

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 Clifford (Norm) S. Burnes & Maria Burnes,
8 Petitioners,

No. 21F-H2120002-REL

9 vs.

**ADMINISTRATIVE LAW JUDGE
DECISION**

10 Saguario Crest Homeowners Association,
11 Inc.,
12 Respondent.

13 **HEARING:** December 11, 2020 at 1:00 PM, March 01, 2021 at 9:00 AM, and
14 March 03, 2021 at 9:00 AM.

15 **APPEARANCES:** Jacob A. Kubert, Esq., and Cynthia F. Burnes, Esq. appeared
16 on behalf of Clifford (Norm) and Maria Burnes (“Petitioners”) with Petitioners and Debora
17 Brown as witnesses. John Crotty, Esq. and Kelsea Dressen, Esq. appeared on behalf of
18 Saguario Crest Homeowners Association (“Respondent”) with Esmerelda Martinez as a
19 witness. Sadot Negreté observed.

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

21
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 ORDER to the Commissioner of the Arizona Department of Real Estate (“Department”).

25 **FINDINGS OF FACT**

26 **BACKGROUND AND PROCEDURE**

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

1 6. Petitioner is a Saguaro Crest subdivision property owner and a member of
2 the Association.

3 7. The Association is governed by its Covenants, Conditions, and Restrictions
4 (“CC&Rs”)⁶, and overseen by a Board of Directors (“the Board”). The CC&Rs empower
5 the Association to control certain aspects of property use within the development. When a
6 party buys residential property in the development, the party receives a copy of the
7 CC&Rs and agrees to be bound by their terms. Thus, the CC&Rs form an enforceable
8 contract between the Association and each property owner.

9 8. An architectural committee is typically charged by an Association’s CC&Rs
10 with the exclusive task of implementing Architectural Guidelines in order to maintain
11 aesthetic standards within the community, and preserving the value of the development.
12 These Architectural Guidelines establish an association’s policies and procedures for
13 alterations, modifications and improvements to an owners' property, common areas, and
14 exclusive use common areas. Having governing rules and bylaws in place, including
15 established architectural rules, helps ensure that an Association meets its fiduciary duty to
16 care for and act in the best interests of the Association.

17 9. The Association’s Amended CC&Rs were recorded with the Pima County
18 Recorder’s Office on August 15, 2006.⁷

19 a. Article 5 of the CC&Rs pertains to architectural and landscape control and is
20 divided into 8 subsections regarding the Association’s Architectural
21 Committee, Purpose, Architectural Standards, Building Envelope, Approval
22 of Plans for Improvements or Alteration, Decision of the Architectural
23 Committee; Approval or Disapproval, Variances, and General Provisions.⁸

24 10. The Associations Architectural Design Guidelines were adopted by the
25 Association’s Board of Directors on May 12, 2018.⁹

26 a. Section 4.0 of the Architectural Design Guidelines states that a refundable
27 \$5,000.00 Construction Compliance Deposit is required.

28 ⁶ See Department’s electronic file at HO19-18017_SinVaca_CCR.pdf.

29 ⁷ See Department’s electronic file at HO21-20002_Saguaro Crest CC&Rs.pdf.

30 ⁸ *Id.*

⁹ See Department’s electronic file at HO21-20002_Saguaro Crest 2018 Architectural design Guidelines.pdf.

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HEARING EVIDENCE

11. Petitioners testified on their own behalf, called Debora Brown as a witness, and submitted exhibits A-HH. Respondent called Esmerelda Martinez as a witness and submitted exhibits 1-6 into the record. The Department's electronic file and NOTICE OF HEARING were also admitted into the record. The substantive evidence of record is as follows:

