IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of: Kenneth Christopher Honerkamp Petitioner, v. Golden Hills Homeowners Association Respondent.	**No. 26F-H129-REL** **ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: September 10, 2026, with the record held open until September 21, 2026, to allow the parties additional time to submit evidence.

APPEARANCES: Kenneth Christopher Honerkamp (Mr. Honerkamp) appeared on behalf of himself. William Osborne (Mr. Osborne) appeared on behalf of the Golden Hills Homeowner Association (GHHA).

ADMINISTRATIVE LAW JUDGE: Velva Moses-Thompson

EXHIBITS ADMITTED INTO EVIDENCE: Mr. Honerkamp's Exhibits A through L. GHHA's Exhibit A and B.

FINDINGS OF FACT

1. The Arizona Department of Real Estate (Department) is authorized by statute to receive and to decide Petitions for Hearings from members of homeowners' associations and from homeowners' associations in Arizona.

2. Homeowners' associations and their members are governed by the Chapter 16 of Title 33, the Planned Communities Act, A.R.S. §§ 33-1801 to 33-1818.

3. GHHA is a homeowners association whose members own single-family houses or lots in Apache Country Club Estates in Mesa, Arizona. GHHA has 780 homes and six units.

4. Mr. Honerkamp owns a home within Apache Country Club Estates. The home is located at 925 S. Longwood Loop, Unit One.

5. Mr. Honerkamp's home is under the jurisdiction of GHHA.

6. Mr. Honerkamp submitted a request to GHHA to build a six-foot-tall wall on his property. However, Section 13 of GHHA's Covenants, Codes & Restrictions Unit One (CC&Rs), prohibits the construction of a wall that exceeds four feet in height. Consequently, GHHA denied Mr. Honerkamp's request.

7. On or about May 18, 2026, Mr. Honerkamp filed a petition with the Department alleging that GHHA violated Section 13 of its CC&Rs[1] and ARIZ. REV. STAT. §§ 33-1802 and 33-1817, by "unreasonably denying a 6-foot solid masonry safety wall required to deter trespassers and prevent small children from exiting the property, while concurrently causing an indefinite delay to a separate, already-approved safety net installation that requires a 30-day masonry cure period before it can be sagely anchored."

8. On August 3, 2026, the Department issued a Notice of Hearing setting the above-captioned matter for hearing on September 10, 2026, at the Office of Administrative Hearings in Phoenix, Arizona.

9. A hearing was held on September 10, 2026.

10. At hearing, Mr. Honerkamp testified on his own behalf. GHHA presented the testimony of William Osborne, the President of GHHA's Board of Directors (Board), and Derek Platt, the Vice President of the Board.

11. At hearing, Mr. Honerkamp alleged that GHHA selectively enforced Section 13 of CC&Rs. To support his position, Mr. Honerkamp submitted into evidence Exhibit J that depicts three properties within GHHA with walls that range from 5 ½ to 8 feet in height.

12. Mr. Osborne testified to the effect that Mr. Honerkamp's request to build the 6-foot wall was properly denied under Section 13 of the CC&RS. Mr. Osborne stated that he was not aware of any six-foot-tall walls in GHHA. Ms. Osborne explained that the current board is four years old, and he has no knowledge that GHHA has approved the construction of walls that exceeded the height limitation.

13. I find Ms. Osborne's testimony to be credible.

[1] Mr. Honerkamp referenced Article 2, Section 18 of the CC&Rs in the petition. However, Mr. Honerkamp acknowledged in a post-hearing that the correct governing CC&Rs was Section 13 and not Article 2, Section 18.

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. Honerkamp 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. 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).

5. ARIZ. REV. STAT. § 33-1802 provides:

> 1. "Association"
>
> (a) Means a nonprofit corporation or unincorporated association of owners that is created pursuant to a declaration to own and operate portions of a planned community and that has the power under the declaration to assess association members to pay the costs and expenses incurred in the performance of the association's obligations under the declaration.
>
> (b) Does not include a nonprofit corporation or unincorporated association of owners that is created or incorporated before January 1, 1974 and that does not have authority to enforce covenants, conditions or restrictions related to the use, occupancy or appearance of the separately owned lots, parcels or units in a real estate development, unless the nonprofit corporation or unincorporated association of owners elects to be subject to this chapter pursuant to section 33-1801, subsection D.
>
> 2. "Common expense lien" means the lien for assessments, charges for late payment of assessments if authorized in the

declaration, reasonable collection fees and costs incurred or applied by the association and reasonable attorney fees and costs that are incurred with respect to those assessments, if the attorney fees and costs are awarded by a court.

3. "Community documents" means the declaration, bylaws, articles of incorporation, if any, and rules, if any.

4. "Declaration" means any instruments, however denominated, that establish a planned community and any amendment to those instruments.

5. "Member expenses":

(a) Means fees, charges, late charges and monetary penalties or interest.

(b) Does not include any amount that is included in a common expense lien.

6. "Planned community":

(a) Means a real estate development that includes real estate owned and operated by or real estate on which an easement to maintain roadways or a covenant to maintain roadways is held by a nonprofit corporation or unincorporated association of owners, that is created for the purpose of managing, maintaining or improving the property and in which the declaration expressly states both that the owners of separately owned lots, parcels or units are mandatory members and that the owners are required to pay assessments to the association for these purposes.

(b) Does not include any of the following:

(i) A timeshare plan or a timeshare association that is governed by chapter 20 of this title.

(ii) A condominium that is governed by chapter 9 of this title.

(iii) A real estate development that is not managed or maintained by an association.

