

24 JUN 17 AM 10:49

Desert Ranch Homeowners' Association

PO Box 3081

Carefree, AZ 85377

Respondent/Appellee, Pro Se

AMENDED

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In the Matter of	)	No. LC 2023-000179 - 001
TOM BARRS	)	APPELLEE RESPONSE TO
Petitioner/Appellant,	)	APPLICATION FOR ATTORNEYS'
v.	)	FEEES AND TAXATION OF COSTS
DESERT RANCH HOMEOWNERS'	)	(SIGNED*)
ASSOCIATION	)	OAH Nos.
Respondent/Appellee.	)	22F-H2222050-REL
	)	22F-H2222054-REL
	)	Agency Case Nos.
	)	HO22-22050
	)	HO22-22054

* This is an unedited resubmission (aside from this note) of the May 24th, 2024 Response with a signature concluding the Response as the missing signature was called to our attention on June, 14th, 2024.

SUMMARY OF THE RESPONSE

The Desert Ranch Homeowner's Association Board of Directors ("Desert Ranch HOA Board", "The Board") has reviewed the Appellant's ("Tom Barrs", "Mr. Barrs") application and we assert that the Appellant is not able to seek attorney's fees in this case, due to their rejection of a written offer which was more favorable to them than the current determination. We also question the validity of the attorney's fees given the inability to determine the service provided from the limited, redacted, and/or missing documentation. Finally, we argue that the Appellant should be denied the application for fees and costs based on his insistence in continuing this litigation despite a reasonable offer, and not acting in good faith during this process.

BACKGROUND

The current Desert Ranch HOA Board put together this response themselves, and no professional legal counsel has been retained. The Board has been forced to do this, as this litigation has left us without cash reserves. The Board has also been responsible for becoming self-managed this year as our management company chose not to renew our contract due to Mr. Barrs'

continued legal escalations and our lack of resources. We have done our best to justify our arguments above and attach below a timeline of documented related actions, followed by the specific arguments and responses to the application declarations, with an appendix of supporting documents.

TIMELINE AND CONTEXT FOR SUPPORTING DOCUMENTS

2/21/2023 - ALJ Decision at issue.

4/29/2023 - Desert Ranch HOA Annual Member Meeting. A new board is elected. At some point between the election and the Appeal, Cynthia Dryden, the new Secretary¹, provides Tom Barrs access to the Membership Roster.

This was not noted by the board at the time because Tom Barrs was a member and therefore was given access.

5/23/2023 - Tom Barrs files Appeal for Judicial Review and pays \$330.

5/24/2023 - Desert Ranch HOA Board Meeting. No discussion of the Appeal².

5/30/2023 - Order Entered by Court.

¹ 4-29-23 DR HOA Annual Mtg DRAFT Minutes.pdf

² 5-24-23 APPROVED DR BOD Min v2.pdf

6/2/2023 - Tom Barrs files Motion to Stay Pending Settlement.

6/3/2023 - Cynthia Dryden signs Acceptance of Service. Not all board members are notified, and the board does not hold a vote to agree to accept service.

6/5/2023 - Tom Barrs files the Acceptance of Service.

6/9/2023 - Tom Barrs and Cynthia Dryden file Joint Stipulation Request to Stay Pending Settlement and Tom Barrs pays the Desert Ranch Homeowners Association Appearance fee of \$245 without board approval. The Notice of Appearance was required to be filed in a timely fashion per the 5/30/2023 Court Order, and the Joint Stipulation could not be processed without it.

6/13/2023 - Tom Barrs provides records for review, spending \$1253.39 for transcription costs.

6/14/2023 - Desert Ranch HOA Board Meeting. No discussion of the Appeal or the actions taken by Cynthia Dryden³.

6/15/2023 - Court orders case to be stayed pending settlement for 90 days.

³ 6-14-23 Approved DR BOD Min v2.pdf

6/19/2023 - Tom Barrs provides a settlement outline⁴. In summary, it asked for several changes to the finding of facts in the case. No monetary amount was put forward.

6/28/2023 - First executive meeting of the Board regarding the Appeal & Settlement⁵.

7/5/2023 - Tom Barrs provides more detail about the process he would like to move forward including “Draft up a joint stipulation of line-by-line errors within the ruling and hearing process related to the February 21, 2023, ALJ Decision for both parties to review. This new board can then review the evidence and come to their independent conclusion of what makes sense and revise accordingly.”⁶

7/6/2023 - Nan Wickman provides a response to Tom Barrs⁷.

7/10/2023 - Executive meeting to discuss response to Tom Barrs. Tom Barrs also joins the discussion.⁸

⁴ 6-19-23 Settlement outline.pdf

⁵ 6-28-23 DRAFT DR BOD Exec Mtg Minutes.pdf

⁶ 7-5-23 Fwd settlement outline - Desert Ranch.pdf

⁷ 7-6-23 Fwd settlement outline - Desert Ranch.pdf

⁸ 7-10-23 DRAFT DR BOD Exec Mtg Min.pdf

7/13/2023 - Nan Wickman sends Board's proposal for settlement terms. In summary, \$1000.00 to be paid to Tom Barrs, no further penalties, no fault, and no further claims from these complaints. ⁹

7/18/2023 - Court orders Tom Barrs initial Motion to Stay Pending Settlement moot.

8/8/2023-8/16/2023 - Tom Barrs claims that he used Dessales Law Group for "Limited Scope Representation" incurring \$1716 in fees. The invoice provided as part of the Application for Attorney Fees is redacted making it unclear what services were provided. No other documentation of the scope or fees is provided.

8/22/2023 - Tom Barrs sends an Agreement¹⁰ and Stipulation for Remand Case to Amend February 21, 2023, Decision¹¹. In summary, the agreement would require:

- Payment of \$2000 for all 4 filing fees.

⁹ 7-13-23 Fwd settlement outline - Desert Ranch.pdf

¹⁰ AGREEMENT.pdf

¹¹ STIPULATION TO REMAND CASE TO AMEND FEBRUARY 21, 2023
DECISION.pdf

- Payment of \$245 for the "Appeals Court Appearance Fee" that he paid on behalf of the board without the board's consent.
- Agreement to all his corrections to the ALJ decision.
- Neither side can claim legal or other fees.
- Release of liability and fault for the current board, but not AAM, our previous legal counsel, or former board members.

9/8/2023 - Cynthia Dryden sends¹² amended version of the Agreement¹³ edited by the board. In summary:

- Payment of \$2000 for all 4 filing fees.
- Neither side can claim legal or other fees.
- No concession of liability or fault by any party.

9/8/2023 - Tom Barrs provides a response¹⁴ rejecting the amended Agreement.

9/15/2023 - Court orders stay lifted and that Appellant's Opening Brief be filed no later than 11/6/2023.

¹² 9-8-23 Settlement Agreement.pdf

¹³ AGREEMENT_DRHOA_final 9-7-23.pdf

¹⁴ 9-9-23 Settlement Agreement.pdf

9/21/2023 - Tom Barrs sends¹⁵ alternative proposal for settlement which would remand the case to the OAH and then have the Board agree to not contest the matter at the OAH rehearing.

10/5/2023 - Nan Wickman sends¹⁶ the Board response to Tom Barrs explaining that without the advice of a lawyer and with limited ability to hire one it is difficult for the Board to make this kind of agreement given the potential legal implications.

10/11/2023 - Tom Barrs responds¹⁷ to the Board and includes claim that board could hire a lawyer by recovering funds that he claims were “improperly withdrawn.”

10/19/2023 - Cynthia Dryden resigns from the Board¹⁸.

10/25/2023 - Nan Wickman resigns from the Board¹⁹.

11/6/2023 - Tom Barrs files his Opening Brief.

¹⁵ 9-21-23 Additional settlement ideas.pdf

¹⁶ 10-5-23 Re Additional settlement ideas.pdf

¹⁷ 10-11-23 Re Additional settlement ideas.pdf

¹⁸ 10-19-23 Resignation Letter.pdf

¹⁹ Res Letter - Nan PDF.pdf

11/10/2023 - Tom Barrs claims to have spent \$5480.00 with Burch & Cracchiolo, P.A. for “Limited Scope Representation” but no written record of the activities, dates, or scope is provided with the Application for Attorney Fees other than an invoice from this date.

12/6/2023 - Tom Barrs sends another proposal where agreement is that “the membership list is a record all members should have equal access to, and also agree both parties to bear their own costs and fees (i.e. zero cost to the hōā).”²⁰

12/6/2023 - The Board meets in executive session and agrees to continue with Tom’s proposal.

12/10/2023 - Michael Olley sends Board response²¹ to Tom Barrs in general agreement and asks him to work with Board member David Hughes to refine the details.

12/17/2023 - Tom Barrs sends proposed language for reply brief²².

12/20/2023 - Board meets in executive meeting to discuss the reply brief.

²⁰ 12-6-23 Desert Ranch Settlement Options.pdf

²¹ 12-10-23 Re Desert Ranch Settlement Options.pdf

²² 12-17-23 Re Desert Ranch Settlement Options.pdf

1/21/2024 - Last internal Board communication on status.

2/5/2024 - Court decides that it is in receipt of briefs filed and sets the case for determination. The Board had not submitted a brief.

4/4/2024 - Court finds in favor of the Appellant. Tom Barrs is given until 4/26/2024 to provide an affidavit to obtain fees and costs.

4/24/2024 - Tom Barrs submits Application for Attorney Fees and Taxation of Costs.

ISSUES PRESENTED & ARGUMENTS

1. Ability to seek attorney's fees: As this dispute arises from an expressed contract between the Desert Ranch Homeowner's Association and one of its members, Tom Barrs, we believe that ARS 12-341.01(a) applies. The HOA offered Tom Barrs \$2000 to settle this action on 9/8/2023 and he refused. Since the final judgement obtained here is more favorable to the HOA as there were no damages awarded, per ARS 12-341.01(a) we believe that we are the successful party and Tom Barrs cannot claim Attorney's Fees.

2. Validity of attorney's fees: Per ARS 12-341.01(b) the attorney fees awarded should be "to mitigate the burden of the expense of litigation to establish a just claim."

a. Tom Barrs claims that he used Dessauls Law Group between 8/8/2023-8/16/2023 for "Limited Scope Representation" incurring \$1716 in fees. The invoice provided as part of the Application for Attorney Fees is redacted making it unclear what services were provided. No other documentation of the limited scope representation or the fees for that service are provided, which Tom Barrs should have received in a written form from Dessauls Law Group per Arizona Supreme Court Rules ER 1.5(b). Given that these expenses occurred during the stay period and immediately preceded Tom Barrs' formal settlement offer, we believe that these fees were not used to establish a just claim.

b. In Declaration 3, Tom Barrs references an invoice from Burch & Cracchiolo, P.A. dated November 2, 2023. No copy of the invoice from Burch & Cracchiolo, P.A. dated November 2, 2023, was provided. Therefore, the amount of \$5,480.00 cannot be substantiated based on Declaration 3. There is an invoice

included with the Application which is from Burch & Cracchiolo, P.A. dated November 10, 2023, in that amount. However, there is no other documentation of the limited scope representation or the fees for the services provided, which Tom Barrs should have received in a written form from Burch & Cracchiolo, P.A. per Arizona Supreme Court Rules ER 1.5(b). November 10th, 2023 is also after the date that the opening brief was filed (November 6th, 2023), so it is not clear that all costs were accrued before the filing of the opening brief. Given these errors and omissions, we cannot be certain that these costs were used to establish a just claim in this case.

3. Continuation of litigation and not acting in good faith: On April 29th, 2023, the Desert Ranch Homeowner's Association held its Annual Member Meeting and elected a new board of directors. As a result of the excessive money spent on the previous litigation and the continuing animosity between Tom Barrs and the previous board and management company, 4 new board members were elected and only one member of the previous board was re-elected. The management company had already provided notice and terminated its involvement with the Desert

Ranch Homeowner's Association as of April 30th, 2023²³. As a result of these changes, Tom Barrs was able to gain access to the Membership Roster from the new Secretary, Cynthia Dryden. Tom was provided access as a member of the HOA. Nonetheless, he continued his Appeal, despite the issue of access to the membership roster being moot long before the filing of the Appeal on May 23rd, 2023, and paying the initial filing fee of \$300.

After filing the appeal, Tom asked Cynthia Dryden to sign the Acceptance of Service, and she did so on June 3rd, 2023, without The Board voting to take this action.

Not long after this Tom Barrs approached The Board with his desire to settle. Again, there was no public vote or official action from The Board, but on June 9th, 2023, Tom Barrs and Cynthia Dryden filed the Joint Stipulation Request to Stay Pending Settlement. At that time, Tom Barrs paid The Board's Appearance fee of \$245, again without board approval.

In his initial settlement outline of June 19th, 2023, Tom Barrs asked for several changes to the ALJ decision. The Board did not feel comfortable

²³ 20230414-Desert_Ranch_HOA_Board_Meeting_Minutes.pdf

changing the decision of the ALJ, especially the findings of fact. After further discussion between the parties, on August 22nd, 2023, Tom Barrs sent an Agreement and Stipulation for Remand Case to Amend February 21, 2023, Decision. The Board counters with a settlement offer of \$2000, but it is rejected by the Appellant. From this, The Board believes that the Appellant's goal was a correction of the record that The Board was unable to provide. Thus, Tom Barrs chose to continue this litigation for the purpose of changing the record despite a reasonable settlement offer.

4. Continued bad faith behavior: On September 15th, 2023, the Court ordered the stay lifted. After rejecting the previous offer, Tom continued to improperly negotiate with The Board, asking for The Board to abdicate its responsibility to defend itself as part of a settlement. During this time, Tom Barrs was a part of the Finance Committee created to support the Treasurer, Cynthia Dryden. Therefore Mr. Barrs was aware that the Desert Ranch Homeowner's Association was having financial issues and could not afford an attorney. The previous board had borrowed from another account to remain solvent, and rather than focus on a smooth financial transition to being self-managed, the

committee pushed a haphazard investigation into the previous Board's legal spending, which the board ultimately rejected²⁴. All of this contributed to the resignation of 2 board members: Cynthia Dryden (Secretary & Treasurer) and Nan Wickman (President) in October. Finally, after submitting his opening brief, Tom Barrs again reached out to The Board on December 6th, 2023, to negotiate a settlement. In this case the agreement was to have The Board state that "the membership list is a record all members should have equal access to, and also agree both parties to bear their own costs and fees (i.e. zero cost to the HOA)." The Board attempted to work out the details with Appellant, but we were unable to come to a written agreement before the Court decided that it was in receipt of briefs filed and set the case for determination on February 2nd, 2024. We are still unsure why Tom Barrs continued to negotiate after submitting his brief, but now feel it was not in good faith, given that after offering a no cost resolution he is now asking for \$9309.57 in costs and fees. It is also the case that this action delayed our response such that we did not submit our brief in a timely fashion.

²⁴ 20240307-JH-Finance_Report_Board_Note_Final.pdf

5. Validity of request for \$500 filing fee: With regards to Declaration 4e):

The expected conclusion of the appealable order is a reversal, in part, and a remanding of the decision to the Arizona Department of Real Estate. Therefore, requesting the \$500 filing fee is premature, especially as ARS 32-2199.02(A) applies only to administrative law judges.

However, the Appellee would prefer that this matter not be reversed and remanded to the Arizona Department of Real Estate, but rather that a decision be rendered by this Court that finds the Appellant/Petitioner has, in part, prevailed and that the Appellee/Respondent shall pay the petitioner the filing fee required by section ARS 32-2199.01 of \$500.

CONCLUSION

Desert Ranch HOA consists of 33 members. Collectively, the Desert Ranch HOA and homeowners, excluding Tom Barrs, have spent over \$29,000 dealing with this matter alone. Volunteer Board members have spent hundreds of hours trying to do what they thought best with limited resources. The property management company discontinued its contract with the Desert Ranch HOA because of the time and hassle this represented. Board members have resigned over the mental anguish this has caused and several more have refused to join the depleted Board directly because of this. The Board voted to

not spend more money on lawyers, and the homeowners voted not to allow an assessment for further legal fees. Several good faith efforts were made to settle this matter and from the beginning the appellant was given access to the roster he wanted, yet he has continued escalating.

Unfortunately, the current Board continues to deal with similar behavior and receive dozens of time consuming and frivolous requests from Tom Barrs. A recent example: After the Board "met" over email to approve \$200 of office supplies for preparation of bills/books/records Tom Barrs provided a response which went beyond the issue at hand²⁵ and then requested all the documentation associated with this action²⁶. While we understand that Tom Barrs has the right to request every document, it seems that his distrust of The Board continues no matter who is part of it. We may not be able to adjust Mr. Barrs' behavior, but we do want to be able to improve our ability to manage ourselves by not spending time on responses like this one.

²⁵ 2-15-24 Re Emergency Email Meeting Approval of Office Supplies for Treasurer.pdf

²⁶ 3-7-24 Re Emergency Email Meeting Approval of Office Supplies for Treasurer.pdf

In conclusion, The Board would prefer that this legal action ends here, so that we can spend our volunteered time to get the HOA back to functioning and dealing with all its business properly. We are prepared to accept the Court's decision and pay whatever costs and penalties the Court deems reasonable to bring this matter to a close.