Issue #1 - Alleged violation of CC&Rs Section 5

- a. The Association is an Arizona non-profit corporation created on June 18, 2009.¹⁰ The subdivision consists of 18 Lots.¹¹
- b. As of the date of the hearing the Board of Directors was comprised of three persons: Esmerelda Martinez – President, Dave Madill – Vice President, and Julie Stevens – Treasurer. All Board positions are voluntary and unpaid.
 - i. Esmerelda Martinez (“President Martinez”) began her tenure on December 02, 2017. Dave Madill began his tenure on January 20, 2018. Julie Stevens began her tenure on January 20, 2018.
- c. On January 27, 2018, the Board of Directors executed a document naming Jamie Argueta, Joseph Martinez, and Norm Burnes (“Petitioner”) to serve as Architecture Review Committee (“ARC”) Members, effective December 05, 2017.¹² ARC Members were advised that the committee’s main goal “is to make the new home look like it belongs in the neighborhood – both in style and colors.”¹³
 - i. The ARC Members had previously been provided a copy of construction plans for Lot 7, owned by Raul and Ramona Martinez, on December 16, 2017, for their review.
- d. On January 03, 2018, the ARC Members unanimously approved of the new home construction on Lot 7.¹⁴

¹⁰ See Petitioners Exhibit U.

¹¹ See Petitioners Exhibit Z.

¹² See Respondent Exhibit 1A.

¹³ See Petitioners Exhibit B; see *a/so* Respondent Exhibit 1B.

¹⁴ See Petitioners Exhibit C; see *a/so* Respondent Exhibit 1C.

- 1 i. On October 16, 2017, Mr. Martinez submitted site plans and building
2 specifications to the ARC. On October 23, 2017, the ARC responded
3 to Mr. Martinez regarding issues with his proposed home placement,
4 septic and driveway location, and color scheme.
- 5 ii. At an unknown time in 2018 additional construction plans were
6 reviewed by the ARC.¹⁵
- 7 e. On May 04, 2018, the construction plans for Lot 7 were approved by Pima
8 County.¹⁶
- 9 i. Construction of Lot 7 began on an unknown date in 2018.
10 Contraction has not been completed.
- 11 f. Petitioners own Lot 6, which is next door to Lot 7.¹⁷
- 12 g. On October 21, 2018, Petitioner notified the Board of his concerns regarding
13 the development of Lot 7.¹⁸ Petitioner included several photos depicting the
14 view he believed he was "going to lose" and the build that would "be in my
15 backyard."¹⁹
- 16 h. On April 14, 2020, after construction on Lot 7 began, Petitioner issued the
17 following letter of concern about the placement of the Martinez's residence
18 with the Board of Directors and the ARC:

19 Having the house in Lot 7 house so close to my back yard is a constant source
20 of stress for my family. Every day there are vehicles with their headlights
21 pointing directly into the back windows of my house. That will never end. A large
22 part of the value to me for my house was the view from the back patio. That's
23 gone now. The view from my kitchen and bedroom windows are destroyed.
24 People in the house on Lot 7 now have a direct view into our family member's
25 windows. I feel our privacy is violated / gone. We are not happy living in this
26 house. During the approval process for the Lot 7 home Jamie mentions how the
27 house placement was originally further back and that "once the home was
28 shown as moved lower and closer to the street, it was approved per the ARC
29 request." Mr. Martinez did not honor the approved plan and has placed the
30 house in the original position. Jamie was correct when he said In that original

¹⁵ Neither party possesses copies of said plans.

¹⁶ See Petitioners Exhibit AA.

¹⁷ See Respondent Exhibit 1D.

¹⁸ See Petitioner Exhibit GG.

¹⁹ *Id.*

1 plan, the building itself would have obstructed an even more significant portion
2 of the direct view from your backyard. That is what happened. When the frame
3 for the foundation was laid out I reported the error to Joseph. The purpose of the
4 ARC is to make sure the houses here are within harmony, to look like they
5 belong in the neighborhood. Because of the (mis) placement of the house on lot
6 7, From my point of view (Literally) the house is not harmonious and does not
7 "look like it belongs". I am asking the home owners association and the ARC to
8 help rectify this error.²⁰

9 (All errors in original.)

10 i. On May 05, 2020, the Association responded to Petitioner that, "The
11 construction location of the home on Lot 7 cannot be held accountable by
12 referencing an aerial map. The construction location of the home should be
13 held accountable by onsite survey verification per construction drawing
14 dimensions."²¹

15 Issue 2 – Alleged violation of Community Agricultural Design Guidelines Section 4.0

16 j. On an unknown date in 2013, the Martinez family bought Lots 7 and 13 from
17 Jamie Argueta. At the time of the sale, Mr. Argueta was a member of the
18 Association's ARC.

