

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 B. Belt,

8 Petitioner,

9  
10 v.

11 Beaver Valley Improvement Association,

12 Respondent

No. 21F-H2121058-REL

**ADMINISTRATIVE LAW JUDGE  
DECISION**

13  
14 **HEARING:** September 10, 2021; the record was held open until September 24, 2021, to  
15 allow the parties to submit written closing arguments

16 **APPEARANCES:** Petitioner Daniel B. Belt appeared on his own behalf. Ellen B. Davis,  
17 Esq. represented Respondent Beaver Valley Improvement Association. Petra Paul and  
18 William Campbell appeared as witnesses.

19 **ADMINISTRATIVE LAW JUDGE:** Sondra J. Vanella

20 **FINDINGS OF FACT**

21 1. On or about June 8, 2021, Daniel B. Belt ("Petitioner") filed a Homeowners  
22 Association (HOA) Dispute Process Petition ("Petition") with the Arizona Department of  
23 Real Estate ("Department") alleging a violation of Planned Community Statutes,  
24 specifically, A.R.S. § 33-1812(6), by Beaver Valley Improvement Association  
25 ("Respondent"). Petitioner indicated a single issue would be presented and paid the  
26 appropriate \$500.00 filing fee.

27 2. On or about July 16, 2021, the Department issued a Notice of Hearing in  
28 which it set forth the issue for hearing as follows:

1 The dispute between Petitioner and Respondent arises from A.R.S. § 33-  
2 1812(6). The Petitioner states in the petition narrative, "... PDS refused to  
3 give petitioner the ballots containing the names, addresses and signatures,  
4 in compliance with ARS 33-1812(6)..."

5 3. At hearing, Petitioner testified on his own behalf and presented the  
6 testimony of Petra Paul. Respondent presented the testimony of William Campbell.

7 4. Petitioner asserted that his Petition, which essentially asserts "voter fraud,"  
8 is a "life and death matter."

9 5. Petra Paul, Managing Agent for Planned Development Services HOA  
10 Management & Accounting Company ("PDS"), testified that PDS's contract with  
11 Respondent is for accounting services only, and not HOA management services.  
12 Consequently, PDS does not manage Respondent. Ms. Paul testified that the only  
13 involvement that PDS had with the election as issue was mailing the annual meeting  
14 documents to the members for Respondent. Ms. Paul emphasized that PDS did not  
15 conduct Respondent's election and did not tabulate the ballots, but rather only facilitated  
16 in the mailing of the ballots to Respondent's members, collecting the returned ballots and  
17 reviewing the number of ballots returned to ensure that a quorum was established for a  
18 valid election. Ms. Paul testified that the counting of the ballots occurred at the annual  
19 meeting with the members present, including Petitioner, and that all ballots were verified  
20 and announced.

21 6. Ms. Paul testified regarding her interactions with Petitioner. Ms. Paul  
22 testified that Petitioner requested copies of the ballots prior to the election (which took  
23 place on a Saturday). Petitioner was advised that he was not permitted to see the ballots  
24 prior to the election. Petitioner thereafter demanded copies of the ballots the Monday  
25 after the election. Ms. Paul testified that Petitioner was provided copies of redacted  
26 ballots, as the names, email addresses, and signatures had been removed. However,  
27 Petitioner would not accept the redacted copies. Ms. Paul explained that she offered  
28 Petitioner the opportunity to review the non-redacted ballots, however advised him that he  
29 could not take those with him.  
30

1 7. Ms. Paul testified that with each interaction with Petitioner, he became  
2 increasingly agitated, that the office staff at PDS was intimidated by Petitioner because  
3 Petitioner refused to leave PDS's premises, Petitioner picketed on the property and sat in  
4 his car in PDS's parking lot. Ms. Paul described Petitioner's behavior as "irrational, mean,  
5 and bullying" and that she and other employees were concerned for their personal safety.  
6 Further, Petitioner's behavior was impacting PDS's business operations. Consequently,  
7 PDS through Ms. Paul, obtained an Injunction Against Workplace Harassment  
8 ("Injunction") against Petitioner after Petitioner spent 45 days picketing outside of PDS's  
9 office.<sup>1</sup> The Injunction indicates that Petitioner made threats against PDS employees,  
10 stating, "You'll be sorry," "You'll regret this," and "You haven't seen the end of me."<sup>2</sup> The  
11 Injunction further indicates that Petitioner remained in PDS's parking lot or the street  
12 adjacent to the building holding a large sign that stated, "PDS Embezzlers, Frauds,  
13 Liars."<sup>3</sup>

14 8. Ms. Paul expressed her concern that Petitioner should not be allowed to  
15 know how individual members voted because she was afraid that Petitioner would resort  
16 to intimidating and bullying them based on their votes. Ms. Paul testified that PDS  
17 demanded its legal fees be paid by Respondent and PDS resigned its services from  
18 Respondent due to Petitioner's "abusive and erratic" interactions with her and other PDS  
19 employees.