Signed this 16th day of June, 2024



Michael Olley

Desert Ranch Homeowners Association President

P.O. Box 3081

Carefree, AZ 85377-3081

ORIGINAL of the foregoing filed this 17th day of June, 2024:

Clerk of the Court

Attn: LC Specialty Desk

MARICOPA COUNTY SUPERIOR COURT

18380 N 40th St.

Phoenix, AZ 85032

COPY of the foregoing emailed/mailed this same date to:

LOWER COURT AND ADMINISTRATIVE APPEALS

Attention: HON. JOSEPH MIKITISH

201 W Jefferson St.

4th Floor

Phoenix, Arizona 85003

TOM BARRS

P.O. Box 14122

Scottsdale, AZ 85267

TBarrs360@gmail.com

By: 

Marilee Martin

Desert Ranch Homeowners Association

P.O. Box 3081, Carefree, AZ 85377-3081

**Desert Ranch Board of Directors Meeting
The Holland Community Center
34250 N 60th St, Scottsdale, AZ 85266
Saturday, April 29, 2023**

Open Meeting at 10:00 AM / In-Person

DRAFT

MINUTES

A. Welcome – 10:15AM

Attendees:

Brian Schoeffler (President)
Monte Matz (Vice President)
Michael Olley (Treasurer & Secretary)
Tom Barrs
Stephen Barrs (OBO Paula Barrs)
Cynthia Dryden
Marilee Martin
Belle Griffiths
Bill and Julie Phoenix
Julie Mahoney
Nan Wickman
Bonnie Kodis
Patrick Healy
David Hughes
Catherine Overby
Lori Loch-lee (AAM)

B. Proof of Notice

Lori confirmed that notice was properly given.

Several homeowners cited continued issues with delivery of notice postcards and requested more notice. AAM was asked about e-mail receipt notices which are not currently used. Homeowners requested test e-mails to verify that their information is current.

Several homeowners also cited issues with receipt of information for homeowner dues and the resulting late fees assessed which seemed unfair. While there was some agreement that it is the homeowners responsibility, there is always the matter of the amount to be paid which is not clear until notices are sent. Again, more notice was requested.

C. Verification of Quorum

Lori Loch-lee confirmed that 82% (28/34) of members voted.

D. Approval of 2022 Annual Members Meeting Minutes

A reading of the minutes was requested and denied.

The minutes were approved by the membership: 8-5.

E. Treasurer's Report

The Budget Comparison Statement was reviewed. The current operating account holds approximately \$5909.70 after an \$8000 loan from the 711 Road Fund. It was explained that the loan is a 0% interest loan for \$8000.

There was a concern expressed that this violated the co-mingling of funds, but the board believes that a loan is not considered co-mingling and the alternative was bankruptcy.

There were also concerns expressed about the legal fees paid to defend the HOA at administrative hearings and if it was necessary. It was explained that the HOA has a duty on behalf of the homeowners to defend itself and respond to the complaints to avoid paying additional fees and penalties incurred by not responding. Since none of the volunteer board, who cannot be compensated for their time, were able to provide the necessary response, it was determined that hiring a lawyer to handle the hearing was the reasonable option.

F. Budget Review

The Budget by Category Annualized was reviewed. The loan from the 711 Road Fund is required to meet the 2023 budget as no new income is expected.

G. President's Report Overview / New Business

Road Repair: Wendell Pickett had offered to assist, but has not provided an update to the board recently. Sealing the road was discussed as to where and when. The last major resealing was performed in 2015 and cost approximately \$130,000.

ADRE/OAH Hearing: After a 2 day hearing on 4 complaints addressing 48 different document requests and other alleged infractions, the ALJ noted 2 cases where documents were not provided in a timely fashion but given that the board operated in good faith and attempted to provide all requested documents, they declined to impose any fees or penalties on the HOA. A rehearing request was filed by the complainant, but the request was denied.

After further concerns being raised about these issues and others relating to past election results, a verbal majority of the homeowners requested an end to the contentious discussions and issues of the past, urging everyone to turn the page on the past and move forward.

Belle Griffiths was recognized and requested an update to the CC&Rs to limit the time scope of records and document requests to those less than 2 years old.

Michael Olley was recognized and explained issues around short-term rentals based on our current CC&Rs and explained that this would be something he would be taking up with the board in 2023, with an anticipated vote by the membership at the next annual meeting in 2024.

H. Election of Directors Results:

Name-Parcel-Vote Total-Decision:

Nan Wickman-511-23-Elected to 2-year term for 511

Michael Olley-711-18-Elected to 2-year term for 711

Cynthia Dryden-711-15-Elected to 2-year term for 711 (as mutually decided with David

Hughes)

David Hughes-711-15-Elected to 1-year term for 711 vacated by Michelle Aerni

Brian Schoeffler-711-12-Not Elected

Monte Matz-711-9-Not Elected

Tom Barrs (write-in)-711-6-Not Elected

Susan Kleinfelter (write-in)-511-4-Elected to 1-year term for 511 vacated by Gerald

Mangieri.

As Susan was not present at the meeting and had not sent notice of her interest to the board, Michael Olley asked that she be notified of the result and to confirm that she was willing to serve before finalizing the results. She was reached and confirmed her commitment to the board after the adjournment of the 2023 Annual Members Meeting.

J. Adjournment of the 2023 Annual Members Meeting: Approximately 11:15AM.

K. Board of Directors Meeting/Organizational Meeting: 11:38AM

i. Elect Board Positions by New Board Members for 2023-2024

Roster:

Nan Wickman: President

Michael Olley: Vice President

Cynthia Dryden: Treasurer and Secretary

David Hughes: At-large

Susan Kleinfelter: At-large

ii. Miscellaneous Business

Discussed Chair of EDC Appointment: Some question as to if they must be a member of the board, for now the board will handle all requests.

Discussed next meeting: Tentatively May 16, 2023.

L. Adjournment of Board of Directors Meeting/Organizational Meeting: 12:01PM

Submitted by Michael Olley

DESERT RANCH BOARD OF DIRECTORS MEETING

ZOOM RECORDING 6:00-7:00 P.M.

May 24, 2023

Open Meeting Minutes

APPROVED

Welcome – 6:01 PM

ATTENDEES:

Nan Wickman – President
Michael Olley - Vice President
Cynthia Dryden – Secretary/Treasurer
David Hughes – Director At Large
Susan Klinefelter – Director At Large

Tom Barrs
Stephen Barrs (OBO Paula Barrs)
Marilee Martin
Jerry Klinger
Julie Mahoney

A quorum was met, as all Board members were in attendance. A motion and a second opened the meeting for input. Stephen asked about the volume of Zoom meeting and Nan gave a response, along with input being recorded and available for members to request and review.

MINUTES REVIEW/APPROVAL:

Motion to approve the May 16, 2023 minutes was approved at the May 24, 2023 meeting. If any member would like to request copies of meeting minutes, please contact Cynthia Dryden.

OFFICER REPORTS:

Cynthia Dryden-Treasurer gave the following update regarding the financial state of the HOA.

GENERAL FUND

4/27/23 \$ 1,000.00 check received from AAM and deposited by Brian Schoeffler to open the General Fund account.

5/24/23 \$ 3,125.52 check received from AAM and deposited by Michael Olley to General Fund account.

\$ 4,125.52 GRAND TOTAL-OPENING BALANCE

Reimbursement of the following to be approved at the June 14 zoom meeting.

ie: Nan Wickman **\$149.90** for Zoom set-up

Brian Schoeffler **\$77.64** snacks-coffee for Annual Meeting

\$166.00 Postal Box set-up

711 ROAD RESERVES FUND

4/27/23 \$ 25.00 cash from Brian Schoeffler to open the Road Fund account.

5/24/23 \$26,379.35 check received from AAM and deposited by Michael Olley for the Reserve/Road Fund account.

\$26,404.35 GRAND TOTAL-OPENING BALANCE

\$8,000.00 LOAN to 711 Road Reserves Fund

October 26, 2022 wire transfer of \$8,000.00 from Road Fund to General Fund

February 22, 2023 wire transfer from General Fund \$12,330.00 (\$8,000 for loan) and \$4,330.00 (711) road dues to Road Fund

March 28, 2023 wire transfer of \$8,000.00 from Road Fund to General Fund

This is the current up-to-date findings for the monies owed to the Road Fund.

Looking into an Operating Reserve Fund not budgeted and if there IS/WAS one?

Investigating if there are drafts to be run through the General Fund, ie: property taxes, taxes filing, debit/credit

Researching any dues that are still outstanding and any further monies due to the attorneys.

UNFINISHED BUSINESS:

Approval Updates and EDC Eligibility

David Hughes, Director At Large, EDC Chair (711)
Susan Klinefelter, Director At Large, EDC member (511)
Stephen Barrs (711)

David gave an update of the following approvals:

- Catherine Overby approved for house painting
- Rice family address signage approved
- Nancy-Roger Newell patio
- Plans for one of the new houses to see the progress of where it stands

Discussion to continue for the meetings of the EDC and what that may look like. Also, the discussion of a third person eligibility according to the by-laws, CC&R, EDC committee is a broad interpretation. Michael Olley states the residents should match the criteria of members with invested interests. A discussion needs to take place regarding an update and understanding of the EDC committee. The language needs clarity for the long term ahead. Stephen Barrs (711) has the approval for the third spot.

Transition from Management Company

The transition of AAM is almost completed. We are working through mountains of paper to get organized and in a central place on the horizon for homeowners to access. A discussion was open regarding setting up committees, especially a financial committee, but was tabled until our June 14th meeting. Three candidates have shown interest for the financial committee and made their intent known to serve on this committee.

These items will rollover to our next Zoom meeting on June 14th, along with the New Business to be discussed from this meeting.

Road Repair and Maintenance Plan
Community Roster

Please note the dates for our Zoom meetings 6:00-7:00 p.m.:

June 14 and 28

July 12 and 26
August 9 and 23

Michael Olley motioned to adjourn with a second from Nan. Open Meeting
adjourned at 7:12 p.m.

Respectfully submitted by:
Cynthia Dryden
Secretary/Treasurer
5/25/23

Approved Minutes: Cynthia Dryden
Cynthia Dryden-Secretary

Date: June 14, 2023

DESERT RANCH BOARD OF DIRECTORS MEETING

via ZOOM 6:00-7:00 P.M.

JUNE 14, 2023

Open Meeting Minutes

APPROVED

Welcome – 6:01 PM

ATTENDEES:

Nan Wickman – President
Michael Olley - Vice President
Cynthia Dryden – Secretary/Treasurer
David Hughes – Director At Large
Susan Klinefelter – Director At Large

Tom Barrs
Stephen Barrs (OBO Paula Barrs)
Jerry Klinger

A quorum was met, as all Board members were in attendance.

MINUTES REVIEW/APPROVAL:

A motion for Approval of May 24, 2023 Minutes was made. Additional comment by Tom Barrs suggested consistency in wording: “Minutes” as opposed to “Notes,” and the use of full reference to the “711 Road Reserves Fund” to distinguish the differences. Minutes were approved 5-0. As always, minutes will be provided with the next meeting agenda and are available upon request to Cynthia Dryden.

OFFICER REPORTS:

Cynthia Dryden-Treasurer gave the following update regarding the financial state of the HOA. AAM has now officially closed our account and mailed us a check for the remaining balance \$4.77, which has yet to be deposited. Current activity and balances are:

GENERAL FUND

\$ 4,125.52

\$ 10.00 Debit payment for ACC Filing

\$ 4,115.52 TOTAL

Reimbursement of the following awaiting approval:

- Nan Wickman \$149.90 for Zoom set-up
- Brian Schoeffler \$77.64 snacks-coffee for Annual Meeting
- Brian Schoeffler \$166.00 Postal Box set-up

711 ROAD RESERVES FUND

\$26,404.35 GRAND TOTAL

EDC UPDATE:

David Hughes, Director At Large, EDC Chair (711)

Susan Klinefelter, Director At Large, EDC member (511)

Stephen Barrs (711)

David Hughes has been working to secure information from Bordeaux Homes with no response. He is seeking to find out the progress of where they stand and the status of their plan submission expiration, per the EDC Guidelines. Discussion of updating the Guidelines to include a Bond requirement with new construction, etc. David will do some research with the help off the EDC and provide an update.

AAM TRANSITION UPDATE:

AAM has officially closed our account. We are continuing to work in getting everything organized and in a central place for homeowner access. Check images requested have yet to be provided by the bank or AAM, but Cynthia is working with her contact at the bank to obtain these images, to ensure accounting accuracy.

In response to the level of work necessary regarding the financial situation of the HOA, without an management company, a motion was made by Nan and second by Michael to establish and appoint a Financial Committee with a charter to:

Be accountable to the Board and chaired/directed by the Treasurer, review and resolve financial conflicts, explore future financing opportunities and assist the Treasurer as needed. The motion was seconded by Michael Olley.

Cynthia Dryden will reach out to Marilee Martin, Tom Barrs, and Jerry Klinger as they expressed interest in serving on a committee. In addition, other individuals are welcome to submit their interest in volunteering.

It was also discussed a possible financial partner either internal or external, since we are now seeking to be independently run without a management company.

ROAD REPAIR and MAINTENANCE PLAN

Discussion on the roads in 711 and seeking the best avenue for repair. David will investigate repair option including filling in cracks vs paving, as well as obtain additional proposals for consideration. Susan noted that season may play a role in execution of repairs...many residents live elsewhere during the summer therefore reducing the volume of inconvenience. Also, Jerry suggested spreading an annual road improvement assessment increase over the next several years as opposed to one large increase, so that when it is time for a full repave we are ready. This opens the thought of establishing a timeline and financing options going forward. FYI, Stephen noted that the last resurfacing was completed in 2015 @\$9,000. David will give an update upon his findings.

Please note the dates for our next Zoom meetings 6:00-7:00 p.m.:

June 28

July 12

July 26

August 9

August 23

Nan Wickman motioned to adjourn with a second from Cynthia Dryden. Open Meeting adjourned at 7:32 p.m.

Respectfully submitted by:

Cynthia Dryden

Secretary/Treasurer

6/16/23

Approved Minutes: Cynthia Dryden

Cynthia Dryden-Secretary

Date: 6/30/23

NOTE: Terms of this settlement should remain confidential for the time being.

In an effort to expeditiously and cost effectively resolve all issues and concerns related to my May 23, 2023 Appeal of the OAH Ruling, I wrote out a simplified list of what I am looking for. If these requests seem reasonable to you all, let me know. Your feedback is appreciated. Once we can get the basic framework agreed to, we can get a formal proposal together to provide to the Judge, setting forth how to bring this case to a resolution.

As you are aware, there is currently a petition before the Maricopa County Lower Court of Appeals (May 23, 2023 Notice of Appeal) to review the decision issued by the ALJ on February 21, 2023 and the subsequent rehearing request. The purpose of the appeal is to address the ruling that I believe to be incorrect for a number of reasons. Past board members have recently sought to use this erroneous ruling to justify their actions. It is also possible that those former board members may use the ruling in the future to justify continued false/misleading statements, and lack of transparency, furthering the damage they have done to me and my family.

It is unfortunate the great lengths and expense that has been required for me to finally obtain Association records that should have been reasonably provided pursuant to ARS 33-1805 and ARS 33-1804(A). Although there appears to be some outstanding relevant records that may have been withheld or destroyed by the previous board, other records have finally been provided by this new board which is appreciated. The newly surfaced responsive records highlight that not only was the previous board withholding records, but they were not candid with the ALJ or myself about the existence and nature of records withheld.

In considering this settlement outline, it is suggested that, at a minimum, you read through the following documents and, if you feel necessary, take it under advisement:

- Petitions 1-4 submitted to the ADRE in 2022
- Petitioner's 12/25/2022 Prehearing Memorandum
- Respondent's 12/26/2022 Prehearing Memorandum
- AAM's April 27, 2021 audio recording
- Email correspondence to Austin Baillio dated September 15, 2022
- The ADMINISTRATIVE LAW JUDGE DECISION issued February 21, 2023
- Petitioner's Rehearing request including "Revised Rehearing Request Memo - Barrs vs Desert Ranch Amended 3-27"
- Respondent's 4/7/2023 Rehearing request response
- Respondent witness cheat sheets
- The Notice of Appeal
- ARS 33-1805 & ARS 33-1804(A)

Essentially, many of the reasons for which the ruling is erroneous can be found in my March 2023 rehearing request memorandum. The following is a simplified outline of most everything that I am looking for.

In simple terms:

Regarding Petitions 1&4 (miscellaneous records requests):

The Administrative Law Judge (ALJ) erroneously entered numerous erroneous findings of fact into the ruling regarding the previous boards responsiveness to requests based on false assertions by witnesses and arguments from Austin Baillio. Regarding Petitions 1&4, Austin Baillio and Respondent's witnesses confused the ALJ with repeated false claims of 50+ items at issue when in fact the number of items I was focusing on with respect to the Petitions was a much smaller number. The record, testimony and cheat sheets of the witnesses clearly show that some of the records at issue were provided late, yet these facts are missing from the findings of fact. The witnesses were also not forthright in their testimony concerning the existence and nature of various records. The outline of the actual items at issue can be found in my correspondence with Austin on September 15, 2022 and in my 12/25/2022 Prehearing Memorandum. Most of this is highlighted in my rehearing request.

In my Appeal,

1. I am asking that the findings of fact be corrected so that the ruling exclusively reflects the items and issues raised by me as part of my case.
2. I am asking that any inaccurate findings of fact and conclusions of law be corrected
3. I am asking that the ruling acknowledge that information discovered after the hearing and ruling reveals that the witnesses were not candid with me or the ALJ.
4. I am further requesting that the subsequent ruling be corrected to reflect the accurate findings of fact.

