

1 **Final agency action regarding decision below:**

2
3 **ALJFIN ALJ Decision final by statute**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 Dina R. Galassini,
8 Petitioner,

No. 18F-H1818032-REL

9 v.

**ADMINISTRATIVE LAW JUDGE
DECISION**

10 Plaza Waterfront Condominiums Owners
11 Association, Inc.,
12 Respondent.

13
14 **HEARING:** May 09, 2018 at 9:00 AM.

15 **APPEARANCES:** Petitioner Dina R. Galassini appeared on her own behalf. Jim
16 Flood, Plaza Waterfront Homeowners Association Board Member, appeared on behalf of
17 Plaza Waterfront Condominiums Owners Association, Inc. ("Respondent" or "the
18 Association"). Roger Isaacs and Gary Pedersen appeared as witnesses for Respondent.
19 Peter Saiia, Suzanne Isaacs, and Paul Blessing observed.

20 **ADMINISTRATIVE LAW JUDGE:** Jenna Clark.

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22 After review of the hearing record in this matter, the undersigned Administrative
23 Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this
24 Recommended Order to the Director of the Arizona Department of Real Estate ("the
25 Department").

26 **FINDINGS OF FACT**

27 **PROCEDURE AND BACKGROUND**

28 1. Per the NOTICE OF HEARING, the Department referred this matter to the
29 Office of Administrative Hearings, an independent state agency, for an evidentiary
30 hearing on May 09, 2018 , regarding the following issue:

1 and that in doing so the Board has unfairly and inequitably burdened her with this
2 increased liability.

3 13. The original Declarant of the property entered into a binding agreement with
4 the local city government regarding the number of parking spaces the development would
5 have. The Association remains bound by that agreement.⁷

6 14. The development has two parking lots: one located on the ground level of
7 the property that is primarily for commercial use, and a gated subterranean lot for resident
8 use.

9 15. The commercial lot has seventy-two parking spaces.

10 16. The primary function of the commercial lot is to serve commercial owners,
11 their customers, and their vendors during regular business hours.

12 17. Residents may use the commercial lot outside of regular business hours,
13 from seven o'clock in the evening until seven o'clock in the morning, Monday through
14 Saturday. The remaining times are restricted for commercial use only, save a small
15 portion of the commercial lot that residents are permitted to use to access their mail and
16 trash receptacles.⁸

17 18. Insofar as the commercial parking lot is concerned, the Association splits
18 the budget into three separate parts: commercial (whereby owners are assessed at 55%
19 of an expense), residential (whereby owners are assessed at 12% of an expense), and by
20 separate structure (whereby a building that shares the parking lot with Respondent is
21 assessed at 12% for expenses).

22 19. Of the 67% of expenses owed, remaining from the separate structure's 33%
23 contribution, the Association breaks down their assessment further as follows: 17.5%
24 owed by residential owners, and 82.5% owed by commercial owners.

25 20. Per the CC&Rs, the Board does not have to obtain owner votes on
26 proposed assessments to the parking lot, because the parking lot is a limited common
27 element.⁹

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⁷ See Respondent Exhibits G and H.

30 ⁸ See Respondent Exhibit D.

⁹ See Respondent Exhibits C and E.

1 11. The commercial parking lot has been correctly categorized as a limited
2 common element by the Board because the lot was designed and exists for the exclusive
3 use of one or more but fewer than all of the units.¹³

4 12. Respondent's 2018 posting appears to be an equitable allocation of funds
5 for the Association's commercial parking lot. Although Petitioner argues that
6 Respondent's posting was incorrect, the greater weight of the evidence demonstrates that
7 it is Petitioner who is incorrect. The commercial parking lot is a limited common element,
8 by legal definition, and the Association has the authority to post common element
9 assessments.

10 13. As such, the Tribunal holds that no violations of CC&R's Article 1 sections
11 1.14 (A, D) and 1.50 of the CC&R's, and the Reciprocal Easement Agreement sections 1
12 (A, B) and 2 (A, B, C) exist in this matter.

13 **ORDER**

14 Based on the foregoing findings and conclusions,

15 **IT IS ORDERED** that Petitioner Dina R. Galassini's petition is dismissed.

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

21 Done this day, May 29, 2018.

22 /s/ Jenna Clark
23 Administrative Law Judge
24

25 Transmitted electronically to:

26 Judy Lowe, Commissioner
27 Arizona Department of Real Estate
28 2910 North 44th Street, Room 100
29 Phoenix, AZ 85018
30 Attn:

¹³ See ARIZ. REV. STAT. §§ 33-1202(17) and 33-1255(C)(2).

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