19 k. In a meeting held on May 03, 2020, the Board of Directors decided,
20 pursuant to ARIZ. REV. STAT. § 10-3821, to honor a Construction
21 Compliance Deposit Waiver previously granted to the Martinez family.²²

22 i. The discretionary waiver was originally granted during an economic
23 turndown to incentivize purchases in the subdivision.

24 l. However, the Association does not possess a corporate record that any
25 such Construction Compliance Deposit Waiver was previously granted to
26 the Martinez family.

27 Issue 3 – Alleged violation of A.R.S. § 33-1804(A), (D), and (E)

28 m. On April 18, 2020, Petitioner requested a meeting with the Board of
29 Directors to discuss the placement of the Martinez residence on Lot 7.²³

30 ²⁰ See Petitioners Exhibit K; see also Respondent Exhibits 3B and 3F.

²¹ *Id.*

²² See Respondent Exhibit 2A-2B and 3E.

²³ *Id.*

1 That same day, President Martinez agreed to hold a meeting with Petitioner
2 and the Board the following day at 10:00 a.m.²⁴

3 n. During his meeting with the Board on April 18, 2020, Petitioner complained
4 to the Board that the construction on Lot 7 was obscuring the mountain
5 views from his home, specifically from his backyard.²⁵ Petitioner asked the
6 Board to require Mr. Martinez (1) pay to construct a wall tall enough block
7 his home's view from Petitioners' property, (2) place the exterior lighting on
8 the home below said wall to prevent reflection into Petitioners' home, (3)
9 relocate the portable bathrooms on site outside of Petitioners' view, and (4)
10 remit a \$5,000.00 payment to the Association as a construction deposit.

11 o. Petitioner was advised that his lighting concern was the only item of
12 contention within the purview of the Association's jurisdiction. Petitioner was
13 also reminded that neither he nor any of his other ARC Members had
14 required a deposit as a requirement of ARC approval. The Board noted that
15 it would be unfair for Officers to ask for a deposit after-the-fact because it
16 would be unfair to the Martinez family. The Board did, however, agree to
17 convey Petitioners' wishes to Mr. Martinez, but asked Petitioner to recuse
18 himself from the discussion. Jesus Carranza served as a substitute ARC
19 Member for the meeting with Mr. Martinez whereby Petitioner's lists of
20 request was delineated.

21 i. Neither Petitioner nor Mr. Martinez agreed to pay for the cost of a wall
22 to be erected between their property lines, nor did either party agree
23 to split the associated costs.

24 p. On May 20, 2020, acting under authority enumerated in ARIZ. REV. STAT §
25 10-3821, the Association restricted Petitioner's participation as an ARC
26 Member regarding all issued related to the construction of Lot 7.²⁶
27 Specifically, the Board notes, in pertinent part, that "[T]he Board of Directors

28 ²⁴ *Id.*

29 ²⁵ See Respondent Exhibit 3D.

30 ²⁶ See Petitioners Exhibit G; see also Respondent Exhibit 3A.

1 hereby unanimously agree that [Petitioner] be removed as an ARC Member
2 for all ARC related matters concerning Lot 7.”²⁷

- 3 i. The Association, through its Board of Directors, obtained individual
4 signatures as unanimous consent in order to move forward with the
5 unnoticed closed meeting.
- 6 q. On May 21, 2020, during a meeting between Petitioner and the Board, a
7 copy of the meeting notes were delivered to Petitioner. Petitioner was
8 advised that the lights he was concerned about were temporary, and that
9 Mr. Martinez would have the portable bathroom relocated out of Petitioner’s
10 line of sight. Petitioner was further advised that Mr. Martinez declined to pay
11 for a wall between the parties’ property lines, and that he had also received
12 a Construction Compliance Deposit waiver from the ARC Members that
13 preceded Petitioner.

