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Attorneys for Respondent

IN THE OFFICE OF ARIZONA

DEPARTMENT OF REAL ESTATE

GENE WILSON, Petitioner, vs. EAGLE ROOST MANAGEMENT INC., Respondent.	No. 26F-H084 **RESPONDENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION**

Pursuant to A.R.S. § 33-2199.01(A) & § 33-2199.02(A), Respondent moves this Court to dismiss the Petition for lack of jurisdiction. The parties to this disagreement previously signed a Joint Request for Mediation. Respondent withdraws that request and seeks dismissal due to lack of jurisdiction.

STATEMENT OF FACTS

Petitioner Gene Wilson owns property in Eagle Roost Airpark. He purchased a piece of property that is 330' X 660' that abuts the airstrip. He has concerns over whether he can develop this property because he believes there are two separate rules addressing setback requirements: (1) a setback requirement established through a special use permit approved by Maricopa County on July 31, 1978 and (2) Amendment No. 3 to the CC&Rs filed on April 6, 1994.

To show the inconsistency, he describes two situations involving two different homeowners where there were different outcomes.

As for Wilson's specific complaint, Wilson claims he submitted a letter to the Board on January 24, 2026 requesting that the Board take action to somehow resolve the discrepancy so he knows whether he can build or not.

ARGUMENT

The office of administrative hearings lacks jurisdiction. The scope of the ALJ's jurisdiction is set forth in two statutes:

A.R.S. § 33-2199.01(A) provides as follows:

> For a dispute between an owner and a condominium association or planned community association that is regulated pursuant to title 33, chapter 9 or 16, the owner or association, may petition the department for a hearing concerning **violations** of condominium documents or planned community documents or **violations** of the statutes that regulate condominiums or planned communities.

A.R.S. §33-2199.01(A).

A corresponding statute provides "the administrative law judge may order any party to ***abide by*** the statute, condominium, documents, community documents, or contract provision at issue, and may levy a civil penalty on the basis of each violation." A.R.S. § 33-2199.02(A).

The allegations contained in the Petition do not relate to claimed violations of the CC&Rs or any other planning document. Petitioner is apparently concerned that if he follows the CC&R setback restriction, the County may issue some citation because it violates the special use permit restrictions.

The Board cannot tell the County whether its special use permit does or does not apply to the setback requirements in the Airpark. Nor is that within the scope of an ALJ's jurisdiction. Similarly, the ALJ cannot direct the Board to take any specific action (other than to abide by a statute, community document, or contract provision).

In short, jurisdiction is limited to addressing claims that planned community documents or statutes involving planned communities were violated. That is not the allegation in this case.

It would appear that Petitioner's remedy to commence his own declaratory judgment action where the superior court can determine which controls, the special use permit or the CC&Rs.

CONCLUSION

For these reasons, Respondent requests the ALJ issue an Order dismissing the Petition for lack of jurisdiction.

Dated this 6th day of July, 2026.

SCHNEIDER, ONOFRY & LOMELI, P.C.

By */s/ Charles D. Onofry*
Charles D. Onofry
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Mailed/E-Mailed this 6th day of July, 2026 to:

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By */s/ LeeAnne Kelley*