Regarding Petition 2 (AAM's incomplete/edited recordings):

The findings of fact misstate the allegation regarding this issue and leave out the most important piece of evidence alleged by me during the hearing, which was that while I was forbidden from recording or attending the April 27, 2021 board meeting, AAM only provided a recording that was missing approximately 30 minutes of a one-hour meeting and was missing 6/7ths of the meeting topics. The audio is clearly cut such that the recording starts abruptly and is missing the first segment as described. It just so happens that the portion missing was the portion discussing the other records the previous board members were attempting to withhold.

In my Appeal,

1. I am asking that the findings of fact be corrected to include the relevant testimony and evidence presented during the hearing.
2. Finding of Fact 3 misstates my allegation regarding Petition 2. Therefore, I am asking that the findings of fact be corrected to correctly reflect the allegation. Petition 2 was not about the Association's policy to forbid homeowner's from recording nor was it about failure to provide a recording, but rather Petition 2 was about the failure to provide a complete/unedited recording as required by A.R.S. 33-1804(A) when an Association precludes homeowners from independently recording the meetings.
3. I am asking that the subsequent ruling reflect the complete and accurate findings of fact

Regarding Petition 3 (Membership List):

In my Appeal, I am asking that the following errors be corrected, that the ruling acknowledge the witnesses' lack of candor, and that the subsequent ruling reflect the accurate record.

1. The record, including the citation in the petition narrative, clearly documents that **AAM (the former management company) refused to provide "any type" of roster within the 10 business day deadline** as required by the alleged statute. The findings of fact need to be corrected to accurately reflect this.
2. A current membership list has been provided by the new board which is appreciated.
3. **Findings of Fact 14(j)(i) and 15 are in error and do not accurately reflect the record.**
4. Finding of Fact 14(j)(i) is incorrect for the following reasons:
 - a. Contrary to the finding of fact, the listing generated in June of 2020 was, in fact, provided to Petitioner, hence the reason it was presented as evidence by me during the hearing. The ALJ's footnote does not make any sense because she references my exhibit while claiming that I never received the exhibit.
5. Finding of Fact 15 is incorrect for the following reasons:
 - a. The evidence in the record shows that full membership rosters were provided in 2018, 2019, 2020 and 2021. Petitioner's credible testimony reflects this as well.
 - b. No evidence was presented that, "the Board received [complaints] regarding unsolicited emails Petitioner would "blast" to Members regarding various grievances and opinions." It was actually Gerrard Mangieri, Brian Schoeffler, et. al. who used the roster and AAM's platform to blast their own grievances to members including proactively sending Mr. Barrs' personal information to the membership. In fact, it was the former board that intentionally disclosed my personal information to a third party without my knowledge or consent while removing their own.
 - c. Mr. Schoeffler falsely claimed during the hearing that he did not use the roster when sending out an email to the membership for the Netflix event. However,

recent emails show that Mr. Schoeffler did in fact, use the roster to send out his emails and not his own personal list obtained by “knocking on doors.”

DESERT RANCH BOARD OF DIRECTORS EXECUTIVE MEETING

via ZOOM 7:00pm

JUNE 28, 2023

Closed Meeting Minutes

DRAFT

CALL TO ORDER 7:01PM

ATTENDEES:

Nan Wickman – President
Michael Olley - Vice President
Cynthia Dryden – Secretary/Treasurer
David Hughes – Director At Large
Susan Klinefelter – Director At Large

As announced, the Board met to discuss the status of pending or contemplated litigation, per AZ 33-1804.A(2).

Meeting adjourned at 8:15 P.M.

Respectfully submitted by:

Cynthia Dryden

Secretary/Treasurer

6/29/23

Approved Minutes: _____

Cynthia Dryden-Secretary

Date: _____

Fwd: settlement outline - Desert Ranch

Nan Wickman <drhoanan@gmail.com>

Wed 7/5/2023 9:36 AM

To: Olley Michael <mfdolley@hotmail.com>

fyi...we passed along the result of our exec session. this morning we had a couple of response emails. please review. first of two:

Begin forwarded message:

From: Tom Barrs <tbarrs360@gmail.com>

Date: July 5, 2023 at 4:09:33 AM MST

To: Cynthia Dryden <drhoacyn@gmail.com>, Nan Wickman <drhoanan@gmail.com>

Subject: Re: settlement outline - Desert Ranch

Perhaps this might explain the process that I had in mind a little better. Let me know if this helps.

As we discussed on the teleconference last week, the best way for the current board to orient themselves with the relevant actions of the former board at issue is to review all of the information in the case file including evidence, rehearing requests and prehearing memorandums. If you are in need of anything, please let me know. As we discussed by phone there are obvious factual inaccuracies and evidence missing from the findings of fact.

If you agree in general that there are significant errors in the ALJ's February 21, 2023 ruling that likely lead to an incorrect final order, then we can proceed to a joint stipulation that both sides can take part in working out the line by line details of what needs to be corrected. It is not necessary at this time to come to a fine grained agreement with each specific instance, as I am sure we may not agree on everything when it comes to the stipulation. Right now (Step #1) we just need to come to an agreement that moving forward to working on a joint stipulation (Step #2) is a good idea. My Rehearing Request details most everything that I am concerned with, but a line by line agreement at this time is not necessary. So again,

Step #1: Agree that the board is willing to move forward with the drafting of a joint stipulation based on the basic premise that both parties understand the February 21, 2023 ALJ Decision is in error to some extent

Step #2: Draft up a joint stipulation of line by line errors within the ruling and hearing process related to the February 21, 2023 ALJ Decision for both parties to review. This new board can then review the evidence and come to their independent conclusion of what makes sense and revise accordingly.

I think resolving this via a joint stipulation will save us all time and money as opposed to the alternative.

Regards,
Tom

On Sat, Jul 1, 2023 at 12:25 AM Tom Barrs <tbarrs360@gmail.com> wrote:

Cynthia and Nan, I just got your earlier emails. I know I am limited on time this coming week; however, Stephen might have time on Monday or Wednesday evening to discuss via phone/zoom if necessary. If that works for you let me know and I will pass it along to him. Either way, if you also send a brief recap, I can look it over and see how to help answer any questions you may have as soon as I get a chance.

Hope you both have a great weekend and holiday!

Regards,
Tom

On Fri, Jun 30, 2023 at 10:15 AM Cynthia Dryden <drhoacyn@gmail.com> wrote:

Tom,

Can we postpone until Wednesday or Thursday of next week? I would appreciate it. Let me know if that works for you. Thank you.

Regards,
Cyn Dryden
Secretary DHRA

On Thu, Jun 29, 2023 at 5:06 PM Tom Barrs <tbarrs360@gmail.com> wrote:

6pm tomorrow night works the best if possible. By phone is fine. Tom

On Thu, Jun 29, 2023 at 9:01 AM Nan Wickman <drhoanan@gmail.com> wrote:

Good morning...and thank you both for your roles in a productive open meeting last night! I am pleased to say that the Executive Session immediately following was equally productive and that we have some helpful follow-up from the BOD to pass along to you, Tom. I think it would be most efficient to have another 3-way call or zoom (whatever y'all prefer) to provide a recap so that we can press forward.

I understand Cynthia has a super full day today, and honestly so do I...trying to wrap up my laundry list of tasks here in CA so I can get home. So, you both tell me...do we want to schedule a time for tomorrow Friday (I think Tom said 6pm works best for him on weekdays) or wait until after the holiday weekend? I'm good with either option, however if we wait until after the holiday, we could likely finally meet in person, which I think would be super! Shouldn't take long either way...15-30 min.

I'll wait to hear back from you both. Have a terrific day!

My Best,
Nan

On Jun 25, 2023, at 8:40 AM, Nan Wickman <drhoanan@gmail.com> wrote:

Below is the Zoom info for the three of us to chat tomorrow night. Thanks and have a lovely Sunday!

My Best,
Nan

Topic: Recap Chat
Time: Jun 26, 2023 06:00 PM Arizona

Join Zoom Meeting
<https://zoom.us/j/96747493824?pwd=b0NSalpG5kxvU0k4TlBBK0lUeFJrOT09>

Meeting ID: 967 4749 3824
Passcode: 736400

<Zoom-Meeting.ics>

One tap mobile
+16027530140,,96747493824#,,,,*736400# US (Phoenix)
+16699006833,,96747493824#,,,,*736400# US (San Jose)

May the fork be with you...Go Devils! \./

On Jun 24, 2023, at 6:48 AM, Nan Wickman <drhoanan@gmail.com> wrote:

sounds good...i'll set up a zoom on Mon @6pm for us. 😊n

May the fork be with you...Go Devils! \./

On Jun 23, 2023, at 2:49 PM, Cynthia Dryden <drhoacyn@gmail.com> wrote:

This sounds good to me. Just let me know what direction we plan on taking. Monday and Zoom works, but I'm open to meeting on 7/6 or 7/7.

Thanks,
Cyn

On Fri, Jun 23, 2023 at 10:46 AM Tom Barrs <tbarrs360@gmail.com> wrote:

Nan, Why don't I meet with Cynthia in person on Monday (6pm?) and you link in via zoom?

Tom

On Thu, Jun 22, 2023 at 4:03 PM Nan Wickman <drhoanan@gmail.com> wrote:

I appreciate you both making yourselves available via Zoom on Monday (6pm??) and am happy to set it up...however my initial intention was to meet "live" because I think there is so much value in meeting face to face, especially if there's lots of paperwork to review together. I will only be in CA for work for 7-10 days, depending on how quickly I can

accomplish my goals there. So I'm wondering if you both would prefer, and be available, to hold off until my return...meet at Cynthia's either Thurs 7/6 or Fri 7/7?

I'm good either way, so just let me know what you both prefer and we'll make it happen. Regardless, I totally agree that it is better to get to work on this sooner than later...I can't believe it is almost July!! Please let me know your thoughts.

My Best,
Nan

On Jun 21, 2023, at 11:17 PM, Tom Barrs <tbarrs360@gmail.com> wrote:

The Order should be the same thing that I emailed on Monday. It is the order granting us all additional time until September, but time flies and September comes quickly so hopefully we can get everything done a lot sooner than that. Monday will probably work although it may be advantageous at some point to sit down and look over everything together in person since there is a lot of paperwork. If you would like a general brief on Monday, someone send us all a zoom link.

Thanks,
Tom

On Wed, Jun 21, 2023 at 12:30 PM Nan Wickman <drhoanan@gmail.com> wrote:

Hi there! Rob and I already have a commitment on Friday but I am available Monday night, albeit via Zoom from CA...I have work there for about a week. Just let me know what time works for you both and I can set it up for the three of us...no quorum at this time. We can fill in the rest of the Board afterwards and take a lookie at whatever it is that Cynthia just received. In the interim, I will review the attachments provided by Tom prior to our chat, as suggested.

Thanks so much to you both!

My Best,
Nan

On Jun 21, 2023, at 12:10 PM, Cynthia Dryden <drhoacyn@gmail.com> wrote:

Good afternoon Tom and Nan,

Sorry for the delay in answering, but this is a bi-weekly payroll and it's now in my rear view mirror. I am available to meet whenever it is convenient for you both. We can certainly meet here at my house to go over. I went to the PO today and received an ORDER that will require a response on our part. According to the ORDER the case will resume active on September 12, 2023. Let me know how you all would like to proceed.

Regards,

Cynthia
Secretary-DRHA

On Tue, Jun 20, 2023 at 10:57 PM Tom Barrs <tbarrs360@gmail.com> wrote:

Nan,
Meeting and going over this in person with Cynthia sounds like a good idea. If Cynthia doesn't mind, we could meet at her house?? or we could do it via zoom. I would highly suggest at least briefing over all of the docs first so that it gives a better starting point to ask questions. It would have to be after 6:00pm for me. How about Friday or Monday?

Tom

On Tue, Jun 20, 2023 at 9:30 AM Nan Wickman <drhoanan@gmail.com> wrote:

Tom, just wanted to let you know that I have received this as well as the other two messages with attachments. I'm heading out to meet a client now but will take a look later today and of course forward to each of the other Board members as well.

Given the volume of everything, wondering if you would be interested in meeting me (and maybe Cynthia?) to review in person sometime this week? We could grab an iced tea at the LT Cantina (or wherever) and hopefully you could bring me up to speed? Let me know your thoughts...thank you for your consideration!

My Best,
Nan

On Jun 19, 2023, at 12:10 PM, Tom Barrs <tbarrs360@gmail.com> wrote:

I have attached a rough outline of settlement terms that I had in mind for you to review. If you are missing any of the corresponding files let me know so I can get those to you. Please review everything and let me know your thoughts and if you have anything to add. Your feedback is appreciated. If everything is acceptable, let me know so we can draft up a joint stipulation agreement to include the more formal wording that the appeals Judge may be looking for to get this resolved. If you can let me know within the next week or two that would be great. It is going to take time to draft up the stipulation wording but I would prefer that we are all in agreement with the fundamentals first.

Please let me know if you have any questions.

Thanks
Tom

<6-19-23 Settlement outline.pdf> <ORDER1.pdf> <notice of appeal.pdf>

Fwd: settlement outline - Desert Ranch

Nan Wickman <drhoanan@gmail.com>

Thu 7/6/2023 5:31 PM

To: Michael Olley <mfdolley@hotmail.com>

Just keeping you in the loop...thanks for your feedback! ~n

Begin forwarded message:

From: Nan Wickman <drhoanan@gmail.com>

Subject: Re: settlement outline - Desert Ranch

Date: July 6, 2023 at 3:29:25 PM MST

To: Tom Barrs <tbarrs360@gmail.com>

Cc: Cynthia Dryden <drhoacyn@gmail.com>

Tom, I have received both of your emails and have forwarded them both to each of the remaining Board members to review independently before likely needing to schedule another Exec Session to discuss a collective response. I think we were all pretty excited by the conclusion of our last meeting by the potential of finding common ground and hoping that you would feel the same.

In the interim, I have read your messages and thought it may help for me to share my own thoughts and questions with you directly. I'm definitely not a lawyer...so most of the lingo is new to me so I decided to google some of the terms you mentioned (legal [dictionary.net](https://www.dictionary.net) popped up and was very helpful), including "stipulation." When you say joint stipulation, do you mean step #2 will include a "Stipulation of Settlement?" Then, what is Step 3? Is there then a Step 4? Does this eventually lead to another hearing? We have each voiced our desire to negotiate a mutually agreeable settlement in the interest of closure, but I think that requires all of us to give a little. The last thing we want is more hearings...but a final settlement with mutually agreeable terms would be awesome and a win for all of us.

As for your concerns about going forward, we can absolutely partner to come up with enhanced guidelines, rules or processes to hold Boards (and committees), including ours, accountable...craft terms limits, consider a succession plan, fine-tune meeting requirements, create/maintain community doc sharing platform, stirring up engagement, etc. Self-managing also is like hitting the reset button, but tons of work.

I think it is safe to say that most homeowners here are well aware of the dysfunction of the last few years and have formed opinions based on fact as well as fiction. At this point, I think the only way to turn some of those opinions around is with with action, which speaks louder than words and flushes out the phony stuff...that's what will make a difference. Formulating a settlement ASAP would no doubt make a world of difference in the perceptions of the people of this community and this Board...sparking engagement in the process. And as I previously stated, the more homeowners engaged, the better...yes, spreads out the work but also leaves far less wiggle room for wrong-doing and greater accountability.

I have said repeatedly that I want to be a part of that positive, forward motion. It's why I ran. How I help facilitate this sooner than later? I'm wondering if may be helpful (and most expeditious) for you to join us during a portion of an Exec Session on this subject or if that is even possible? I may look into that if you would be interested. Please let me know your thoughts.

Sincerely,

Nan

On Jul 5, 2023, at 4:09 AM, Tom Barrs <tbarrs360@gmail.com> wrote:

Perhaps this might explain the process that I had in mind a little better. Let me know if this helps.

As we discussed on the teleconference last week, the best way for the current board to orient themselves with the relevant actions of the former board at issue is to review all of the information in the case file including evidence, rehearing requests and prehearing memorandums. If you are in need of anything, please let me know. As we discussed by phone there are obvious factual inaccuracies and evidence missing from the findings of fact.

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Meeting ID: 967 4749 3824
Passcode: 736400

<Zoom-Meeting.ics>

One tap mobile

+16027530140,,96747493824#,,,,*736400# US (Phoenix)

+16699006833,,96747493824#,,,,*736400# US (San Jose)

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Tom, just wanted to let you know that I have received this as well as the other two messages with attachments. I'm heading out to meet a client now but will take a look later today and of course forward to each of the other Board members as well.

Given the volume of everything, wondering if you would be interested in meeting me (and maybe Cynthia?) to review in person sometime this week? We could grab an iced tea at the LT Cantina (or wherever) and hopefully you could bring me up to speed? Let me know your thoughts...thank you for your consideration!

My Best,
Nan

On Jun 19, 2023, at 12:10 PM, Tom Barrs <tbarrs360@gmail.com> wrote:

I have attached a rough outline of settlement terms that I had in mind for you to review. If you are missing any of the corresponding files let me know so I can get those to you. Please review everything and let me know your thoughts and if you have anything to add. Your feedback is appreciated. If everything is acceptable, let me know so we can draft up a joint stipulation agreement to include the more formal wording that the appeals Judge may be looking for to get this resolved. If you can let me know within the next week or two that would be great. It is going to take time to draft up the stipulation wording but I would prefer that we are all in agreement with the fundamentals first.

Please let me know if you have any questions.