14 Issue 4 – Alleged violation of A.R.S. § 33-1805

- 15 r. On June 04, 2020, Petitioners issued the following records request, in
16 pertinent part, to the Association:

17 I am requesting to review ALL of the **documents** of the HOA, including
18 financial documents. Additionally, I am requesting a copy of all HOA
19 documents to be provided to me regarding the following items. As per the
20 statute, the review should be fulfilled, and the copies should be provided
21 within ten (10) days.

- 22 1. Any meetings where my family or I were discussed, or decisions were
23 made regarding me or my family.
24 2. Any meetings where issues that I addressed were discussed, or
25 decisions were made regarding any issues that I addressed.
26 3. I understand that Raul and Jaime have both stated that there is no
27 documentation regarding the CCD waiver on Lot 7. Please confirm that
28 there are no HOA records about that matter. If such records do exist, please
29 provide me with a copy of those records.
30 4. Any meetings where any activity regarding Lot #7 were discussed or
decisions were made.
5. All current insurance policies. Please see Art 13 of the CC&Rs.

²⁷ *Id.*

1 6. All past and present ARC guidelines and the paperwork showing how
2 those guidelines were adopted. Please provide the minutes of any meetings
3 where the Members approved those ARC guidelines. Also provide evidence
4 that the Amended Architectural Guidelines were recorded in Pima county.

5 7. A copy of all of the Project Documents as defined in Section 1.19 of the
6 CC&Rs.

7 8. A copy of all documents submitted regarding Lot 7.

8 9. A copy of all final documents approved by the county for Lot 7.

9 10. The construction drawings for Lot 7 with dimensions showing the
10 placement of the structure on the lot.

11 11. A copy of all actions taken by the Board of Directors under ARS Section
12 10-3821

13 12. A copy of all discussions and approvals by the ARC or the Board of
14 Directors regarding Lot 7.

15 13. A copy of all documents showing written approval of new construction
16 on any of the lots as required by ARS 33-1817 (B)(2)(b).

17 14. A copy of written reports following on-site formal reviews for the purpose
18 of determining compliance with the approved plans of all new construction
19 on any of the lots as required by ARS 33-1817 (B)(2)(c) and 33-1817 (B)(2)
20 (d).

21 15. All notes, minutes, and findings, regarding the complaint filed by Norm
22 and Maria Burnes on April 18, 2020.

23 16. On May 21, 2020, an "HOA Violation Complaint Form" was sent to Norm
24 Burnes.

25 Please provide a copy of all records where that form was adopted by the
26 HOA.

27 17. Please provide a copy of all complaints filed on the form listed in 16
28 above.²⁸

29 *(All errors and emphases in the original.)*

30 s. On June 8, 2020, Petitioners received an email from the Association about
reviewing the requested documents.²⁹ Specifically, Petitioners were advised
that the requested documents, excluded from nondisclosure, would be
available for review on June 16, 2020, from 10:00 a.m. until 11:00 a.m.

t. On June 16, 2020, the Association met with Petitioners. Petitioners were
presented with a 40-item outline identifying which documents fulfilled each
of Petitioner's enumerated records requests. A total of 342 pages were
identified. Petitioners were permitted to review all 40 documents. Petitioners

²⁸ See Petitioners Exhibit M; see also Respondent Exhibit 3G.

²⁹ See Petitioners Exhibit T.

1 brought their own scanning machine but were prohibited from using it.
2 Alternatively, Petitioners requested copies of all 40 documents.

- 3 u. On June 17, 2020, Petitioner made another request for a copy of the
4 documents.
- 5 v. On June 21, 2020, Petitioner again requested copies of the documents from
6 the Association.³⁰
- 7 w. On June 23, 2020, the Association instructed Petitioner to submit a formal
8 written request using the Association's REQUEST FOR REVIEW OF THE
9 ASSOCIATION'S RECORDS form.³¹ The Association also provided Petitioner
10 with 2 pick-up options for the documents.³²
- 11 x. On June 24, 2020, Petitioner paid \$51.30 to the Association, signed his
12 acknowledgement accepting review of the documents, and purchase
13 agreement for the copies.³³
- 14 i. Later that day, Petitioner notified the Association that "[S]ome of the
15 attachments for some emails are not included within in this package
16 from this documentation." [sic]
- 17 y. On June 30, 2020, the Board confirmed their receipt of Petitioner's June 04,
18 2020, and June 21, 2020, letters.³⁴ Petitioner was advised that due to the
19 nature and volume of Petitioner's requests, and their concerns regarding
20 statutory and community document compliance, the Board needed to
21 schedule an open meeting to discuss how to proceed.