6. ARIZ. REV. STAT. § 33-1817 provides in relevant part:

Declaration amendment; design, architectural committees; review

A. Except during the period of declarant control, or if during the period of declarant control with the written consent of the declarant in each instance, the following apply to an amendment to a declaration:

1. The declaration may be amended by the association, if any, or, if there is no association or board, the owners of the property that is subject to the declaration, by an affirmative vote or written consent of the number of owners or eligible voters specified in the declaration, including the assent of any individuals or entities that are specified in the declaration.

2. An amendment to a declaration may apply to fewer than all of the lots or less than all of the property that is bound by the declaration and an amendment is deemed to conform to the general design and plan of the community, if both of the following apply:

(a) The amendment receives the affirmative vote or written consent of the number of owners or eligible voters specified in the declaration, including the assent of any individuals or entities that are specified in the declaration.

(b) The amendment receives the affirmative vote or written consent of all of the owners of the lots or property to which the amendment applies.
3. Within thirty days after the adoption of any amendment pursuant to this section, the association or, if there is no association or board, an owner that is authorized by the affirmative vote on or the written consent to the amendment shall prepare, execute and record a written instrument setting forth the amendment.

4. Notwithstanding any provision in the declaration that provides for periodic renewal of the declaration, an amendment to the declaration is effective immediately on recordation of the instrument in the county in which the property is located.

B. Notwithstanding any provision in the community documents:

1. Membership on a design review committee, an architectural committee or a committee that performs similar functions, however denominated, for the planned community shall include at least one member of the board of directors who shall serve as chairperson of the committee.

2. For new construction of the main residential structure on a lot or for

rebuilds of the main residential structure on a lot and only in a planned community that has enacted design guidelines, architectural guidelines or other similar rules, however denominated, and if the association documents permit the association to charge the member a security deposit and the association requires the member to pay a security deposit to secure completion of the member's construction project or compliance with approved plans, all of the following apply:

(a) The deposit shall be placed in a trust account with the following instructions:

(i) The cost of the trust account shall be shared equally between the association and the member.

(ii) If the construction project is abandoned, the board of directors may determine the appropriate use of any deposit monies.

(iii) Any interest earned on the refundable security deposit shall become part of the security deposit.

(b) The association or the design review committee must hold a final design approval meeting for the purpose of issuing approval of the plans, and the member or member's agent must have the opportunity to attend the meeting. If the plans are approved, the association's design review representative shall provide written acknowledgement that the approved plans, including any approved amendments, are in compliance with all rules and guidelines in effect at the time of the approval and that the refund of the deposit requires that construction be completed in accordance with those approved plans.

(c) The association must provide for at least two on-site formal reviews during construction for the purpose of determining compliance with the approved plans. The member or member's agent shall be provided the opportunity to attend both formal reviews. Within five business days after the formal reviews, the association shall cause a written report to be provided to the member or member's agent specifying any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association.

(d) Within thirty business days after the second formal review, the association shall provide to the member a copy of the written report specifying any deficiencies, violations or unapproved variations from the approved plans, as amended, that have come to the attention of the association. If the written report does not specify any deficiencies, violations or unapproved variations from the approved plans, as amended,

that have come to the attention of the association, the association shall promptly release the deposit monies to the member. If the report identifies any deficiencies, violations or unapproved variations from the approved plans, as amended, the association may hold the deposit for one hundred eighty days or until receipt of a subsequent report of construction compliance, whichever is less. If a report of construction compliance is received before the one hundred eightieth day, the association shall promptly release the deposit monies to the member. If a compliance report is not received within one hundred eighty days, the association shall release the deposit monies promptly from the trust account to the association.

(e) Neither the approval of the plans nor the approval of the actual construction by the association or the design review committee shall constitute a representation or warranty that the plans or construction comply with applicable governmental requirements or applicable engineering, design or safety standards. The association in its discretion may release all or any part of the deposit to the member before receiving a compliance report. Release of the deposit to the member does not constitute a representation or warranty from the association that the construction complies with the approved plans.

3. Approval of a construction project's architectural designs, plans and amendments shall not unreasonably be withheld.

[Emphasis Added.]

7. ARIZ. REV. STAT. § 33-1802 provides definitions for the following words: Association, Common expense lien, Community documents, Declaration, Member expenses, and Planned Community. Mr. Honerkamp presented no evidence to show that GHHA violated ARIZ. REV. STAT. § 33-1802. Mr. Honerkamp failed to meet his burden to establish that GHHA violated ARIZ. REV. STAT. § 33-1802.

8. The preponderance of the evidence shows that GHHA was required to deny Mr. Honerkamp's request to build a six-foot-tall-wall on his property, pursuant to Section 13 of the CC&RS. Mr. Honerkamp presented no evidence that the request was denied for any other reason. Mr. Honerkamp presented evidence of three walls within GHHA that exceeded four feet in height. However, Mr. Hack presented no evidence that the Board knew the walls existed. Mr. Hack presented no evidence of when the walls were erected or that the Board approved of the construction of the walls. Mr.

Honerkamp presented no evidence that the Board targeted Mr. Honerkamp or acted in bad faith. Mr. Honerkamp failed to establish that the Board selectively enforced Section 13 of its CC&Rs.

9. Mr. Honerkamp has not proven that GHHA violated its CC&Rs or ARIZ. REV. STAT. §§ 33-1802 and 33-1817. Accordingly, Mr. Honerkamp's petition should be dismissed.

ORDER

IT IS ORDERED that Kenneth Christopher Honerkamp's petition 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, October 9, 2026.

/s/ Velva Moses-Thompson
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile October 7, 2026 to:

Susan Nicolson
Arizona Department of Real Estate - HOA

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By: OAH Staff