Thanks
Tom

<6-19-23 Settlement outline.pdf> <ORDER1.pdf> <notice of appeal.pdf>

DESERT RANCH BOARD OF DIRECTORS MEETING

Via ZOOM 5:30 P.M.

July 10, 2023

CLOSED Meeting Minutes

DRAFT

CALL TO ORDER – 5:31 PM

ATTENDEES:

Nan Wickman – President

Michael Olley - Vice President

Cynthia Dryden – Secretary/Treasurer

Susan Klinefelter – Director At Large

Meeting began at 5:31p.m. with Nan, Cynthia, and Susan. Michael arrived at 5:40 p.m. Discussion was regarding the settlement of what the Board feels will be best for The Barrs Family and the HOA.

Tom and Stephen Barrs were invited for a quick overview of how to proceed with a joint agreed settlement, as they gave input and answered Board's questions. They joined the meeting at 5:50 p.m. and left the meeting at 7:00 p.m.

The Board discussed our understanding of what is needed to bring closure to the Appeal process. We are working on our submission and will keep our HOA informed.

Meeting adjourned at 7:30 P.M.

Respectfully submitted by:

Cynthia Dryden -Secretary

7/12/23

Approved Minutes: _____

Cynthia Dryden-Secretary

Date: _____

Fwd: settlement outline - Desert Ranch

Nan Wickman <drhoanan@gmail.com>

Mon 7/17/2023 10:46 AM

To: Michael Olley <mfdolley@hotmail.com>

just fyi...

May the fork be with you...Go Devils! \\/

Begin forwarded message:

From: Tom Barrs <tbarrs360@gmail.com>
Date: July 16, 2023 at 11:11:00 PM MST
To: Nan Wickman <drhoanan@gmail.com>
Cc: Cynthia Dryden <drhoacyn@gmail.com>
Subject: Re: settlement outline - Desert Ranch

Nan, Let me review this. Thank you

Tom

On Thu, Jul 13, 2023 at 10:12 AM Nan Wickman <drhoanan@gmail.com> wrote:

Stephen and Tom, on behalf of the Board I would like to thank you both for joining us during our Executive Meeting yesterday to discuss the idea of working on a joint stipulation and settlement. As we collectively communicated, we are interested in pressing forward with that step, provided the stipulations include the discussed settlement terms resulting in full and timely closure of this complaint process:

- DR HOA payment of \$1,000.00 for reimbursement of filing fees (to you) via check within 120 days of judicial approval of settlement
- no civil or otherwise penalties will be pursued by either party
- settlement is not an admission or concession of liability or fault by either party
- this settlement and mutual release is intended to extinguish further claims arising from this complaint (dismissal with prejudice)

While we understand your request to draft a joint stipulation to address your concerns on record, we are also a new Board that was not a party to the actions of the former Board. Our exposure to the details in the claims is limited in that we were not there...we are literally unable to knowingly agree to everything you have provided to us in your claim summaries. However, we are sympathetic to the situation and your desire to correct the suggested discrepancies on record. I believe that we share the desire to find closure to these ongoing legal procedures resulting from past problems, so that we may move forward with any necessary reform to avoid this from recurring and rebuild a positive sense of community for Desert Ranch.

I've of course copied Cynthia as Secretary, but if you would like me to also copy Stephen directly going forward based upon his participation, please let me know. Regardless, we look forward to

your response.

My Best,
Nan

On Jul 6, 2023, at 3:29 PM, Nan Wickman <drhoanan@gmail.com> wrote:

Tom, I have received both of your emails and have forwarded them both to each of the remaining Board members to review independently before likely needing to schedule another Exec Session to discuss a collective response. I think we were all pretty excited by the conclusion of our last meeting by the potential of finding common ground and hoping that you would feel the same.

In the interim, I have read your messages and thought it may help for me to share my own thoughts and questions with you directly. I'm definitely not a lawyer...so most of the lingo is new to me so I decided to google some of the terms you mentioned ([legal dictionary.net](https://www.legaldictionary.net) popped up and was very helpful), including "stipulation." When you say joint stipulation, do you mean step #2 will include a "Stipulation of Settlement?" Then, what is Step 3? Is there then a Step 4? Does this eventually lead to another hearing? We have each voiced our desire to negotiate a mutually agreeable settlement in the interest of closure, but I think that requires all of us to give a little. The last thing we want is more hearings...but a final settlement with mutually agreeable terms would be awesome and a win for all of us.

As for your concerns about going forward, we can absolutely partner to come up with enhanced guidelines, rules or processes to hold Boards (and committees), including ours, accountable...craft terms limits, consider a succession plan, fine-tune meeting requirements, create/maintain community doc sharing platform, stirring up engagement, etc. Self-managing also is like hitting the reset button, but tons of work.

I think it is safe to say that most homeowners here are well aware of the dysfunction of the last few years and have formed opinions based on fact as well as fiction. At this point, I think the only way to turn some of those opinions around is with with action, which speaks louder than words and flushes out the phony stuff...that's what will make a difference. Formulating a settlement ASAP would no doubt make a world of difference in the perceptions of the people of this community and this Board...sparking engagement in the process. And as I previously stated, the more homeowners engaged, the better...yes, spreads out the work but also leaves far less wiggle room for wrong-doing and greater accountability.

I have said repeatedly that I want to be a part of that positive, forward motion. It's why I ran. How I help facilitate this sooner than later? I'm wondering if may be helpful (and most expeditious) for you to join us during a portion of an Exec Session on this subject or if that is even possible? I may look into that if you would be interested. Please let me know your thoughts.

Sincerely,
Nan

On Jul 5, 2023, at 4:09 AM, Tom Barrs <tbarrs360@gmail.com> wrote:

Perhaps this might explain the process that I had in mind a little better. Let me know if this helps.

As we discussed on the teleconference last week, the best way for the current board to orient themselves with the relevant actions of the former board at issue is to review all of the information in the case file including evidence, rehearing requests and prehearing memorandums. If you are in

need of anything, please let me know. As we discussed by phone there are obvious factual inaccuracies and evidence missing from the findings of fact.

If you agree in general that there are significant errors in the ALJ's February 21, 2023 ruling that likely lead to an incorrect final order, then we can proceed to a joint stipulation that both sides can take part in working out the line by line details of what needs to be corrected. It is not necessary at this time to come to a fine grained agreement with each specific instance, as I am sure we may not agree on everything when it comes to the stipulation. Right now (Step #1) we just need to come to an agreement that moving forward to working on a joint stipulation (Step #2) is a good idea. My Rehearing Request details most everything that I am concerned with, but a line by line agreement at this time is not necessary. So again,

Step #1: Agree that the board is willing to move forward with the drafting of a joint stipulation based on the basic premise that both parties understand the February 21, 2023 ALJ Decision is in error to some extent

Step #2: Draft up a joint stipulation of line by line errors within the ruling and hearing process related to the February 21, 2023 ALJ Decision for both parties to review. This new board can then review the evidence and come to their independent conclusion of what makes sense and revise accordingly.

I think resolving this via a joint stipulation will save us all time and money as opposed to the alternative.

Regards,
Tom

On Sat, Jul 1, 2023 at 12:25 AM Tom Barrs <tbarrs360@gmail.com> wrote:

Cynthia and Nan, I just got your earlier emails. I know I am limited on time this coming week; however, Stephen might have time on Monday or Wednesday evening to discuss via phone/zoom if necessary. If that works for you let me know and I will pass it along to him. Either way, if you also send a brief recap, I can look it over and see how to help answer any questions you may have as soon as I get a chance.

Hope you both have a great weekend and holiday!

Regards,
Tom

On Fri, Jun 30, 2023 at 10:15 AM Cynthia Dryden <drhoacyn@gmail.com> wrote:

Tom,

Can we postpone until Wednesday or Thursday of next week? I would appreciate it. Let me know if that works for you. Thank you.

Regards,
Cyn Dryden
Secretary DHRA

On Thu, Jun 29, 2023 at 5:06 PM Tom Barrs <tbarrs360@gmail.com> wrote:
6pm tomorrow night works the best if possible. By phone is fine. Tom

On Thu, Jun 29, 2023 at 9:01 AM Nan Wickman <drhoanan@gmail.com> wrote:
Good morning...and thank you both for your roles in a productive open meeting last night!
I am pleased to say that the Executive Session immediately following was equally
productive and that we have some helpful follow-up from the BOD to pass along to you,
Tom. I think it would be most efficient to have another 3-way call or zoom (whatever y'all
prefer) to provide a recap so that we can press forward.

I understand Cynthia has a super full day today, and honestly so do I...trying to wrap up my
laundry list of tasks here in CA so I can get home. So, you both tell me...do we want to
schedule a time for tomorrow Friday (I think Tom said 6pm works best for him on
weekdays) or wait until after the holiday weekend? I'm good with either option, however if
we wait until after the holiday, we could likely finally meet in person, which I think would be
super! Shouldn't take long either way...15-30 min.

I'll wait to hear back from you both. Have a terrific day!

My Best,
Nan

On Jun 25, 2023, at 8:40 AM, Nan Wickman <drhoanan@gmail.com> wrote:

Below is the Zoom info for the three of us to chat tomorrow night. Thanks and have a lovely
Sunday!

My Best,
Nan

Topic: Recap Chat
Time: Jun 26, 2023 06:00 PM Arizona

Join Zoom Meeting
<https://zoom.us/j/96747493824?pwd=b0NSalpGskxvU0k4TlBBK0lTUeJrOT09>

Meeting ID: 967 4749 3824
Passcode: 736400

<Zoom-Meeting.ics>

One tap mobile
+16027530140,,96747493824#,,,,*736400# US (Phoenix)
+16699006833,,96747493824#,,,,*736400# US (San Jose)

May the fork be with you...Go Devils! \,/,

On Jun 24, 2023, at 6:48 AM, Nan Wickman <drhoanan@gmail.com> wrote:

sounds good...i'll set up a zoom on Mon @6pm for us. 😊n

May the fork be with you...Go Devils! \,/,

On Jun 23, 2023, at 2:49 PM, Cynthia Dryden <drhoacyn@gmail.com> wrote:

This sounds good to me. Just let me know what direction we plan on taking. Monday and Zoom works, but I'm open to meeting on 7/6 or 7/7.

Thanks,
Cyn

On Fri, Jun 23, 2023 at 10:46 AM Tom Barrs <tbarrs360@gmail.com> wrote:

Nan, Why don't I meet with Cynthia in person on Monday (6pm?) and you link in via zoom?

Tom

On Thu, Jun 22, 2023 at 4:03 PM Nan Wickman <drhoanan@gmail.com> wrote:

I appreciate you both making yourselves available via Zoom on Monday (6pm??) and am happy to set it up...however my initial intention was to meet "live" because I think there is so much value in meeting face to face, especially if there's lots of paperwork to review together. I will only be in CA for work for 7-10 days, depending on how quickly I can accomplish my goals there. So I'm wondering if you both would prefer, and be available, to hold off until my return...meet at Cynthia's either Thurs 7/6 or Fri 7/7?

I'm good either way, so just let me know what you both prefer and we'll make it happen. Regardless, I totally agree that it is better to get to work on this sooner than later...I can't believe it is almost July!! Please let me know your thoughts.

My Best,
Nan

On Jun 21, 2023, at 11:17 PM, Tom Barrs <tbarrs360@gmail.com> wrote:

The Order should be the same thing that I emailed on Monday. It is the order granting us all additional time until September, but time flies and September comes quickly so hopefully we can get everything done a lot sooner than that. Monday will probably work although it may be advantageous at some point to sit down and look over everything together in person since there is a lot of paperwork. If you would like a general brief on Monday, someone send us all a zoom link.

Thanks,
Tom

On Wed, Jun 21, 2023 at 12:30 PM Nan Wickman <drhoanan@gmail.com> wrote:

Hi there! Rob and I already have a commitment on Friday but I am available Monday night, albeit via Zoom from CA...I have work there for about a week. Just let me know what time works for you both and I can set it up for the three of us...no quorum at this time. We can fill in the rest of the Board afterwards and take a look at whatever it is that Cynthia just received. In the interim, I will review the attachments provided by Tom prior to our chat, as suggested.

Thanks so much to you both!

My Best,
Nan

On Jun 21, 2023, at 12:10 PM, Cynthia Dryden <drhoacyn@gmail.com> wrote:

Good afternoon Tom and Nan,

Sorry for the delay in answering, but this is a bi-weekly payroll and it's now in my rear view mirror. I am available to meet whenever it is convenient for you both. We can certainly meet here at my house to go over. I went to the PO today and received an ORDER that will require a response on our part. According to the ORDER the case will resume active on September 12, 2023. Let me know how you all would like to proceed.

Regards,

Cynthia
Secretary-DRHA

On Tue, Jun 20, 2023 at 10:57 PM Tom Barrs <tbarrs360@gmail.com> wrote:

Nan,

Meeting and going over this in person with Cynthia sounds like a good idea. If Cynthia doesn't mind, we could meet at her house?? or we could do it via zoom. I would highly suggest at least briefing over all of the docs first so that it gives a better starting point to ask questions. It would have to be after 6:00pm for me. How about Friday or Monday?

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Please let me know if you have any questions.

Thanks
Tom

<6-19-23 Settlement outline.pdf> <ORDER1.pdf> <notice of appeal.pdf>

AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between the following parties (“the Parties”): Tom Barrs (Petitioner/Appellant), and The Desert Ranch Homeowner’s Association (Respondent/Appellee)

RECITALS:

On April 18, 2022, Petitioner filed two single-issue petitions with the ADRE that alleged violation(s) of ARIZ. REV. STAT. § 33-1805 and one single-issue petition with the ADRE that alleged violation(s) of ARIZ. REV. STAT. § 33-1804(A).

On April 28, 2022, the ADRE issued a HOA NOTICE OF PETITION in Case #HO22-22050 to Respondent.

On May 12, 2022, Petitioner filed a fourth single-issue petition with the Department that alleged violation(s) of ARIZ. REV. STAT. § 33-1805

On May 11, 2022, the Department issued a HOA NOTICE OF PETITION in Case #HO22-22054 to Respondent.

On January 9-10, 2023, an evidentiary hearing was held for Case #HO22-22050 and Case #HO22-22054 (Docket numbers 22F-H2222050-REL and 22F-H2222054-REL)

On February 21, 2023, ALJ Jenna Clark issued an ORDER granting Petitions 1 & 4 in part and denying Petitions 2 & 3.

On March 21, 2023, Petitioner filed a request for rehearing with the Arizona Department of Real Estate (ADRE) pointing out errors in the ruling including but not limited to: flawed hearing procedures, erroneous findings of fact, missing valid testimony and evidence within the findings of fact, arbitrary/capricious conclusions of law, and witness misconduct.

On April 18, 2023, the Department of Real Estate issued an Order Denying Rehearing Request.

On April 7, 2023 Brian Schoeffler responded to the request for rehearing on behalf of the Association stating, “Desert Ranch HOA believes all the issues Mr. Barrs raised in his rehearing request seek to undermine the discretion the Court used in deciding which evidence was credible and what weight to give the evidence, which is not a proper subject for a re-hearing.”

On April 29, 2023, an entirely new Desert Ranch HOA board was elected

On May 23, 2023, Petitioner filed a Notice of Appeal for Judicial Review of Administrative Decision (LC2023-000179).

In May and June of 2023, Respondent provided various records responsive to some of the items that were at issue in the four petitions. These were records that had been turned over by AAM (the former management company) upon their contract termination.

On June 9, 2023, Petitioner and Respondent agreed to request a joint stipulation to stay all appeals deadlines pending a potential settlement agreement.

On June 14, 2023, the Court granted the motion to stay all appeals deadlines for 90 days.

Respondent has held a series of meetings to discuss the settlement terms including the July 12, 2023 meeting attended by Petitioner.

After having reviewed the materials pertinent to the case, it is clear to the Parties that there are material errors and omissions in the February 21, 2023 OAH Ruling central to this agreement which should be resolved.

INTENT:

Petitioner/Appellant's main concerns are: (1) the correction of all errors, falsehoods, and inaccuracies in the February 21, 2023 Ruling such that the Ruling reflects the valid testimony, evidence and results, clears his name, and reflects that Petitioner did sustain his burden of proof in all 4 Petitions. (2) reimbursement of filing fees

Respondent/Appellee's main concerns are: (1) removal of any and all OAH/ADRE civil penalties from the Ruling [i.e. "no civil or otherwise penalties will be pursued by either party"]

To avoid the time and expense of litigation, the Parties want to resolve the errors and reach an end, compromise, and settlement of the matter before the Maricopa County Superior Court of Appeals (LC2023-000179).

AGREEMENT:

In consideration of the mutual execution of this Agreement and the releases and promises made in the Agreement by the Parties, the Parties agree as follows:

The Parties agree that there were significant material errors and omissions in the February 21, 2023 OAH Ruling which must be corrected. (see STIPULATION TO REMAND CASE TO AMEND FEBRUARY 21, 2023 DECISION dated _____).

1. In exchange for removal of any liability of civil penalties by the ADRE, Desert Ranch HOA agrees to the Joint Stipulation of corrections to the February 21, 2023 OAH Ruling attached hereto as "STIPULATION TO REMAND CASE TO AMEND FEBRUARY 21, 2023 DECISION" and agrees that Desert Ranch HOA will reimburse Petitioner's four (4) \$500 ADRE filing fees via check within 120 days of judicial approval of settlement.