22 **ADDITIONAL EVIDENCE**

- 23 z. The Association does not have the authority to halt construction that has
24 begun after it has been approved by the local building authority, not does
25 the Association have the authority to inspect or issue a citation to a
26 construction site for alleged code compliance violations.

27 ³⁰ See Petitioners Exhibit N; see also Respondent Exhibit 3H.

28 ³¹ See Petitioners Exhibit s P-Q.

29 ³² See Petitioners Exhibit P.

30 ³³ *Id.*

³⁴ See Respondent Exhibit I.

1 fees be reimbursed, and that a civil fine be imposed against Respondent if it is held in
2 violation of any alleged charge.

3 Respondent's closing argument

4 17. In closing, Respondent argued that Petitioner was on the ARC when the
5 plans for Lot 7 were approved, and that he was not removed from the ARC but restricted
6 from participating on decision regarding Lot 7 due to the number of personal complaints he
7 had levied against Mr. Martinez. Respondent opined that Petitioner's quarrel stemmed
8 from alleged deviation of approved Mr. Martinez made after the ARC gave its approval,
9 and argued that Petitioners' complaint with the Department was misplaced.

10 18. As for the construction compliance deposit, Respondent argued that the
11 facts clearly established that the Association has the authority to waive it, as was done in
12 this matter. Respondent opined that the issue was really whether a proper construction
13 compliance waiver was issued to Lot 7. Respondent argued that Petitioners failed to
14 provide any evidence to establish that the waiver was never issued, or alternatively that it
15 was improperly issued to Lot 7.

16 19. Regarding Petitioner's Lot 7 restriction on the ARC, Respondent argued that
17 Petitioner himself agreed to the restriction to avoid the appearance of impropriety and
18 conflict of interest in visiting Mr. Martinez's residence on April 18, 2020 with the rest of the
19 ARC and Board. Thus, Respondent further argued, no dispute existed.

20 20. To Petitioners' untimely document request allegation, Respondent argued
21 that (1) the request was so vague as to make it impossible to comply with, and (2) that
22 Respondent needed to provide Petitioners an opportunity to review the documents, or at
23 least the documents they believed were encompassed by Petitioners' request, within 10-
24 business days (i.e. June 18, 2020). Respondent argued that it complied because not only
25 did it provide Petitioners an opportunity to view the requested documents on June 16,
26 2020. Respondent also argued that at the June 16, 2020, meeting Petitioner clarified what
27 he was looking for, the Association provided copies of the exact documents to Petitioner
28 that he requested on June 24, 2020, and Petitioner signed an acknowledgement that he
29 was satisfied with the documentation provided. Again, Respondent argued no dispute
30 existed.

1 statutory construction, unless applying the literal language would lead to an absurd result.
2 Words should be given “their natural, obvious, and ordinary meaning.”³⁹

3 6. Statutes should be interpreted to provide a fair and sensible result.
4 *Gutierrez v. Industrial Commission of Arizona*; see also *State v. McFall*, 103 Ariz. 234,
5 238, 439 P.2d 805, 809 (1968) (“Courts will not place an absurd and unreasonable
6 construction on statutes.”).

7 7. When the legislature uses a word or words in one section of a statute, but
8 not another, the tribunal may not read those words into the section where the legislature
9 did not include them.⁴⁰ Unless defined by the legislature, words in statutes are given their
10 ordinary meanings.⁴¹

11 8. Each word, phrase, clause, and sentence of a statute or rule must be given
12 meaning so that no part will be void, inert, redundant, or trivial.⁴²

13 9. ARIZ. REV. STAT § 10-3821 provides, in pertinent part, that “[A]ction required
14 or permitted to be taken at a directors' meeting may be taken without a meeting if the
15 action is taken by all of the directors. The action must be evidenced by one or more written
16 consents describing the action taken, signed by each director and included in the minutes
17 filed with the corporate records reflecting the action taken.”

