

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

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

4
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 Daniel J. Coe,
8 Petitioner,

No. 21F-H2120029-REL

9 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

10 Maricopa Meadows Homeowners
11 Association,
12 Respondent.

13 **HEARING:** June 08, 2021 at 9:00 AM.

14 **APPEARANCES:** Daniel Coe (“Petitioner”) appeared on his own behalf. Ed
15 O’Brien, Esq. appeared on behalf of Maricopa Meadows Homeowners (“Respondent”)
16 with Michael LaPoint as a witness. Randy Eilts, Andrea Chin, and Summer Wierth
17 observed.

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

19
20 After review of the hearing record in this matter, the undersigned Administrative
21 Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this
22 DECISION AND ORDER to the Commissioner of the Arizona Department of Real Estate (“the
23 Department”).

24 **FINDINGS OF FACT**

25 **PROCEDURE AND BACKGROUND**

26 1. The Department is authorized by statute to receive and to decide petitions
27 for hearings from members of homeowners’ associations and from homeowners’
28 associations in Arizona.

1 2. On or about December 21, 2020, Petitioner filed a single-issue petition with
2 the Department that alleged that the Association was in violation of Article III Section 3.6
3 of the Association’s Bylaws.¹ Specifically, Petitioner alleged “The Association failed to
4 acknowledge newly elected board members and that quorum was met at November 04,
5 2020 meeting.”² [sic] In terms of relief, Petitioner requested that the Association
6 “[R]ecognize quorum was met and to order the association to recognize Alicia Chin,
7 [Petitioner], Randy Eilts, Summer Wierth, and Albert Barnes as Board Members Elect” at
8 the next scheduled Board meeting.³

9 3. On December 29, 2020, Petitioner tendered a \$500.00 payment to the
10 Department for the petition fee in this matter.⁴

11 4. On December 31, 2020, the Department provided Respondent with notice of
12 Petitioner’s petition, and advised that a response was due no later than January 25,
13 2021.⁵

14 5. On January 25, 2021, Respondent submitted its ANSWER whereby it denied
15 all of the complaint items in the underlying petition.⁶ Respondent also submitted a Motion
16 to Dismiss to the Department pursuant to ARIZ. REV. STAT. § 32-2199.01(C) and ARIZ. R.
17 Civ. P. 12(b)(6-7).⁷

18 6. On January 28, 2021, the Department referred this matter to the Office of
19 Administrative Hearings (“OAH”), an independent state agency, for an evidentiary hearing
20 on August 18, 2020. Per the NOTICE OF HEARING the issue to be determined is as follows:

21 **Whether Respondent violated Bylaws Article III Section 3.6.**

22 **THE PARTIES AND GOVERNING DOCUMENTS**

23 7. Respondent is a homeowners’ association whose members own properties
24 in a residential real estate development located in Maricopa, Arizona. Membership for the
25 Association is compromised of the Maricopa Meadows subdivision.

26 ¹ See Department’s electronic file at HO21-20029_Petition.pdf.

27 ² *Id.*

28 ³ *Id.*

29 ⁴ See Department’s electronic file at HO21-20029_Payment1.JPG.

30 ⁵ See Department’s electronic file at HO21-20029_Notice_Petition.pdf.

⁶ See Department’s electronic file at HO21-20029_Response_Petition.pdf.

⁷ See Department’s electronic file at HO21-20029_MotionToDismiss.pdf.

1 8. Petitioner is a Maricopa Meadows subdivision property owner and a
2 Member of the Association.

3 9. The Association is governed by its Covenants, Conditions, and Restrictions
4 (“CC&Rs”), and overseen by a Board of Directors (“the Board”). The CC&Rs empower the
5 Association to control certain aspects of property use within the development. When a
6 party buys a residential unit in the development, the party receives a copy of the CC&Rs
7 and agrees to be bound by their terms. Thus, the CC&Rs form an enforceable contract
8 between the Association and each property owner. The Association’s bylaws delineate
9 the structure of day-to-day governance and contain information on voting processes,
10 quorum requirements, meeting provisions, and other operating guidelines.

11 10. The Association is also regulated by Title 33, Chapter 16, Article 1 of the
12 Arizona Revised Statutes (“ARIZ. REV. STAT.”).

13 11. Bylaws Article III – Meeting of Members, Section 2.3, Quorum, states, in
14 pertinent part, that “[A]t any meetings of the Members, **one-tenth (1/10) of the votes in**
15 **each class of Members entitled to vote at the meeting**, whether present in person or
16 represented by proxy, shall constitute a quorum for the transaction of business.”⁸
17 (*Emphasis added.*)

18 HEARING EVIDENCE

19 12. Petitioner testified on his own behalf. Respondent called Michael LaPoint as
20 a witness and submitted Exhibits 1-9 and a Prehearing Memo into the record. The
21 Department’s electronic file, including the NOTICE OF HEARING, were also admitted into the
22 record. The substantive facts of record are as follows:

- 23 a. There are 1,626 residential lots that comprise the Association’s Class A
24 Members.
- 25 b. An election to vote for new Board of Directors was placed on the
26 Association’s November 04, 2020, Board meeting agenda.⁹ As noticed, the
27

28 _____
29 ⁸ See Respondent Exhibit 2.