3. Desert Ranch HOA will also reimburse the \$245 Appeals court appearance fee (paid by Tom Barrs on behalf of Desert Ranch) via check within 120 days of judicial approval of settlement.

4. The “STIPULATION TO REMAND CASE TO AMEND FEBRUARY 21, 2023 DECISION” includes changes requested by both parties including the removal of all references to OAH and/or ADRE civil penalties. This will absolve Desert Ranch HOA of the potential greater than \$2000 in liability to the Association that the past and present boards were concerned about. It will also remove erroneous findings of fact/conclusions of law, numerous extraneous items improperly entered into the record, false claims about Petitioner, and likewise address the improper resulting Orders to reflect that Petitioner did sustain his burden of proof in all four Petitions. ***Both Parties agree to pursue these corrections to the successful conclusion of this matter.***

5. The Parties shall each bear their own costs and attorney fees incurred in connection with this Agreement to the extent that neither party will seek reimbursement of costs or fees from the other Party not listed herein. Petitioner agrees not to seek reimbursement from the Respondent/Appellee for the additional thousands of dollars in costs and fees (not mentioned above) incurred by him in the appeals process to date.

6. To the extent that there is a new board, ***this settlement is not an admission or concession of liability or fault by either Party.*** The releases of liability herein are not intended for the benefit of any third party, but solely for the Parties to this Agreement. This settlement does not absolve the former management company (AAM), the former legal counsel (Maxwell & Morgan) or the former 2022 Desert Ranch HOA board members, in whole or in part, of any liability or guilt arising out of this agreement or preexisting this agreement.

7. The Parties agree to act in good faith and to cooperate fully with each other in carrying out the intent of this Agreement, and for that purpose agree to execute all additional documents as may prove reasonably necessary to accomplish that intent.

8. The failure of any Party at any time to require performance of any provision of this Agreement shall not limit that Party’s right to enforce the provision, nor shall any waiver of any breach of any provision constitute a waiver of that provision itself.

9. This Agreement shall be binding upon each of the Parties here and their respective directors, officers, and members.

10. The undersigned Parties each further expressly warrant and represent to one another as follows:

10.1 THEY HAVE READ THIS AGREEMENT (WITH THE ATTACHED “STIPULATION TO REMAND CASE TO AMEND FEBRUARY 21, 2023 DECISION”) AND HAVE CONSULTED OR HAD THE OPPORTUNITY TO CONSULT WITH THEIR RESPECTIVE ATTORNEYS CONCERNING ITS CONTENTS AND LEGAL CONSEQUENCES AND HAVE REQUESTED ANY CHANGE IN LANGUAGE NECESSARY OR DESIRABLE TO EFFECTUATE THEIR INTENT AND EXPECTATIONS SO THAT THE RULE OF

CONSTRUCTION OF CONTRACTS CONSTRUING AMBIGUITIES AGAINST THE DRAFTING PARTY SHALL BE INAPPLICABLE;

10.2 THEY HAVE INVESTIGATED THE FACTS TO THE EXTENT THAT THEY HAVE DEEMED NECESSARY IN THEIR SOLE DISCRETION AND HAVE ASSUMED ANY RISK OF MISTAKE OF FACT AND ANY FACTS PROVEN TO BE OTHER THAN OR DIFFERENT FROM THE FACTS NOW KNOWN TO ANY OF THE PARTIES AND THEREFORE INTEND THIS AGREEMENT TO BE BINDING WITHOUT REGARD TO ANY MISTAKE OF FACT OR LAW RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT;

10.3 The Agreement is being executed solely in reliance on each Party's own respective judgment, belief and knowledge of the matters set forth here and on the advice of their respective attorneys following an independent investigation of all relevant matters to the extent they deem necessary and reasonable;

10.4 They have taken all actions and obtained all authorizations, consents and approvals as are conditions precedent to their authority to execute this Agreement and thus warrant that they are fully authorized to bind the Party for which they execute this Agreement; and,

11. The foregoing warranties and representations shall survive the execution and delivery of this Agreement.

12. The Parties hereby incorporate the Recitals set forth above as an integral part of this Agreement and acknowledge the truth and accuracy of those Recitals.

13. This Agreement is the entire, final, and complete agreement of the Parties relating to the subject of this Agreement, and supersedes and replaces all prior or existing written and oral agreements between the Parties or their representatives relating thereto. No amendment or modification of this Agreement shall be effective unless in a writing executed by all Parties whose interests are affected by the modification.

14. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals, and with the same effect as if all Parties had signed the same document. All of such counterparts shall be construed together with and shall constitute one Agreement, but in making proof, it shall only be necessary to produce one such counterpart. A facsimile transmission shall be as valid and enforceable as an original.

The Parties, by their signatures below, have executed this Agreement and agree to be bound by it.

PETITIONER/APPELLANT:

Petitioner's Signature

STATE OF _____

COUNTY OF _____

Subscribed and sworn before me this _____ by _____
(date)

(notary seal)

Notary Public

RESPONDENT/APPELLEE:

Agent(s) authorized to sign on behalf of Respondent/Appellee

Respondent's Signature

Officer Position

STATE OF _____

COUNTY OF _____

Subscribed and sworn before me this _____ by _____
(date)

(notary seal)

Notary Public

1 Thomas Barrs
2 P O Box 14122
3 Scottsdale, AZ 85267
4 Tel. 602.684.0544
5 tbarrs360@gmail.com

6 *Petitioner*

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR THE COUNTY OF MARICOPA

9 THOMAS BARRS,

10 Petitioner/Appellant,

11 vs.

12 DESERT RANCH HOMEOWNERS'
13 ASSOCIATION,

14 Respondent/Appellee.

Case No. LC2023-000179 DT

**STIPULATION TO REMAND CASE TO
AMEND FEBRUARY 21, 2023,
DECISION**

(OAH No. 22F-H2222050-REL
No. 22F-H2222054-REL)

15 The parties hereby stipulate to the revised findings of facts and conclusions
16 of law to the Office of Administrative Hearing's February 21, 2023, Decision as
17 detailed below. The parties further request this matter be remanded to direct the
18 Office of Administrative Hearings to revise the February 21, 2023, Decision
19 accordingly. A proposed Order is being submitted herewith.

20 With respect to paragraph 3 of the Findings of Facts, it should be modified
21 as follows:¹

- 22 3. On April 18, 2022, Petitioner filed a second single-issue
23 petition against the Association with the Department that
24 alleged violation(s) of ARIZ. REV. STAT. § 33-1804(A) for an
25 alleged audio recording preclusion and failure to provide a

26 ¹ Any changes and/or additions from the Decision are indicated in **bold**
and *italic* font and/or with a ~~strikethrough~~.

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complete or unedited recording.

With respect to paragraph 14(a) of the Findings of Facts, it should be modified as follows:

- a. Petitioner has been a member of the Association for the last 21 years **and has taken an active interest in his community by regularly requesting records. Each time Petitioner submitted requests that he felt were unanswered, he would follow up with the Association to provide feedback on which items were incomplete.** ~~Over time, the relationship between the parties has dissolved into an acrimonious state, due in large part, to the number and manner of requests submitted by Petitioner to the Association, and the Association's responses thereto, or lack thereof, to Petitioner and the intent perceived behind them.~~

With respect to paragraph 14(b)(i) of the Findings of Facts, it should be modified as follows:

- i. On **May 11, 2021,** ~~an unknown date~~ the Association provided Petitioner with a video copy of the requested meeting **noting that the first half of the meeting was missing. Petitioner testified that the first two thirds of the meeting were missing from the recording and presented a copy of the incomplete recording. More specifically, "Call meeting to order," "Roll call," "Approve January 18, 2021 minutes," "Organizational Meeting to Elect Officers," "Volunteering for Committee Chair Positions," "Common Area Cleanup," "Vote to approve Survey & Payment Method, and part of the "discussion to approve truncated cleanup & payment method" were all missing from the recording.** ~~However, at approximately 17:20, the video noticeably stops and immediately restarts, largely due to the fact that Petitioner was escorted out of the meeting, which was held at a private residence, after he showed up in person and insisted to observe and/or participate. The exact amount of lapsed time is unknown. The recording was also stopped at 30:24 for an unknown amount of time.~~

With respect to paragraph 14(d)(i) of the Findings of Facts, it should be

1 modified as follows:

2 i. On November 17, 2020, the company responded with an
3 attached quote. ***The quote was addressed to Desert Ranch***
4 ***HOA but was withheld from Petitioner despite multiple***
follow-up requests.

5 With respect to paragraph 14(e) of the Findings of Facts, it should be
6 modified as follows:

7 e. On March 04, 2021, the Association’s Board President issued
8 the following correspondence, in pertinent parts, to its
9 Members:

10 Your Board of Directors is organizing a cleanup of the three
11 Common Areas that border the streets. This is necessary to
12 keep the Desert Ranch HOA pristine. If you are interested in
helping please reply to this email.

13 On March 07, 2021, Petitioner replied, offering to volunteer.
14 ***The April 27, 2021, minutes stated, “Residents that have***
15 ***already volunteered to help will be informed of the delay and***
16 ***thanked for their volunteerism.” Petitioner testified that none***
of those responses were provided to him within 10 days of his
request.

17 With respect to paragraphs 14(f) and (f)(i)-(ii) of the Findings of Facts, they
18 should be modified as follows:

19 f. On March 26, 2021, Petitioner submitted a written request to
20 the Association for ~~“the approved 2020 Annual Meeting~~
21 ~~minutes,”~~ “Any/all election materials for the 2021 Desert
22 Ranch Election,” and “volunteer responses for the common
area cleanup project.”

23 i. On April 09, 2021, AAM ***stated they*** provided a copy of
24 the ~~approved 2020~~ ***2021*** Annual Meeting ~~minutes~~ and
25 election materials to Petitioner. ***Petitioner, however,***
26 ***testified that not all of the election materials were***
provided to him within 10 days and that some fo the
materials were provided over a year later. Regarding

1 Petitioner's cleanup project volunteer responses request,
2 AAM denied it on the grounds that "Communications
3 between individual Members & the Board are not HOA
4 documents. Correspondence by the Board that hasn't
5 been voted on or acted on are not Board Documents." [sic]
6 ~~Thus, none were provided. Petitioner pointed out that~~
7 **not all Association records are voted on such as bank**
8 **records.**

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- ii. On April 13, 2021, Petitioner replied with his belief that Respondent's response to his requests were **missing election records because the number of ballots did not match the number of envelopes.** ~~insufficient or otherwise incomplete, querying "Why so secretive?" "The board does not have to vote on an item in order for it to become a record."~~ **Petitioner testified during the hearing that he did not receive all of the election materials within the required time period and that some were not received until 18 months later.**

With respect to paragraphs 14(g) and (g)(iv) of the Findings of Facts, they should be modified as follows:

- g. On April 27, 2021, Petitioner submitted a written request to the Association and AAM for "Copy of any and all survey bids received by and voted on by the association and/or its affiliates," "Copy of any and all landscape bids received by and voted on by the association and/or its affiliates," "Copy of any and all contracts related to the above mentioned cleanup and surveys, ~~copy of the January 18, 2021 minutes," and~~ **copy of the Annual meeting minutes.** ~~copy of the new directors and committee members," and~~ **copy of the updated bylaws."**

- iv. On May 14, 2021, in response to an email from Petitioner dated May 11, 2021, AAM **claimed** advised that "The [survey] proposal is not in our files," "[t]he [landscaping] proposal was oral so there is nothing to send," ~~The Annual Meeting minutes will be made available prior to next year's Annual Meeting," "[T]he same people that were on the Committee are continuing their duties,"~~ and

1 **Admitted** “The beginning of the meeting was missing,”
2 **but claimed it was, “not cut or edited in any way.”**

3 With respect to paragraph 14(h) of the Findings of Facts, it should be
4 modified as follows:

5 h. On May 06, 2021, AAM ***sent an eBlast to the community***
6 ***stating***~~mailed the following, in pertinent parts, to~~
7 ***bdsplans@gmail.com***:

8 “[The Association] received a delinquent notice dated 04/03/21
9 from the AZ Corporate Commission for the 2020 ACC Report
10 that did not get properly filed by the ACC itself... I assure you
11 the issue had been resolved with the ACC ... AAM has evidence
12 of the cashed check dated 07/09/20 which was mailed with a
13 paper copy of the annual report in 2020 in mid-June 2020. ~~{The~~
14 ***Association is current in its ACC filings.***”

15 With respect to paragraphs 14(i) and (i)(ii) of the Findings of Facts, they
16 should be modified as follows:

17 i. On October 21, 2021, Petitioner submitted a written request to
18 the Association and AAM for ~~“A copy of all check images and~~
19 ~~bank statements for September 2020 – October 2021,” “A copy~~
20 ~~of all 2021 Monthly Financial statements,” “A copy of the 2022~~
21 ~~proposed budget,” “A copy of the April 27, 2021 Board meeting~~
22 ~~minutes and any other Board and Committee meeting minutes~~
23 ~~from 2021,” “A copy of all 2019, 2020 and 2021 Annual~~
24 ~~Reports as ‘filed’ with the Arizona Corporation Commission,”~~
25 ~~“A copy of any contracts approved/entered into/signed by any~~
26 ~~Board member or designee of the board (September 2020-~~
 ~~October 2021),” “Dates of all committee meeting and actions~~
 ~~(January 2020-October 2021) by any legal or bylaw committee~~
 ~~member,” “A copy of the EDC actions spreadsheet(s) for 2020~~
 ~~and 2021,” and “A copy of any/all corresponding EDC~~
 ~~submittals, requests, approvals, denials, correspondence to /~~
 ~~from / between EDC / board / contractor / applicant /~~
 ~~homeowner, etc (September 2020 - October 2021) ... including~~
 ~~attachments.”~~

1 ii. AAM provided the documents to *Lori Loch-Lee of AAM*
2 Petitioner the same date *but not to Petitioner*.

3 With respect to paragraphs 14(j) footnote 40 and (j)(i) of the Findings of
4 Facts, they should be modified as follows:

5 j. On October 21, 2021, Petitioner also submitted a written
6 request to the Association and AAM, noting "I need a copy of
7 the most current Desert Ranch Association roster for my
 personal records."⁴⁰

8 i. ~~Although~~ AAM generated a Resident Directory on June
9 06, 2020,⁴¹ *and provided a copy of this directory to*
10 ~~Petitioner on or around April 9, 2021. the information~~
11 ~~was not provided to Petitioner. Instead, Petitioner was~~
12 *then advised by Lori Loch-Lee on behalf of Desert Ranch*
13 *on November 22, 2021, that "AAM is not providing any*
14 *type of listing to a non-Board Member." Petitioner*
 testified that AAM then proceeded to provide a
 membership list roughly four months later. the owner
 ~~list was not provided to non-Board members as the~~
 ~~information was personal.~~

15 With respect to paragraph 14(k)(i) of the Findings of Facts, it should be
16 modified as follows:

17 i. On November 19, 2021, AAM *responded that "There was no*
18 *written approval for changing any of the NAOS areas of the*
19 *community." However, Petitioner provided evidence in which*
20 *Michelle Aerni claimed to Monte Matz, "we obviously needed*
21 *approval from the HOA, which Brian had granted." Petitioner*
22 *also testified that a landscaper, obtaining a quote for the*
23 *Association, showed him a copy of an August 15, 2020 email*
 to board member Monte Matz which was being used to
 ~~generate the quote. provided the requested documents to~~
 ~~Petitioner. The Association's responses were reiterated to~~

24 ⁴⁰ See Petitioner Exhibit 52.

25 ⁴¹ See Petitioner Exhibits ~~19-23~~ P135-140.

1 Petitioner by AAM on November 22, 2021.⁴⁴

2 With respect to paragraphs 14(m) and (m)(i) of the Findings of Facts, they
3 should be modified as follows:

4 m. On December 07, 2021, Petitioner submitted a written request
5 to the Association and AAM for "Mr. Schoeffler's emails to the
6 City of Scottsdale," ~~"EDC records for October 21, 2021 to~~
7 ~~Present,"~~ "A copy of Mr. Schoeffler's 12/6/21 email showing
8 the list of all homeowners that were contacted by Mr.
9 Schoeffler."

10 i. On an unknown date, *Lori Loch-Lee of AAM* provided
11 ~~Petitioner with 1 EDC submittal and~~ advised that *the*
12 *requested information would not be no other requested*
13 ~~information could be~~ provided as it was either
14 ~~nonexistent~~ *not provided to her by the Association* or it
15 *was personal. Evidence discovered after the hearing*
16 *revealed that Respondent's testimony regarding the*
17 *nature of these records was false, and the email*
18 *exchange alleged by Mr. Schoeffler to be personal*
19 *actually stated, "Here is the email [that] was drafted by*
20 *the HOA from the car commercial..." and contained the*
21 *signature of Mr. Schoeffler as Treasurer/Secretary of*
22 *the Association*

23 With respect to paragraphs 14(n) and (n)(i) of the Findings of Facts, they
24 should be modified as follows:

25 n. On January 19, 2022, Petitioner submitted a written request to
26 the Association and AAM for "All approved meeting minutes
for the period January 2017- January 2022," ~~"All signed~~
~~contracts between AAM and Desert Ranch HOA from 2018-~~
~~Present including attachments thereto,"~~ "All Desert Ranch HOA
signed contracts from 2019-Present," "A copy of all records
pertaining to the survey of common areas 'commissioned' by
the Board of Directors," *and* "A copy of any/all proposals
received by Desert Ranch HOA or its affiliates relating to
common areas (2019-Present)." ~~and "A copy of the~~

⁴⁴ See *Petitioner Exhibits 51 and 33* ~~Respondent Exhibit 1.~~

1 ~~Officer/Director/Shareholder Change form filed with the~~
2 ~~Arizona Corporation Commission 11/3/2021.”~~

3 i. On *February 2, 2022*~~an unknown date~~, AAM provided
4 Petitioner with *some but not all meeting minutes*
5 *responsive to Petitioner’s request. AAM also did not*
6 *provide any of the Survey records that Mr. Mangieri*
7 *directed AAM to put in the HOA’s file nor did she*
8 *provide the Superior Survey Contract or the Maxwell*
~~and Morgan contracts several documents from is request~~
~~but advised that no other requested information could be~~
~~provided as it was nonexistent.~~⁵²

9 With respect to paragraph 14(o)(i) of the Findings of Facts, it should be
10 modified as follows:

11 i. On March 14, 2022, AAM informed Petitioner that his requests
12 could not be fulfilled because the documents Petitioner sought
13 were nonexistent. *Nevertheless, the record reflects that the*
documents Petitioner sought did in fact exist.