18 10. ARIZ. REV. STAT. § 33-1804 provides, in pertinent parts:

19 A. Notwithstanding any provision in the declaration, bylaws or other documents to
20 the contrary, ***all meetings of the members' association and the board of***
21 ***directors, and any regularly scheduled committee meetings, are open to all***
22 ***members of the association*** ... Any portion of a meeting may be closed only if that
23 closed portion of the meeting is limited to consideration of one or more of the
24 following:

25 1. ***Legal advice from an attorney for the board or the association.*** On final
26 resolution of any matter for which the board received legal advice or that
27 concerned pending or contemplated litigation, the board may disclose information

28 ³⁹ *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations omitted).

29 ⁴⁰ See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

30 ⁴¹ *Id.*

⁴² See *Deer Valley, v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

1 about that matter in an open meeting except for matters that are required to remain
2 confidential by the terms of a settlement agreement or judgment.

3 **2. Pending or contemplated litigation.**

4 **3. Personal, health or financial information** about an individual member of the
5 association, an individual employee of the association or an individual employee of
6 a contractor for the association, including records of the association directly related
7 to the personal, health or financial information about an individual member of the
8 association, an individual employee of the association or an individual employee of
9 a contractor for the association.

10 **4. Matters relating to the job performance** of, **compensation** of, **health**
11 **records** of or **specific complaints** against an individual employee of the
12 association or an individual employee of a contractor of the association who works
13 under the direction of the association.

14 **5. Discussion of a member's appeal** of any violation cited or penalty imposed by
15 the association except on request of the affected member that the meeting be held
16 in an open session.

17 * * *

18 D. Notwithstanding any provision in the declaration, bylaws or other community
19 documents, for meetings of the board of directors that are held after the termination
20 of declarant control of the association, notice to members of meetings of the board
21 of directors shall be given at least forty-eight hours in advance of the meeting by
22 newsletter, conspicuous posting or any other reasonable means as determined by
23 the board of directors. Notice to members of meetings of the board of directors is
24 not required if emergency circumstances require action by the board before notice
25 can be given. **The failure of any member to receive actual notice of a meeting**
26 **of the board of directors does not affect the validity of any action taken at**
27 **that meeting.**

28 E. Notwithstanding any provision in the declaration, bylaws or other community
29 documents, for meetings of the board of directors that are held after the termination
30 of declarant control of the association, all of the following apply:

* * *

2. An emergency meeting of the board of directors may be called to discuss
business or take action that cannot be delayed for the forty-eight hours required for
notice. At any emergency meeting called by the board of directors, the board of
directors may act only on emergency matters. The minutes of the emergency

meeting shall state the reason necessitating the emergency meeting. The minutes of the emergency meeting shall be read and approved at the next regularly scheduled meeting of the board of directors.

* * *

4. ***Any quorum of the board of directors that meets informally to discuss association business shall comply with the open meeting and notice provisions of this section*** without regard to whether the board votes or takes any action on any matter at that informal meeting.

(Emphasis added.)

11. ARIZ. REV. STAT. § 33-1805 provides, in relevant part, as follows:

A. Except as provided in subsection B of this section, ***all financial and other records of the association shall be made reasonably available for examination by any member*** or any person designated by the member in writing as the member's representative. The association shall not charge a member or any person designated by the member in writing for making material available for review. ***The association shall have ten business days to fulfill a request for examination. On request for purchase of copies of records by any member*** or any person designated by the member in writing as the member's representative, ***the association shall have ten business days to provide copies of the requested records. An association may charge a fee for making copies of not more than fifteen cents per page.***

(Emphasis added.)

12. Here, the material facts are clear.

13. Based upon a review of the credible and relevant evidence in the record, Petitioners did not sustain their burden of proof regarding issues 1 through 3. Petitioners sustained their burden of proof as to issue 4.

