20 18. Mr. Horn attended the November 5, 2021 board meeting was given the
21 opportunity to express his opinion regarding Motion 3. Ralph Howlen, a Sun Lakes
22 homeowner, attended the November 5, 2021 board meeting and expressed that the
23 tennis club needed access to the pavilion to continue acting as a club. Mr. Howlen also
24 inquired with the board whether the tennis court could be built in another location.

25 19. After listening to the Sun Lakes members, the board voted unanimously,
26 for a second time, to approve the tennis court conversion to pickle ball courts.

27 20. Although Mr. Horn attended the November 9, 2021 board meeting, Mr.
28 Horn stated at hearing that he did not receive notice of the November 9, 2021 board
29 meeting.
30

CONCLUSIONS OF LAW

1 1. A.R.S. § 32-2199(B) permits an owner or a planned community organization
2 to file a petition with the Department for a hearing concerning violations of planned
3 community documents under the authority Title 33, Chapter 16.³ Such petitions will be
4 heard before the Office of Administrative Hearings, an independent state agency.

5 2. Petitioner bears the burden of proof to establish that Respondent violated
6 A.R.S. § 33-1804(F) by a preponderance of the evidence.⁴ Respondent bears the
7 burden to establish affirmative defenses by the same evidentiary standard.⁵

8 3. “A preponderance of the evidence is such proof as convinces the trier of fact
9 that the contention is more probably true than not.”⁶ A preponderance of the evidence is
10 “[t]he greater weight of the evidence, not necessarily established by the greater number of
11 witnesses testifying to a fact but by evidence that has the most convincing force; superior
12 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
13 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather
14 than the other.”⁷

15 4. The preponderance of the evidence shows that Sun Lakes properly notified
16 Sun Lakes members, through the July 2, 2021 notice, of the information that was
17 reasonably necessary to inform the members of the matters to be discussed at the July
18 6, 2021 board meeting. The July 2, 2021 notice regarding the July 6, 2021 board
19 meeting informed the Sun Lakes members that it would discuss and vote on an upgrade
20 of the tennis courts. Sun Lakes was not required to specify the method of upgrade: a
21 conversion to pickleball courts. Nonetheless, the weight of the evidence presented at
22 hearing shows that Sun Lakes notified Sun Lakes members, on November 5, 2021, that it
23 would discuss and vote on the conversion of the tennis court to pickle ball courts at its
24 November 9, 2021 meeting, in compliance with A.R.S. § 33-1804 (F).

25
26 ³ See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce
the development's CC&Rs.

27 ⁴ 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
28 Ariz. 369, 372, 249 P.2d 837 (1952).

⁵ See A.A.C. R2-19-119(B)(2).

⁶ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁷ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 5. Therefore, the Administrative Law Judge concludes that Sun Lakes did not
2 violate A.R.S. § 33-1804(F) with respect to the July 6, 2021 board meeting. Even if Sun
3 Lakes had violated A.R.S. § 33-1804(F) with respect to the July 6, 2021, Sun Lakes cured
4 the violation when it provided timely notice that the tennis court conversion would be
5 discussed and voted on at the November 9, 2021 board meeting.

6 6. Therefore, Mr. Horn's petition must be dismissed.

7 **RECOMMENDED ORDER**

8 **IT IS ORDERED** that Petitioner Anthony T. Horn's petition against Sun Lakes
9 Homeowners Association #1, Inc., is dismissed.

10 **NOTICE**

11 **This administrative law judge order, having been issued as a result of**
12 **a rehearing, is binding on the parties. A.R.S. § 32-2199.02(B). A party**
13 **wishing to appeal this order must seek judicial review as prescribed**
14 **by A.R.S. § 41-1092.08(H) and title 12, chapter 7, article 6. Any such**
15 **appeal must be filed with the superior court within thirty-five days**
16 **from the date when a copy of this order was served upon the parties.**
17 **A.R.S. § 12-904(A).**

18 Done this day, August 22, 2022.

19 /s/ Velva Moses-Thompson
20 Administrative Law Judge

21 Transmitted by either mail, e-mail, or facsimile August 22, 2022 to:

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