14 With respect to paragraph 14(p)(i) of the Findings of Facts, it should be
15 modified as follows:

16 i. On *the 10th business day*, March 14, 2022, AAM *claimed “There*
17 *are no checks cashed dated July 9, 2020.”* Petitioner
18 *reminded Lori Loch-Lee that she had claimed on May 6, 2021*
19 *that, “AAM has evidence of the cashed check dated*
20 *07/09/20.”* AAM *then provided a copy of the requested check*
21 *image dated 7/09/20 the following day.* ~~provided documents~~
~~in response to Petitioner’s request. On March 15, 2022, AAM~~
~~followed-up with Petitioner, in pertinent parts, as follows:~~⁵⁷

22 ~~“Based on your Records Request on February 28, 2022, you~~
23 ~~provided me the inquiry of a cashed check of July 9, 2020 and~~
24 ~~no other information as to what you were looking for, I~~
25 ~~investigated further. I have attached ... a copy of the cashed~~
~~check from the ACC that showed up on the July 2020 bank~~

26 ⁵² See *Petitioner Exhibit 340* Respondent Exhibit 26.

⁵⁷ See Petitioner Exhibits 288 and 294-296-297 and 394.

1 ~~statement; and a copy of the cashed check front and back that~~
2 ~~the ACC cashed. I will now close any further inquiries on a past~~
3 ~~action that was resolved nearly 20 months ago.~~⁵⁷

4 With respect to paragraph 14(q) of the Findings of Facts, it should be
5 modified as follows:

6 q. On March 30, 2022, Petitioner submitted a written request to
7 the Association for ~~“a copy of the financials for October 2021-~~
8 ~~April 2022,” “a copy of all legal invoices for 2021-2022 showing~~
9 ~~amounts paid,” “a copy of records relating to the \$100 Legal~~
10 ~~Fee reimbursements as shown in the February 2021 Ledger,” “a~~
11 ~~copy of check #54 for around \$2000 on the July 2021~~
12 ~~statement,” “a copy of any/all records relating to the negative~~
13 ~~\$255.92 late fee balance in the August 2021 Ledger,” “a copy~~
14 ~~of any/all records relating to the 51155 legal fees of \$167~~
15 ~~shown in the August 2021 Ledger,” “a copy of any and all~~
16 ~~Environmental Design Committee records December 2021-~~
17 ~~April 2022,” “a copy of any and all plans received by Desert~~
18 ~~Ranch January 2022 - Present,” “a copy of the draft minutes~~
19 ~~for the January 25, 2022 board meeting,” and “an unredacted~~
20 ~~copy of the entirely redacted email chain presumably between~~
21 ~~AAM and the ACC regarding the Desert Ranch Corporate filing~~
22 ~~for 2020.”~~

23 With respect to paragraph 15 of the Findings of Facts, it should be
24 modified as follows:

25 15. *Petitioner testified that he served on the board for two years*
26 *and has lived in the community over 20 years and that*
community rosters have always been provided except on the
one occasion at issue in this case. Petitioner offered
testimony and evidence documenting examples of the
membership lists provided to himself as well as the
membership including ones from 2002 through early 2021.
In 2018, while Petitioner served on the Board, the Board
stopped disseminating membership rosters, in large part, due
to complaints the Board received regarding unsolicited emails
Petitioner would “blast” to Members regarding various
grievances and opinions.

1 With respect to paragraph 16 of the Findings of Facts, it should be
2 modified as follows:

3 16. On April 27, 2021, *the Board approved a survey of the*
4 *common areas to be completed for vegetation clean-up of*
5 *Desert Ranch. Payment of which was to be made personally*
6 *by Monte Matz and Brian Schoeffler.*~~Mr. Mangieri and Mr.~~
7 ~~Schoeffler volunteered to cover the cost of common area~~
8 ~~survey, which the Board approved.~~

9 With respect to paragraph 17 of the Findings of Facts, it should be
10 modified as follows:

11 17. On *October 6, 2021*, Mr. Mangieri *directed AAM to "put [a copy*
12 *of the survey] in our file."* And on October 29, 2021, *Mr.*
13 *Mangieri issued an email to Petitioner claiming that "The*
14 *Board of Directors commissioned a survey of the Common*
15 *areas, including Tracts D & E of Block 511 and Tract F of*
16 *Block 711." The purpose of which was "to facilitate the*
17 *cleanup of those areas."*~~issued the following to Petitioner:~~

18 ~~The Board of Directors commissioned a survey of the Common~~
19 ~~Areas, including Tracts D & E of Block 511 and Tract F of Block~~
20 ~~711. The purpose of the survey was to facilitate the cleanup of~~
21 ~~those areas. As a result of the survey of Tract F, it has come to~~
22 ~~our attention that you have encroached on the Association~~
23 ~~property. This includes planting of vegetation, installing~~
24 ~~irrigation and making changes to the topography of Tract F ...~~
25 ~~Please, remove any and all alterations you have made to Tract~~
26 ~~F, including but not limited to, plantings, installation of~~
~~irrigation and the like, changes to its topography etc. by~~
~~November 21, 2021.~~

27 With respect to paragraph 20 of the Findings of Facts, it should be
28 modified as follows:

29 20. In closing, Petitioner argued that *if you accept the*
30 *Respondent's interpretation of A.R.S. § 33-1805, you gut the*
31 *statute because 33-1805 has "overarching goals of*
32 *transparency and openness."* The evidence established that

1 Petitioner routinely requested records from the Association in
 2 order to be fully informed, but Respondent, despite its
 3 statutory obligations to comply with records requests,
 4 ~~routinely **willfully** failed to **do so** comply, due, in large part,~~
 5 ~~because Petitioner has been deemed a bother or nuisance.~~
 6 Petitioner also argued that Respondent failed to provide
 7 **complete** unedited audio/video records upon request, **even**
 8 though Respondent precluded Petitioner from recording
 9 meetings himself. Petitioner **argued that if you as an**
 10 **association are going to assume the statutory obligation and**
 11 **take away someone else's right to record, you better make**
 12 **sure to record the entire meeting. Petitioner argued that the**
 13 **failure to record the entire April 27th meeting while**
 14 **precluding homeowner's from recording was a violation of**
 15 **A.R.S. § 33-1804(A). Petitioner also highlighted that the**
 16 **significant portion missing from the recording was**
 17 **conveniently the same 30 minutes during which the survey**
 18 **was discussed**~~noted that while the Tribunal cannot compel~~
 19 ~~Respondent to treat him with respect, the undersigned could~~
 20 ~~compel Respondent to produce records and encourage future~~
 21 ~~compliance by imposing civil penalties.~~

22 With respect to paragraph 10 of the Conclusions of Law, it should be
 23 modified as follows:

- 24 10. ~~Neither party clearly presented their evidence in this matter.~~
 25 ~~Here, Petitioner only testified about his March and April 2021,~~
 26 **October 2021, December 2021, November 2021, January**
 27 **2022, and February 2022 records requests, and Respondent**
 28 **did not clarify the specific dates by which the Association**
 29 **responded the multitude of Petitioner's requests, and**
 30 **Respondent's testimony in this matter was not credible. For**
 31 **instance, Mr. Schoeffler claimed to not sign correspondence**
 32 **as Secretary/Treasurer of the Association, yet evidence**
 33 **shows that he did. Mr. Mangieri claimed he had never seen**
 34 **the survey, yet he personally sent a copy of the survey to the**
 35 **management company directing Ms. Loch-Lee to put it in the**
 36 **Association's file. Thus, The undersigned to rely****relied** heavily
 37 on the exhibits that had been admitted into the record. To that
 38 end, however, the material facts in this matter are

1 distinguishable.

2 With respect to paragraph 11 of the Conclusions of Law, it should be
3 modified as follows:

4 11. The crux of this matter involves Petitioner's four (4) petitions
5 to the Department that allege Respondent violated ARIZ. REV.
6 STAT. §§ 33-2805(A) and 33-1804(A). Specifically, that
7 Respondent failed ***and/or refused*** to timely and completely
8 fulfill records request submitted March 26, 2021, April 27,
9 2021, October 21, 2021, November 08, 2021, December 07,
10 2021, January 19, 2022, February 28, 2022, and March 30, 2022,
11 in violation of ARIZ.REV.STAT. § 33-2805(A), ***that Respondent***
12 ***refused to provide the Membership List requested on October***
13 ***21, 2021 in violation of ARIZ.REV.STAT. § 33-1805(A), and***
14 ***that Respondent's management company responsible for***
15 ***recording the meetings has failed to provide***
16 ***complete/unedited*** Respondent produces "~~altered~~" copies of
17 recorded meetings in violation of ARIZ. REV. STAT. § 33-
18 1804(A).

19 With respect to paragraph 12 of the Conclusions of Law, it should be
20 modified as follows:

21 12. The credible evidence of record ***with respect to Petitions 1&4***
22 reflects that an overwhelming majority of Petitioner's records
23 request ***at issue*** were ***not*** fully and timely complied with. ***In***
24 ***some cases, Respondent intentionally withheld records that***
25 ***should have been provided such as election materials, survey***
26 ***records, EDC approvals, the Membership List, quotes,***
communication records, and Mr. Schoeffler's
correspondence as Secretary/Treasurer with the COS. Based
on credible evidence and testimony the Respondent failed to
provide a complete/unedited recording for at least the April
27, 2021 meeting while simultaneously precluding
independent recording by homeowners. The credible
evidence of record with respect to Petition 3 reflects that
AAM, on behalf of Respondent, refused to provide "any type
of listing" in response to Petitioners request, save those that
were unable to be fulfilled due to their privileged and/or

1 ~~private nature or sheer nonexistence. Notably, however, the~~
2 ~~exceptions that fall outside these specific instances include~~
3 ~~Petitioner's April 27, 2021, survey request(s), and Petitioner's~~
4 ~~December 07, 2021, records request regarding Brian~~
5 ~~Schoeffler's communication(s). In each of these circumstances~~
6 ~~Mr. Schoeffler was clearly acting in his capacity as a Board~~
7 ~~Member, and the Association was required to provide the~~
8 ~~requested records upon request - regardless of whether AAM~~
9 ~~had the documents in its possession.~~

7 With respect to paragraph 13 of the Conclusions of Law, it should be
8 modified as follows:

9 13. Therefore, based on the relevant and credible evidence of
10 record, the undersigned concludes that Petitioner did ~~not~~
11 sustain his burden of proof regarding Respondent's alleged
12 violation of ARIZ. REV. STAT. § 33-1804(A) ~~and, but~~
13 ~~successfully sustained his burden of proof, in part, regarding~~
14 Respondent's alleged violation(s) of ARIZ.REV. STAT. § 33-
15 1805.

14 In addition to the foregoing modifications, paragraphs 14(c) and (c)(i) of
15 the Findings of Facts and paragraph 14 of the Conclusions of Law should be
16 completely removed and stricken.

17 The parties further stipulate that Petitioner is deemed the prevailing party
18 in the underlying matters and Respondent shall reimburse Petitioner his filing
19 fees. The parties have also agreed not to pursue any civil penalties in this matter.

20 Based on the foregoing stipulations of the parties, the parties respectfully
21 request this Court remand this matter to the Office of Administrative Hearings
22 directing it to enter an *Amended* Decision incorporating the stipulated changes
23 as detailed above. A proposed Order is being submitted herewith.

24 DATED this ____ day of August 2023.

25 PETITIONER/APPELLANT

RESPONDENT/APPELLEE

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By: _____
Thomas Barrs

By: _____
Desert Ranch HOA

Name: _____
Its: _____

ORIGINAL of the foregoing filed
this ____ day of August 2023 to:

Clerk of the Court
Attn: LC Specialty Desk
MARICOPA COUNTY SUPERIOR COURT
201 W Jefferson
Phoenix, Arizona 85003

COPY of the foregoing emailed
this same day to:

DESERT RANCH HOMEOWNERS' ASSOCIATION
PO Box 3081
CAREFREE, AZ 85377
Respondent

Settlement Agreement

Cynthia Dryden <drhoacyn@gmail.com>

Fri 9/8/2023 12:50 PM

To: Tom Barrs <tbarrs360@gmail.com>

 1 attachments (127 KB)

AGREEMENT_DRHOA_final 9-7-23.pdf;

Good morning Tom,

The board met last evening in a closed session to discuss and provide you with what we all agreed upon. You will note the collective red-line version as it will show what we can agree with. Given the timeline this should help to hopefully expedite the settlement agreement.

Feel free to contact me or any board member with any questions. Again, we look forward to getting this resolved.

Regards,

Cynthia Dryden
Secretary/Treasurer DRHA
480-415-3671

AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between the following parties (“the Parties”): Tom Barrs (Petitioner/Appellant), and The Desert Ranch Homeowner’s Association (Respondent/Appellee)

RECITALS:

On April 18, 2022, Petitioner filed two single-issue petitions with the ADRE that alleged violation(s) of ARIZ. REV. STAT. § 33-1805 and one single-issue petition with the ADRE that alleged violation(s) of ARIZ. REV. STAT. § 33-1804(A).

On April 28, 2022, the ADRE issued a HOA NOTICE OF PETITION in Case #HO22-22050 to Respondent.

On May 12, 2022, Petitioner filed a fourth single-issue petition with the Department that alleged violation(s) of ARIZ. REV. STAT. § 33-1805

On May 11, 2022, the Department issued a HOA NOTICE OF PETITION in Case #HO22-22054 to Respondent.

On January 9-10, 2023, an evidentiary hearing was held for Case #HO22-22050 and Case #HO22-22054 (Docket numbers 22F-H2222050-REL and 22F-H2222054-REL)

On February 21, 2023, ALJ Jenna Clark issued an ORDER granting Petitions 1 & 4 in part and denying Petitions 2 & 3.

On March 21, 2023, Petitioner filed a request for rehearing with the Arizona Department of Real Estate (ADRE) pointing out errors in the ruling including but not limited to: flawed hearing procedures, erroneous findings of fact, missing valid testimony and evidence within the findings of fact, arbitrary/capricious conclusions of law, and witness misconduct.

On April 18, 2023, the Department of Real Estate issued an Order Denying Rehearing Request.

On April 7, 2023 Brian Schoeffler responded to the request for rehearing on behalf of the Association stating, “Desert Ranch HOA believes all the issues Mr. Barrs raised in his rehearing request seek to undermine the discretion the Court used in deciding which evidence was credible and what weight to give the evidence, which is not a proper subject for a re-hearing.”

On April 29, 2023, an entirely new Desert Ranch HOA board was elected

On May 23, 2023, Petitioner filed a Notice of Appeal for Judicial Review of Administrative Decision (LC2023-000179).

In May and June of 2023, Respondent provided various records responsive to some of the items that were at issue in the four petitions. These were records that had been turned over by AAM (the former management company) upon their contract termination.

On June 9, 2023, Petitioner and Respondent agreed to request a joint stipulation to stay all appeals deadlines pending a potential settlement agreement.

On June 14, 2023, the Court granted the motion to stay all appeals deadlines for 90 days.

Respondent has held a series of meetings to discuss the settlement terms including the July 12, 2023 meeting attended by Petitioner.

~~After having reviewed the materials pertinent to the case, it is clear to the Parties that there are material errors and omissions in the February 21, 2023 OAH Ruling central to this agreement which should be resolved.~~

INTENT:

~~Petitioner/Appellant's main concerns are: (1) the correction of all errors, falsehoods, and inaccuracies in the February 21, 2023 Ruling such that the Ruling reflects the valid testimony, evidence and results, clears his name, and reflects that Petitioner did sustain his burden of proof in all 4 Petitions. (2) reimbursement of filing fees~~

~~Respondent/Appellee's main concerns are: (1) removal of any and all OAH/ADRE civil penalties from the Ruling [i.e. "no civil or otherwise penalties will be pursued by either party"]~~

To avoid the time and expense of litigation, the Parties want to ~~resolve the errors and~~ reach an end, compromise, and settlement of the matter before the Maricopa County Superior Court of Appeals (LC2023-000179).

AGREEMENT:

In consideration of the mutual execution of this Agreement and the releases and promises made in the Agreement by the Parties, the Parties agree as follows:

~~The Parties agree that there were significant material errors and omissions in the February 21, 2023 OAH Ruling which must be corrected. (see STIPULATION TO REMAND CASE TO AMEND FEBRUARY 21, 2023 DECISION dated _____).~~

1. In exchange for removal of any liability of civil penalties by the ADRE, ~~Desert Ranch HOA agrees to the Joint Stipulation of corrections to the February 21, 2023 OAH Ruling attached hereto as "STIPULATION TO REMAND CASE TO AMEND FEBRUARY 21, 2023 DECISION"~~ and agrees that Desert Ranch HOA will reimburse Petitioner's four (4) \$500 ADRE filing fees via check within 120 days of judicial approval of settlement.