While it is clear that the construction on Lot 7 is not per plans approved by the ARC on January 03, 2018, it is also clear that no additional plans were provided for the ARC's consideration afterward. The ARC cannot approve or deny proposed plans unless they are submitted for review. Moreover, the record reflects that the build does comply with the local government's building authority. No violation of CC&Rs Section 5 has been established.

1 14. It is also clear that Lot 7 was granted a construction compliance deposit
2 waiver. What is not clear is why the Association does not have a documented record to
3 explain the details regarding how or when the waiver was issued. Because that is not a
4 noticed issue, however, the inquiry is moot. No violation of Community Agricultural Design
5 Guidelines Section 4.0 has been established.

6 15. It is also clear that on April 18, 2020, Petitioner asked to meet with the Board
7 to discuss an urgent matter, and the Board obliged by scheduling a meeting for the next
8 morning on April 19, 2020. Here, the Board's failure to notice the meeting is excused as an
9 exception. Moreover, the record reflects that Petitioner's assertion that the Board
10 removed him from the ARC is incorrect. The Board only removed Petitioner from all ARC
11 related matters concerning Lot 7. No violation of ARIZ. REV. STAT. § 33-1804 has been
12 established.

13 16. It is also clear that on June 04, 2020, Petitioner submitted a records request
14 to Respondent that sought to review all of the Association's records, including financials,
15 and also asked for copies of all documents that fell into 17 enumerated categories.
16 Petitioner specifically demanded that his requests be fulfilled within 10-days. The record
17 reflects that Respondent had until June 18, 2020, to comply with both of Petitioner's
18 requests. The record also reflects that documents were made available to Petitioner on
19 June 16, 2020, and copies of documents were provided to Petitioner on June 24, 2020.
20 Notably, the documents provided to Petitioner on June 24, 2020, did not include email
21 attachments referenced in the documentation. A violation of ARIZ. REV. STAT. § 33-1805
22 has been established.

- 23 a. Respondent's argument that Petitioner's June 16, 2020, clarification
24 regarding his document his request effectively reset the statutory deadline is
25 rejected. The statute does not quantify how many records or what size of
26 record(s) may be requested. While Petitioner's request may be rightly
27 perceived as vague and/or over-encompassed the crux of discoverable
28 information in possession of Respondent, it was still up to the Association to
29 timely clarify and provide Petitioner with the documents he requested, or
30 obtain an extension.

1 17. Therefore, the undersigned Administrative Law Judge concludes that
2 because Petitioners failed to sustain their burden of proof that the Respondent violated
3 section 5 of the Association's CC&Rs, section 4.0 of the Association's Agricultural Design
4 Guidelines, and ARIZ. REV. STAT. § 33-1804(A), (D), and (E), their petition must be denied
5 in part. Because Petitioners sustained their burden of proof that Respondent violated
6 ARIZ. REV. STAT. § 33-1805, their petition must be granted in part.

7 **ORDER**

8 Based on the foregoing,

9 **IT IS ORDERED** that Petitioners' petition regarding Issue 4 be granted, and
10 Petitioners' petition regarding Issues 1-3 be denied.

11 **IT IS FURTHER ORDERED** that Respondent reimburse $\frac{1}{4}$ of Petitioners' filing fee
12 (e.g. \$500.00) in certified funds.

13 **IT IS FURTHER ORDERED** that Respondent shall henceforth comply with ARIZ.
14 REV. STAT. § 33-1805.

15 **IT IS FURTHER ORDERED** that Respondent provide Petitioners with the
16 aforementioned missing email attachments related to Petitioner's June 04, 2020, records
17 request within 10-business days of the effective date of the FINAL ORDER in this matter.

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

21 **NOTICE**

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

27 Done this day, March 22, 2021.

Office of Administrative Hearings

/s/ Jenna Clark
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile March 22, 2021 to:

Judy Lowe, Commissioner
Arizona Department of Real Estate
100 N. 15th Avenue, Suite 201
Phoenix, Arizona 85007
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