20 9. William Campbell, a member of Respondent's Board of Directors testified  
21 regarding Respondent's Policy and Procedure regarding Ballot/Proxy Handling  
22 Procedure for the Annual Meeting, which was approved by Respondent's Board on July  
23 10, 2004. Mr. Campbell testified regarding paragraph number 3 that states:

24 3. BALLOTS WILL BE PLACED IN A MANILA ENVELOPE(S)  
25 ACCORDING TO STATUS, I.E. DUES CURRENT / DUES NOT  
26 CURRENT WITH THE BOTTOM PORTION FOLDED UNDER  
27 TO MAINTAIN THE SECRECY OF THE BALLOT.<sup>4</sup>

28 <sup>1</sup> See Petitioner's Exhibit 1.

29 <sup>2</sup> *Id.*

30 <sup>3</sup> *Id.*

<sup>4</sup> See Respondent's Exhibit 22.

1 Emphasis in original.

2 10. Mr. Campbell further testified regarding Respondent's May 8, 2021 Meeting  
3 Minutes. Those meeting minutes illustrate that Respondent's Board unanimously  
4 reaffirmed Respondent's policy of secret ballots, as follows:

5 President Mexal recognized member Dan Belt who expressed  
6 dissatisfaction that he was not able to view all the ballots from the  
7 2021 election inclusive of individual members personal information. A  
8 discussion was held regarding the long-standing practice of the BVIA  
9 providing its members to a secret ballot. Vice President Campbell  
10 made an offer to Mr. Belt that would provide him an opportunity to  
11 review the ballots without disclosing an individual's private information  
12 but with the ability for any member who wants to confirm their vote  
13 was counted to be given the opportunity to view their individual ballot,  
14 preserving the practice of a secret ballot and any members privacy  
15 concerns.

16 Vice President Campbell made a motion to arrange for a meeting for  
17 any interested members to attend a review of the ballots (without  
18 personally identifying information) and allow members to confirm their  
19 personal ballots were included. Director Hallett seconded the motion,  
20 and the motion was approved unanimously.

21 Treasurer Sarah Linkey made a motion to reaffirm that all Board of  
22 Directors elections be conducted with a secret ballot. Director Hallett  
23 seconded the motion, and the motion was approved unanimously.<sup>5</sup>

24 11. Mr. Campbell testified regarding Respondent's Bylaws, specifically, Article  
25 VII Books and Records, which states in pertinent part, "Notwithstanding the foregoing, the  
26 following are not subject to inspection by any party other than the Board of Directors, its  
27 management agent, if any, . . . (d) Personal . . . information about an individual Member of  
28 the Association. . . ."<sup>6</sup>

29 12. Mr. Campbell testified that the way in which individual members voted is  
30 considered private information and the members believed they had the right to a secret  
ballot. Mr. Campbell asserted that Respondent's Bylaws would need to be amended in  
order to provide personal information. Mr. Campbell testified that there was nothing  
irregular about this election, and that Petitioner was told he could have copies of the

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<sup>5</sup> See Respondent's Exhibit 19.

<sup>6</sup> See Respondent's Exhibit 3.

1 ballots with the members' demographic information, just not their voting information.  
2 However, Mr. Campbell devised a way in which he could match a members' demographic  
3 information to the members' vote if upon Petitioner's inspection, something appeared  
4 irregular.<sup>7</sup> Mr. Campbell further testified that there was a meeting at the end of May 2021  
5 during which members were permitted to view the ballots and the ballots were recounted  
6 and the votes were confirmed. Mr. Campbell also brought the ballots to the June 2021  
7 meeting in the event that any member wanted to view the ballots, and again at the July  
8 2021 meeting. Mr. Campbell testified that no one availed themselves of the opportunities  
9 in June or July.

10 13. Mr. Campbell referenced Article VII, Section 1 of the Arizona Constitution  
11 which provides that "all elections by the people shall be by ballot, or by such other method  
12 as may be prescribed by law; Provided, that secrecy in voting shall be preserved."<sup>8</sup> Mr.  
13 Campbell opined that if voting were not conducted by secret ballot, that there would be a  
14 chilling effect in that members would not vote for fear of repercussions.

15 14. Mr. Campbell acknowledged that Respondent was not utilizing the correct  
16 form for secret ballots as they were not in manila envelopes, however, the ballots  
17 remained secret because they were folded.