~~3. Desert Ranch HOA will also reimburse the \$245 Appeals court appearance fee (paid by Tom Barrs on behalf of Desert Ranch) via check within 120 days of judicial approval of settlement.~~

~~4. The "STIPULATION TO REMAND CASE TO AMEND FEBRUARY 21, 2023 DECISION" includes changes requested by both parties including the removal of all references to OAH and/or ADRE civil penalties. This will absolve Desert Ranch HOA of the potential greater than \$2000 in liability to the Association that the past and present boards were concerned about. It will also remove erroneous findings of fact/conclusions of law, numerous extraneous items improperly entered into the record, false claims about Petitioner, and likewise address the improper resulting Orders to reflect that Petitioner did sustain his burden of proof in all four Petitions. **Both Parties agree to pursue these corrections to the successful conclusion of this matter.**~~

5. The Parties shall each bear their own costs and attorney fees incurred in connection with this Agreement to the extent that neither party will seek reimbursement of costs or fees from the other Party not listed herein. Petitioner agrees not to seek reimbursement from the Respondent/Appellee for the additional thousands of dollars in costs and fees (not mentioned above) incurred by him in the appeals process to date.

6. To the extent that there is a new board, **this settlement is not an admission or concession of liability or fault by either Party.** ~~The releases of liability herein are not intended for the benefit of any third party, but solely for the Parties to this Agreement. This settlement does not absolve the former management company (AAM), the former legal counsel (Maxwell & Morgan) or the former 2022 Desert Ranch HOA board members, in whole or in part, of any liability or guilt arising out of this agreement or preexisting this agreement.~~

7. The Parties agree to act in good faith and to cooperate fully with each other in carrying out the intent of this Agreement, and for that purpose agree to execute all additional documents as may prove reasonably necessary to accomplish that intent.

8. The failure of any Party at any time to require performance of any provision of this Agreement shall not limit that Party's right to enforce the provision, nor shall any waiver of any breach of any provision constitute a waiver of that provision itself.

9. This Agreement shall be binding upon each of the Parties here and their respective directors, officers, and members.

~~10. The undersigned Parties each further expressly warrant and represent to one another as follows:~~

~~10.1 THEY HAVE READ THIS AGREEMENT (WITH THE ATTACHED "STIPULATION TO REMAND CASE TO AMEND FEBRUARY 21, 2023 DECISION") AND HAVE CONSULTED OR HAD THE OPPORTUNITY TO CONSULT WITH THEIR RESPECTIVE ATTORNEYS CONCERNING ITS CONTENTS AND LEGAL CONSEQUENCES AND HAVE REQUESTED ANY CHANGE IN LANGUAGE NECESSARY OR DESIRABLE TO EFFECTUATE THEIR INTENT AND EXPECTATIONS SO THAT THE RULE OF~~

~~CONSTRUCTION OF CONTRACTS CONSTRUING AMBIGUITIES AGAINST THE DRAFTING PARTY SHALL BE INAPPLICABLE;~~

~~10.2 THEY HAVE INVESTIGATED THE FACTS TO THE EXTENT THAT THEY HAVE DEEMED NECESSARY IN THEIR SOLE DISCRETION AND HAVE ASSUMED ANY RISK OF MISTAKE OF FACT AND ANY FACTS PROVEN TO BE OTHER THAN OR DIFFERENT FROM THE FACTS NOW KNOWN TO ANY OF THE PARTIES AND THEREFORE INTEND THIS AGREEMENT TO BE BINDING WITHOUT REGARD TO ANY MISTAKE OF FACT OR LAW RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT;~~

~~10.3 The Agreement is being executed solely in reliance on each Party's own respective judgment, belief and knowledge of the matters set forth here and on the advice of their respective attorneys following an independent investigation of all relevant matters to the extent they deem necessary and reasonable;~~

~~10.4 They have taken all actions and obtained all authorizations, consents and approvals as are conditions precedent to their authority to execute this Agreement and thus warrant that they are fully authorized to bind the Party for which they execute this Agreement; and;~~

~~11. The foregoing warranties and representations shall survive the execution and delivery of this Agreement.~~

~~12. The Parties hereby incorporate the Recitals set forth above as an integral part of this Agreement and acknowledge the truth and accuracy of those Recitals.~~

~~13. This Agreement is the entire, final, and complete agreement of the Parties relating to the subject of this Agreement, and supersedes and replaces all prior or existing written and oral agreements between the Parties or their representatives relating thereto. No amendment or modification of this Agreement shall be effective unless in a writing executed by all Parties whose interests are affected by the modification.~~

~~14. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals, and with the same effect as if all Parties had signed the same document. All of such counterparts shall be construed together with and shall constitute one Agreement, but in making proof, it shall only be necessary to produce one such counterpart. A facsimile transmission shall be as valid and enforceable as an original.~~

The Parties, by their signatures below, have executed this Agreement and agree to be bound by it.

PETITIONER/APPELLANT:

Petitioner's Signature

STATE OF _____

COUNTY OF _____

Subscribed and sworn before me this _____ by _____
(date)

(notary seal)

Notary Public

RESPONDENT/APPELLEE:

Agent(s) authorized to sign on behalf of Respondent/Appellee

Respondent's Signature

Officer Position

STATE OF _____

COUNTY OF _____

Subscribed and sworn before me this _____ by _____
(date)

(notary seal)

Notary Public

Re: Settlement Agreement

Tom Barrs <tbarrs360@gmail.com>

Sat 9/9/2023 6:20 PM

To:Cynthia Dryden <drhoacyn@gmail.com>;Nan Wickman <drhoanan@gmail.com>;David Hughes <david@sgcl.ca>;SUSAN KLINEFELTER <suezek@me.com>;Michael Olley <mfdolley@hotmail.com>

Desert Ranch BOD,

Thank you for your response. I think it is incumbent upon the board to consider the interest of the community in good faith, and not the special interests of individual past or present board members who may have a conflict of interest.

Though I am sympathetic to your desire for this Appeal to "just go away", you must also understand my concern with a deeply flawed February 21, 2023 OAH Ruling and my desire to have the significant material errors corrected such that the Ruling reflects the true and accurate record as well as the corresponding outcome. I have unfortunately been put through a long process by the Association wrongfully withholding records; falsely testifying about the nature and existence of those records; and besmearing my character as a means to avoid accountability. This journey has not come without great expense to me. The settlement that I offered did not even touch the tip of the iceberg in addressing the harm the Association's actions have caused me related to this case, much less the greater scope of things. The Association's blatant refusal to provide records and willingness to falsely testify about those records is one of the reasons I had asked for civil penalties in the first place. Had the records simply been provided within a reasonable period of time according to the alleged statutes, I would not be where I am at. Instead, most of the records were provided months/years after the requested date, provided long after the hearing, or not provided at all.

The majority of you have remarked individually that you understand there are significant material errors within the February 21, 2023 OAH Ruling. As a result, you can understand why I am baffled at your present refusal to agree to this current settlement which embodies the simple request to correct the ruling in exchange for the removal of the requested OAH civil penalties in a means that saves us all time and expense. If my only concern was my filing fee, I would not have paid the filing fees in the first place. Out of the falsehoods and material errors in the Ruling which I have identified, it is unclear which ones you desire to have remain enough to derail this settlement because after 3 weeks you have yet to provide any comment on the final stipulation. What is clear is that you apparently now wish to have the errors and falsehoods remain equally as much as I wish to have them corrected. Therefore, I am afraid we are at an impasse.

I thank you for your consideration in this matter, but your response to my offer does not address my primary concerns. I will have to move forward with my appeal. Please know that I am open to reasonable settlement offers at any time, but as I proceed forward, the amount of compensation I will ask for in return for settlement will unfortunately necessarily increase.

Regards,
Tom

On Fri, Sep 8, 2023 at 10:50 AM Cynthia Dryden <drhoacyn@gmail.com> wrote:
Good morning Tom,

The board met last evening in a closed session to discuss and provide you with what we all agreed upon. You will note the collective red-line version as it will show what we can agree with. Given the timeline this should help to hopefully expedite the settlement agreement.

Feel free to contact me or any board member with any questions. Again, we look forward to getting this resolved.

Regards,

Cynthia Dryden
Secretary/Treasurer DRHA
480-415-3671

On Wed, Aug 30, 2023 at 5:41 PM Tom Barrs <tbarrs360@gmail.com> wrote:

Other than Susan's questions last week, I have not received any other comments or questions. Is everything making sense? I got your earlier changes implemented and was hoping we could wrap this up earlier this week given the impending September deadline.

Thanks,
Tom

On Wed, Aug 23, 2023 at 9:13 PM Tom Barrs <tbarrs360@gmail.com> wrote:

Thanks.

On Aug 23, 2023, at 7:23 PM, Cynthia Dryden <drhoacyn@gmail.com> wrote:

Tom,

I have forwarded to the other board members for them to review. Nan is out of pocket and not sure when she will be back. I am waiting to hear from the other board members and there will possibly be a Closed Meeting for all of us to discuss. I will keep you posted.

Regards,

Cynthia

On Wed, Aug 23, 2023 at 6:59 PM Tom Barrs <tbarrs360@gmail.com> wrote:

If you have any questions feel free to ask. The sooner the better. The deadline is quickly approaching and it will still take time to get everything together.

Best,
Tom

On Sun, Aug 20, 2023 at 6:40 PM Tom Barrs <tbarrs360@gmail.com> wrote:
Cynthia and Nan, see attached agreement and joint stipulation drafts as promised. Please thoroughly read through these, take them under advisement and provide me with any comments/questions. I would like to have a final draft completed and signed before next week.

Regards,
Tom

Additional settlement ideas

Tom Barrs <tbarrs360@gmail.com>

Thu 9/21/2023 11:55 PM

To: Nan Wickman <drhoanan@gmail.com>; Secretary Cynthia Dryden <drhoacyn@gmail.com>; David Hughes <david@sgcl.ca>; SUSAN KLINEFELTER <suezek@me.com>; Michael Olley <mfdolley@hotmail.com>

Desert Ranch Board,

I thought of one more option to settle that might work. Would you be willing to do a joint stipulation to remand the case to the OAH for a rehearing? That way the board doesn't have to make any determinations on their own which I think was a concern by some. The board would not need to show up for the hearing. General terms would be as follows:

- 1) No admission of guilt by either party
- 2) Joint stipulation to remand case to OAH for rehearing
- 3) No monetary ADRE/OAH civil penalties requested if Desert Ranch agrees to NOT contest the matter at the OAH rehearing
- 4) Leave the reimbursement of filing fees up to the ALJ to determine. (Petitioner may consider donating some or all of the filing fees back to Association depending on how much is required for rehearing)
- 5) Desert Ranch to reimburse Tom for paying the \$245 Maricopa Superior Court appearance fee owed by Desert Ranch (paid on or before February 1, 2024)

I am hopeful this can work and be mutually agreeable!

Regards,
Tom

Re: Additional settlement ideas

Nan Wickman <drhoanan@gmail.com>

Thu 10/5/2023 6:26 PM

To: Tom Barrs <tbarrs360@gmail.com>

Cc: Cynthia Dryden <drhoacyn@gmail.com>; David Hughes <david@sgcl.ca>; Susan Klinefelter <suezek@me.com>; Michael Olley <mfdolley@hotmail.com>

Tom, all five Board members were in attendance during the exec meeting, so all five had the opportunity to weigh in on your proposal below. The overall opinion was that while we greatly appreciate that you are considering alternatives to your current court appeal process, your suggestion below is yet another legal process. If there was a way to instead strike or remove the records altogether, that would be great, but we have no idea how or if that is possible. I'm no lawyer, and as you know the HOA does not have funds to engage a lawyer, but I do not think the expungement process would be applicable in this scenario...do you have any insight on that or similar process?

Are there other scenarios altogether that could bring this to a conclusion without courts or lawyers that we should consider?

My Best,
Nan

On Oct 3, 2023, at 11:59 PM, Tom Barrs <tbarrs360@gmail.com> wrote:

I understand that there was an executive meeting on 9/27/23 to discuss this offer. What was the consensus? Do you think this will work or have any other ideas?

Regards,
Tom

On Thu, Sep 21, 2023 at 9:54 PM Tom Barrs <tbarrs360@gmail.com> wrote:

Desert Ranch Board,

I thought of one more option to settle that might work. Would you be willing to do a joint stipulation to remand the case to the OAH for a rehearing? That way the board doesn't have to make any determinations on their own which I think was a concern by some. The board would not need to show up for the hearing. General terms would be as follows:

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Re: Additional settlement ideas

Tom Barrs <tbarrs360@gmail.com>

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To: Nan Wickman <drhoanan@gmail.com>

Cc: Cynthia Dryden <drhoacyn@gmail.com>; David Hughes <david@sgcl.ca>; Susan Klinefelter <suezek@me.com>; Michael Olley <mfdolley@hotmail.com>

Unfortunately I think any option we choose at this point will involve the court. If we choose to withdraw the case, it will involve the court; if we choose to correct the errors, it will involve the court; if we ask to have the case remanded to the OAH for a second review, it will involve the court. The time for removing the court ended when certain past board members decided to hire an attorney to mislead the ALJ instead of simply providing the Association records that I requested. They hired the attorney even when the membership said no. As we all now know, all the records that the previous board and management company said did not exist turned out to exist. But they spent \$30,000 to hide records that should have been provided.

To me, in my non-lawyer opinion, we are at that same point right now. We could either go through the costly appeals process (which I would rather avoid), or take the simplest most cost effective solution for everyone that I can think of which would be to work together in getting the errors corrected, agree to provide the current membership lists as we have for decades, be done with everything, and move forward. So far that I am aware, that would cost the Association minimal if not zero.

When this new board was elected, the majority of the new board members said they were interested in getting the errors in the ruling corrected. That seemed like a simple goal that would have benefited everyone. Unfortunately, one of the board members who has a conflict of interest seems to have convinced the rest to avoid that simple path?

There would be no reason to set aside the ruling if it was correct. If it is in error, why wouldn't we want to correct it? As far as I am aware, there is not a way to set aside the ruling without giving a reason for the errors to be corrected. In other words, agree to correct such and such on the ruling, provide it to the appeals Judge, and be done with it. If you think there is better wording than what I proposed, I would love to hear it.

Best Regards,

Tom

PS. Regarding funds to engage a lawyer, as you know, the HOA could have recovered \$12,000 worth of funds that appear to have been improperly withdrawn by the former board days before their exit earlier this year. That would certainly have offered sufficient funding. Nevertheless, I would guess there is also the option of using insurance to cover necessary advice. I cannot force you to seek counsel if you don't want it, but there are options.

On Thu, Oct 5, 2023 at 4:26 PM Nan Wickman <drhoanan@gmail.com> wrote:

Tom, all five Board members were in attendance during the exec meeting, so all five had the opportunity to weigh in on your proposal below. The overall opinion was that while we greatly appreciate that you are considering alternatives to your current court appeal process, your

suggestion below is yet another legal process. If there was a way to instead strike or remove the records altogether, that would be great, but we have no idea how or if that is possible. I'm no lawyer, and as you know the HOA does not have funds to engage a lawyer, but I do not think the expungement process would be applicable in this scenario...do you have any insight on that or similar process?

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I am hopeful this can work and be mutually agreeable!

Regards,
Tom

DESERT RANCH HOA

P.O. BOX 3081

CAREFREE, AZ 85377-3081

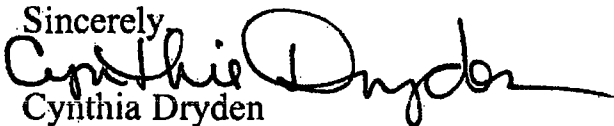
October 19, 2023

TO THE BOARD OF DIRECTORS and HOMEOWNERS:

I am resigning my position as Secretary/Treasurer of the Desert Ranch Homeowners Association. It will be a limited capacity as I transition my position. My last official Zoom meeting will be October 25th. I appreciate the opportunity given to me over the past several months to be effective in ways that would help to get our community back on track. Many hours have been devoted to the HOA, but I need to place my focus back on my personal business. I will continue to support this board and the work they are seeking to do.

Again, thank you for the support over the last several months and I am hopeful good things will happen for DRHOA.

Sincerely,


Cynthia Dryden

FROM THE DESK OF

NAN WICKMAN

October 25, 2023

Dear Desert Ranch Homeowners,

It is with mixed emotions that I tender my resignation as HOA President. I want to assure the remaining Board members and community that I will assist as needed to ensure the transition of signatory duties, etc., however I will no longer participate in Board business.

When my folks lived here, we vividly recall how happy they were to be part of a Desert Ranch! They loved this community...my dad would brag that the only real expense that the HOA had back then was the party they'd host at the HOA annual meetings, where everyone would gather to socialize and have fun after HOA business was complete. We've longed for those days to return. When I decided to run for the Board, I had just a few, what I felt, achievable goals...to foster transparency regarding Board business, increase communication within the community, launch a website for so many reasons, and most importantly to instill a platform that would embrace harmony and forward motion. My intent was always to do my very best to facilitate a positive direction for our community...especially as we faced self-management. With a fresh Board in place, our meetings have been frequent, online and open to permit better attendance and participation, with follow-up communication consistent, albeit sometimes lengthy as a result of meeting frequency. I admit, however, that I had high hopes that by making meetings accessible and consistent, that by now we would have greater participation.