30 ⁹ See Respondent Exhibit 3.

1 Bylaws required that one-tenth of the Members participated to establish a
2 quorum for the vote.¹⁰

3 i. 10% of 1,626 is 162.6; when rounded to the nearest whole number,
4 however, is 163.

5 ii. Historically, the total number of lots has always been used by the
6 Association to calculate the number of voting Members to reach
7 quorum.¹¹

8 iii. Per election rules, five (5) candidates would be elected to the Board
9 of Directors whereby the top three (3) candidates receiving the most
10 votes would be elected for 2yr terms, while next two (2) candidates
11 receiving the highest votes would be elected for 1yr terms.

12 c. All lots were provided notice of the Association's November 04, 2020, Board
13 meeting. Members could vote through postal mail, electronically, or via
14 absentee ballot.¹² However, 222 lots were deemed ineligible to cast votes in
15 the Board of Directors election due to lot owners' delinquent account
16 statutes.¹³

17 d. The Association hired a company, TXT 2VOTE, to collect, tabulate, and
18 report the election results to the Association. Ultimately, TXT 2VOTE
19 determined that 147 votes had been received for the Board of Directors
20 vote; specifically, 122 electronic ballots and 25 mail-in ballots were
21 collected.¹⁴

22 i. Although Alicia Chin received 109 votes, Randy Eilts received 103
23 votes, Petitioner received 103 votes, Summer Wierth received 102
24 votes, and Albert Barnes received 100 votes, none were elected to
25 the Board of Directors because the Association determined that
26 quorum had not been met.¹⁵

27 ¹⁰ *Id.*

28 ¹¹ See Respondent Exhibit 8.

29 ¹² See Respondent Exhibit 4.

30 ¹³ See Respondent Exhibit 5.

¹⁴ See Respondent Exhibits 6-7. Four (4) homeowners appeared in-person but did not vote.

¹⁵ See Respondent Exhibit 7.

1 5. "A preponderance of the evidence is such proof as convinces the trier of fact
2 that the contention is more probably true than not."¹⁸ A preponderance of the evidence is
3 "[t]he greater weight of the evidence, not necessarily established by the greater number of
4 witnesses testifying to a fact but by evidence that has the most convincing force; superior
5 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
6 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
7 the other."¹⁹

8 6. The issues in this matter is whether the Association violated Article III
9 Section 3.6 of its Bylaws by determining that quorum was not met a meeting to elect board
10 members on November 04, 2020. The Tribunal concludes that the Board acted within the
11 scope of its statutory authority.

12 7. Bylaws must be construed to avoid an absurdity.²⁰ The voices of few cannot
13 speak for all, unless all have bestowed those few with the power and authority to speak on
14 their behalf. In the case at bar, the governing documents for the Association are clear:
15 one-tenth (e.g. 10%) of Members entitled to vote must be present in order for a quorum to
16 be established. The record clearly reflects that 163 homeowners who were eligible to vote
17 needed to cast their ballots in the November 04, 2020, Board of Directors election in order
18 for quorum to be met. The record further reflects that only 147 votes were cast, which
19 does not constitute a quorum.

20 8. Petitioner's argument that because only 1,404 Members were eligible to
21 vote, that quorum was established at 140 voting Members is erroneous. Moreover,
22 Petitioner provided no statute, regulation, governing document, or other binding case law
23 to support his contention. Here, the clear authority lies within the plain text of Article III
24 Section 3.6. No other evidence in the record circumvents its jurisdiction.

25 9. Therefore, the Administrative Law Judge concludes that because the record
26 does not establish violation(s) of Article III Section 3.6 by a preponderance of the
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28 ¹⁸ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

29 ¹⁹ BLACK'S LAW DICTIONARY 1220 (8th ed. 1999).

30 ²⁰ See *Mail Boxes v. Indus. Comm'n of Ariz.*, 181 Ariz. 119, 122, 888 P.2d 777, 780 (1995).

1 evidence, it must be concluded that Petitioner failed to sustain his burden of proof in this
2 matter. Therefore, his petition must be denied.²¹

3 **ORDER**

4 Based on the foregoing,

5 **IT IS ORDERED** that Petitioner's petition, and requested relief, be denied.

6 *In the event of certification of the Administrative Law Judge Decision by the*
7 *Director of the Office of Administrative Hearings, the effective date of the Order will be five*
8 *days from the date of that certification.*

9 **NOTICE**

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

15 Done this day, June 24, 2021.

16 OFFICE OF ADMINISTRATIVE HEARINGS

17
18
19 /s/ Jenna Clark
20 Administrative Law Judge

21
22 Transmitted electronically to:

23 Judy Lowe, Commissioner
24 Arizona Department of Real Estate
25 DGardner@azre.gov

26 Daniel Coe, Petitioner
27 danjcoe@gmail.com

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29 ²¹ Notably, Petitioner offered several facts and made arguments in kind unrelated to the noticed issue. None
30 were addressed by this DECISION AND ORDER because they are irrelevant.

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