### 18 **CONCLUSIONS OF LAW**

19 1. Arizona statute permits an owner or a planned community organization to  
20 file a petition with the Department for a hearing concerning violations of planned  
21 community documents or violations of statutes that regulate planned communities.<sup>9</sup> That  
22 statute provides that such petitions will be heard before the Office of Administrative  
23 Hearings.  
24  
25  
26  
27

28 <sup>7</sup> See Respondent's Exhibit 17.

29 <sup>8</sup> See Respondent's Exhibit 23.

30 <sup>9</sup> See A.R.S. § 32-2199.

1           2.       Petitioner bears the burden of proof to establish that Respondent committed  
2 the alleged violation by a preponderance of the evidence.<sup>10</sup> Respondent bears the burden  
3 to establish affirmative defenses by the same evidentiary standard.<sup>11</sup>

4           3.       “A preponderance of the evidence is such proof as convinces the trier of fact  
5 that the contention is more probably true than not.”<sup>12</sup> A preponderance of the evidence is  
6 “[t]he greater weight of the evidence, not necessarily established by the greater number of  
7 witnesses testifying to a fact but by evidence that has the most convincing force; superior  
8 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable  
9 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than  
10 the other.”<sup>13</sup>

11           4.       A.R.S. § 33-1812(A) provides in pertinent part:

12           . . . any action taken at an annual, regular or special meeting of the  
13 members shall comply with all of the following if absentee ballots or ballots  
14 provided by some other form of delivery are used:

15           . . .

16           6. The completed ballot shall contain the name, address and  
17 signature of the person voting, except that if the community  
18 documents permit secret ballots, only the envelope shall contain the  
19 name, address and signature of the voter.

20           7. Ballots, envelopes and related materials, including sign-in sheets if  
21 used, shall be retained in electronic or paper format and made  
22 available for member inspection for at least one year after completion  
23 of the election.

24           5.       A.R.S. § 33-1805 provides the following in pertinent part:

25           A. Except as provided in subsection B of this section, all financial and other  
26 records of the association shall be made reasonably available for  
27 examination by any member or any person designated by the member in  
28 writing as the member's representative. The association shall not charge a  
29 member or any person designated by the member in writing for making  
30 material available for review. The association shall have ten business days  
to fulfill a request for examination. On request for purchase of copies of

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<sup>10</sup> See ARIZ. REV. STAT. section 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

<sup>11</sup> See A.A.C. R2-19-119(B)(2).

<sup>12</sup> MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

<sup>13</sup> BLACK'S LAW DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).

1 records by any member or any person designated by the member in writing  
2 as the member's representative, the association shall have ten business  
3 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.

4 B. Books and records kept by or on behalf of the association and the board  
5 may be withheld from disclosure to the extent that the portion withheld  
6 relates to any of the following:

7 . . . .

8 4. Personal . . . records of an individual member of the association . . .

9 6. Petitioner failed to prove by a preponderance of the evidence that  
10 Respondent violated A.R.S. § 33-1812(A)(6) as alleged in his Petition. A.R.S. § 33-  
11 1812(A)(6) requires that “[t]he completed ballot shall contain the name, address and  
12 signature of the person voting, except that if the community documents permit secret  
13 ballots, only the envelope shall contain the name, address and signature of the voter.” In  
14 this case, the credible evidence of record established that the ballots contained the name,  
15 email address, and signature of the person voting, and that the ballots were intended to be  
16 secret pursuant to the community documents. Respondent permitted Petitioner the  
17 opportunity to review those ballots. Petitioner declined to do so. Respondent also  
18 provided redacted copies of those ballots which Petitioner refused to accept. Instead,  
19 Petitioner demanded copies of the ballots containing the personal information of  
20 Respondent’s members, most notably, the way in which each member cast their  
21 respective votes. In addition to the fact that the ballots were to be secret, Respondent is  
22 precluded by A.R.S. § 33-1805(B)(4) from disclosing such personal information of its  
23 members. Thus, Petitioner failed to sustain his burden to establish a violation by  
24 Respondent.

25 **ORDER**

26 IT IS ORDERED that Petitioner’s Petition is dismissed.

27  
28 **NOTICE**

1 Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties  
2 unless a rehearing is granted pursuant to A.R.S. § 32-2199.04.  
3 Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter  
4 must be filed with the Commissioner of the Department of Real Estate  
5 within 30 days of the service of this Order upon the parties.  
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10  
11

12 Done this day, October 5, 2021.

13  
14 /s/ Sondra J. Vanella  
15 Administrative Law Judge

16 Transmitted by either mail, e-mail, or facsimile October 5, 2021 to:

17 Judy Lowe, Commissioner  
18 Arizona Department of Real Estate  
19 100 N. 15<sup>th</sup> Avenue, Suite 201  
20 Phoenix, Arizona 85007  
21 Attn:  
22 AHansen@azre.gov  
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