Although I have had the pleasure of getting to know my fellow Board members and received encouraging comments from several neighbors over the last six months, I unfortunately have also been the recipient of accusations and demands. During the last six months, I alone have logged over 250 hours of HOA-related work...not including the sleepless nights trying to think of solutions to our existing barriers or worrying about what roadblocks will surface next. One of my, and my husband Rob's, growing concerns is how this is affecting my health...therefore I am faced with a choice and I am sure no-one would begrudge that I must choose my health and well-being over this role. I don't think it's a stretch to say that most people who know me feel that I am a positive person...one who searches for the good rather than wasting time on the negative, but from what I have experienced these last few months, I do not foresee any change within this HOA that will permit me to continue. This community feels broken and now, so do I.

I wish I could have made a difference. I'd hoped that I would not have been perceived as having any motive for volunteering other than to help create positive change for our community. I am disappointed that anyone would presume that I am not an independent thinker with integrity and a drive to do the right thing, even when unpopular. I knew that this role would be difficult, but I had no idea just how much resistance to forward progress I would face. Perhaps my replacement will be more successful, and for our community, I hope that is the case. Honestly, at this point I feel that the only solution is dissolution of this HOA...if two-thirds of the community agrees with me, perhaps that may something to pursue. In closing, I request that anyone reading this please take the initiative to participate in meetings and support the Board now more than ever...without your support, progress for them will be difficult, if not impossible, to achieve. Thank you for your time.

My Best,
Nan

Desert Ranch Settlement Options

Tom Barrs <tbarrs360@gmail.com>

Wed 12/6/2023 6:30 PM

To: Steve Mahoney <ps_mahoney@hotmail.com>; David Hughes <david@sgcl.ca>; SUSAN KLINEFELTER <suezek@me.com>; Michael Olley <mfdolley@hotmail.com>

Hope all is well. If you have any ideas on a reasonable settlement that will save everyone on cost, please let me know. As I mentioned to several board members, one option is to agree that the membership list is a record all members should have equal access to, and also agree both parties to bear their own costs and fees (i.e. zero cost to the hoa). We are a small association that has board members rotating through from time to time. It does not make sense that some members have privileged access to the membership list while they are on the board while the other paying members are considered an inferior class that does not deserve the ability to talk with their neighbors. It would be great if we could get this settled and out of the way.

Look forward to hearing from you.

Best,
Tom Barrs

Re: Desert Ranch Settlement Options

Michael Olley <mfdolley@hotmail.com>

Sun 12/10/2023 2:29 AM

To: Tom Barrs <tbarrs360@gmail.com>; Steve Mahoney <ps_mahoney@hotmail.com>; David Hughes <david@sgcl.ca>; SUSAN KLINEFELTER <suezek@me.com>; Joe Hegener <joehegener@gmail.com>

Hi Tom,

During our executive session there was a consensus that an agreement like the one that you have outlined is possible. We feel that the board must understand how to maintain the information properly, make it available where required, and be responsible with it by never misusing or abusing it, which we believe aligns with your goals. In order to work out the details, we have asked David Hughes to work with you to better define what an acceptable solution would look like. Our discussion included the following points:

1. We will follow the law for what information and documentation is required to be maintained by the board and available to the members. We are open to ways to make this clear in the CC&Rs and/or bylaws or whatever way makes sense.
2. We would like to put policies in place for any additional personal and/or private information gathered through the normal course of business. This information should have clear guidelines for its collection and use by the board, and distribution to or use by the members. We are open to ways to make this part of the CC&Rs and/or bylaws or whatever way makes sense.

Best,

Michael Olley

From: Michael Olley <mfdolley@hotmail.com>

Sent: Wednesday, December 6, 2023 6:49 PM

To: Tom Barrs <tbarrs360@gmail.com>; Steve Mahoney <ps_mahoney@hotmail.com>; David Hughes <david@sgcl.ca>; SUSAN KLINEFELTER <suezek@me.com>; Joe Hegener <joehegener@gmail.com>

Subject: Re: Desert Ranch Settlement Options

+ Joe Hegener

Thank you for your message Tom. I'm confident that we can get a response to you in short order after our executive session tonight.

Best,

Michael Olley

From: Tom Barrs <tbarrs360@gmail.com>

Sent: Wednesday, December 6, 2023 6:30 PM

To: Steve Mahoney <ps_mahoney@hotmail.com>; David Hughes <david@sgcl.ca>; SUSAN KLINEFELTER <suezek@me.com>; Michael Olley <mfdolley@hotmail.com>

Subject: Desert Ranch Settlement Options

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Look forward to hearing from you.

Best,
Tom Barrs

Re: Desert Ranch Settlement Options

Tom Barrs <tbarrs360@gmail.com>

Sun 12/17/2023 8:31 PM

To:David Hughes <david@sgcl.ca>

Cc:Michael Olley <mfdolley@hotmail.com>;SUSAN KLINEFELTER <suezek@me.com>;Joe Hegener <joehegener@gmail.com>;

Steve Mahoney <ps_mahoney@hotmail.com>

David and board,

Called the lower court of Appeals (602-506-1497, Option 4) and they said that the method we discussed on Wednesday night would be the best option by submitting a joint reply brief.

The general outline of the reply brief would state something to the effect:

There is no objection by either of the parties to the Opening Brief memorandum submitted by Tom Barrs on 11/6/2023 except that both parties agree to bear their own costs and fees. Both parties agree that the withholding of the membership list did not align with state law and the OAH ruling erred in concluding that the content of the record being withheld was privileged. Specifically, pursuant to the applicable state statutes governing Associations and corporations, at a minimum the following should have been provided to Barrs in response to his request for the membership list record: member names, mailing addresses and email addresses used for association contact purposes. Additionally, both parties agree that as both parties (Tom Barrs and the current 2023 Board on behalf of the Association) are approaching the resolution of this matter in good faith, no civil penalties are appropriate or necessary. If future boards renege on the agreement and refuse meaningful access to the membership list, my costs and fees would be reimbursed.

Let me know your thoughts.

Regards,

Tom

On Sun, Dec 10, 2023 at 12:29 AM Michael Olley <mfdolley@hotmail.com> wrote:

Hi Tom,

During our executive session there was a consensus that an agreement like the one that you have outlined is possible. We feel that the board must understand how to maintain the information properly, make it available where required, and be responsible with it by never misusing or abusing it, which we believe aligns with your goals. In order to work out the details, we have asked David Hughes to work with you to better define what an acceptable solution would look like. Our discussion included the following points:

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Best,

Michael Olley

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Subject: Re: Desert Ranch Settlement Options

+ Joe Hegener

Thank you for your message Tom. I'm confident that we can get a response to you in short order after our executive session tonight.

Best,

Michael Olley

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Subject: Desert Ranch Settlement Options

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Look forward to hearing from you.

Best,

Tom Barrs

Desert Ranch Board of Directors Meeting

The Holland Community Center

34250 N 60th St, Scottsdale, AZ 85266

Friday, April 14, 2023

Open Meeting at 10:00 AM / In-Person and Zoom Call-in (Audio Only)

MINUTES

I. Call to Order – Meeting called to order at 10:01 AM

Attendees:

Brian Schoeffler
Monte Matz
Michael Olley
Tom Barrs
Stephen Barrs (OBO Paula Barrs)
Cynthia Dryden
Marilee Martin
Jerome Klinger (Zoom)
Wendell Pickett (Zoom)

II. Board of Directors

Roster:

Brian Schoeffler: President, Treasurer/Secretary -> President
Monte Matz: Vice-President
Michael Olley: At Large -> Treasurer/Secretary
511 Seat 2: Vacant
711 Seat 3: Resigned by Michelle Aerni, April 8th

Notes:

Brian S had taken on role of President at the last board meeting due to Gerry M. resignation. CC&Rs do not allow one board member to hold more than one office unless it is a combined Treasurer/Secretary. Mike volunteered to take on Treasurer/Secretary until the election of new board members. Vote taken at end of meeting, 2-0 in favor. All BOD roles will be re-elected as part of the annual election. 3 terms will be for 2 years: One 511 seat will be filled by the top 511 vote getter; two 711 seats will be filled by top 2 vote getters from 711. 3rd place vote getter from 711

will fill the open 711 one-year vacancy, and the 4th place vote getter from 711 will fill the open 511 one-year vacancy.

III. Approval of Minutes from October 25, 2022, and March 25, 2023 Board Meetings
Notes: Approved 3-0 w/ update of BOD Roster.

IV. Review 2023 Financials

Notes:

General Fund: \$9300, which includes \$8000 loan from Road Fund. Still expecting legal bills of approximately \$12000 to be paid.

Road Fund: No change other than loan.

V. Old Business

- Annual Meeting Final Preparations

Notes:

Conference room booked. Ballots are available. Online information postcards to be sent. E-mail will be sent for those with one on record.

Brian will organize refreshments based on RSVP count to Lori.

- Rules for recording meetings

Notes:

Discussion on 15 minutes: Important when access to room before the meeting is restricted.

- Rules for representatives and guests in meetings

Notes:

No change from the below.

- Rehearing and record requests

Notes:

Request for rehearing has been received. HOA response complete and filed. Copies available on request. No council is planned on being retained. One outstanding records request, but no additional information needed from the board.

VI. New Business

- Assessments for General Fund

Notes:

Brian to lead effort to determine assessment.

- Assessments for 711 Roads

Notes:

Brian to follow up with Wendell on quotes, financing, and assessment options.

- AAM

Notes:

AAM is terminating their contract with us as of April 30th. Brian and Michael will assist with the transition until new board is elected.

Comments from homeowners:

Marilee M: Asked for improvement of meeting minutes with regards to board member changes. Her postcard was delayed after advanced notice; asked for improvement of email and communication. Asked about our liability based on ADRE administrative hearings: \$2000 for hearings + possible civil damages.

Stephen Barrs: Disagreed with meeting minutes about disruptions at previous meetings. Added general complaints about a survey of HOA parcels, the 2021 HOA board election, and access to the Bordeaux Homes plans provided to the EDC. Accused the HOA board members, Lori, and the HOA's lawyer of lying at the administrative hearing.

Tom Barrs: Spoke to Michael almost directly about how he should be trying to find the truth.

VII. Adjournment of Open Meeting

VIII. Executive Meeting (33-1804 A-B) to follow

Reminders/Rules Representatives and guests: To minimize disruptions, if a person has been designated as a member's representative, they must proactively provide a written document from said member to the board at least 5 minutes prior to the posted start time of the meeting. If time allows later in the meeting and before voting, the board will ask if there are any authorizations that need to be turned in. Guests are welcome but are not allowed to comment or disrupt the meeting.

Recording of meetings: Recording equipment must be set up before the beginning of the meeting, be mostly stationary, and cannot be disruptive to the proceedings. At least 15 minutes will be provided before the start of the meeting to set up equipment

Secretary: *Michael Olley*

DESERT RIDGE HOA BOARD REVIEW AND MOTION REGARDING 2023 DRAFT REPORT

After careful review of all the information provided to this current Board regarding the previously drafted, but unsigned/unsent Financial Committee July 2023 Report ("The Report"), the motion below will be proposed at the next open meeting. This communication is provided in advance of the meeting in the interest of both time (to limit an extended zoom meeting), and clarity (in providing specific points of consideration).

Board Responsibilities

- First and foremost, we have a duty to act in the best interests of the Association as a whole, and not to the loudest or most angry subset of the community.
- We have the duty to act within the scope of our authority.
- There is a duty of care, compelling us to act with reasonable judgment and "in good faith."

Upon review of hundreds of pages on file pertaining to Desert Ridge HOA of the last several years, some key points are apparent through the documents:

- 1) Poor decisions (certainly some with the benefit of hindsight) must have been made to have brought the HOA multiple years of cantankerous meetings, emails and discussions.
- 2) Poor planning and fiscal management likely lead to the current low liquidity and lack of resources.
- 3) Approximately \$30k of homeowner funds in aggregate were spent on legal fees. This is a staggering sum for an Association of this size, on matters of minor legal points, that seemingly could have been addressed differently by multiple parties within the community.

Having made these points, we cannot change the past, and it is not within the scope of our authority to adjudicate past decisions. Keeping in mind the duties noted in the first three bullets, here are the key questions considered specifically with regard to "The Report":

- What would the purpose be in sending out this Report?
- Is it complete, accurate and objective? Does it meet professional standards?
- Was it unanimously agreed to by Committee members as well as the Board of Directors?
- What are the likely/ possible outcomes if it was sent? Would a request for funds be enforceable if deemed appropriate, if so, how? How much money would the HOA spend attempting to enforce payment?
- Finally, is it in the best interest of the HOA "as a whole" to move further on this issue?

Before going further to address these questions let's address two points heard numerous times over different meetings:

- A. The concept of "precedent" was brought up. This is a moot point. No decision by this Board in any way creates a pathway for allowing misconduct by future Boards. Every

Board member, current or future, is guided by the duties outlined at the beginning of this note and the rules of law.

- B. "Sweeping under the rug:" Contrary to this statement heard several times, this Report, its contents, issues, allegations, etc. have been scrutinized far beyond the normal scope of HOA business. All material, down to complete minutiae, has been submitted or referenced. This issue has become counter-productive to the volunteers that have spent hundreds of hours trying to ameliorate it, and exhaustive to the homeowners that see continued negativity rather than the promotion of neighborly spirit and kind feelings that should be prevalent in such a small community.

Answering the questions noted above, we come to the following conclusion regarding The Report:

- It is not objective, not entirely accurate, and not professional in diction, tone or format.
- It was not unanimously agreed to by the Finance Committee, nor the Board.
- There is no written contract, nor signed Agreement to enforce. Any action would be based on the allegation of a verbal contract that would most certainly cost more to prove and enforce than the total amount in question.
- Given the above, it is, therefore, not in the interest of the HOA to proceed any further with this document and there is no positive purpose in pursuing this matter further.

It is time to move past this belabored issue and concentrate on improving the Desert Ranch Community in all material aspects. The motion proposed is:

- I. Disregard the draft document provided and labeled Financial Committee July 2023 Report.
- II. The Board has determined that approximately \$24,000 was spent by the HOA to defend itself during an administrative hearing process, with some previous Board members personally funding an additional \$5500 on top of that amount. This was in line with decisions the previous Board made, and these numbers do not include other legal fees paid in 2022. The Board sees no net benefit to the homeowners in continuing any further consideration of this matter, and thus, it is hereby closed.

Re: Emergency Email Meeting: Approval of Office Supplies for Treasurer

t barrs <bdsplans@gmail.com>

Thu 2/15/2024 12:06 AM

To: Michael Olley <mfdolley@hotmail.com>

Cc: Joe Hegener <joehegener@gmail.com>; David Hughes <david@sgcl.ca>; Paul Mahoney <ps_mahoney@hotmail.com>; Susan Klinefelter <suezek@me.com>

Michael,

For future reference, typically emergency meetings are reserved for occasions when no notice is possible.

Under normal circumstances, a \$200 general expense would not require a meeting, but as you know, there is technically less than \$0 to spend. The Association is still essentially bankrupt today because \$8000 was improperly removed from the road fund ONLY account during a March 2023 closed board meeting to pay the personal expenses of two former board members. Michael, you participated in that closed session, yet never produced a set of minutes for that meeting to my knowledge. Since you are unwilling to even attempt recovering those funds, we are going to need to find some other creative yet legal means to meet the current need. One such solution would be that **I am willing to loan \$200 to cover the necessary office expenses until we have collected enough dues to repay the road fund.**

Another option is, we could vote to abolish the road fund but that would require a vote of the 711 membership not the board.

Hope this helps resolve the issue.

Best
Tom

On Tue, Feb 13, 2024 at 8:28 PM Michael Olley <mfdolley@hotmail.com> wrote:

Hello Fellow Board Members & Homeowners,

Please consider this email an emergency meeting to approve Office Supplies for Steve to be able to generate and send out the 2024 Homeowner Dues Invoices.

Since we have not approved a 2024 budget, which this would normally be a part of, I am asking the board to approve no more that \$200 in funds for Steve to have access to for this purpose.

This email and any responses by membership will be read into the meeting minutes of the next meeting.

Board members: Please respond briefly with an "Approve" or let me know if you have an objection or feel that this needs a more formal discussion by Thursday, February 15th at 11:59 PM. I will record the final vote on Friday morning.

Re: Emergency Email Meeting: Approval of Office Supplies for Treasurer

Michael Olley <mfdolley@hotmail.com>

Thu 3/7/2024 11:38 PM

To: t barrs <bdsplans@gmail.com>

Cc: Paul Mahoney <ps_mahoney@hotmail.com>; Joe Hegener <joehegener@gmail.com>; Susan Klinefelter <suezek@me.com>; David Hughes <david@sgcl.ca>

📎 10 attachments (738 KB)

Re: Emergency Email Meeting: Approval of Office Supplies for Treasurer; Re: Emergency Email Meeting: Approval of Office Supplies for Treasurer; Re: Emergency Email Meeting: Approval of Office Supplies for Treasurer; Re: Emergency Email Meeting: Approval of Office Supplies for Treasurer; Re: Emergency Email Meeting: Approval of Office Supplies for Treasurer; Re: Emergency Email Meeting: Approval of Office Supplies for Treasurer; Re: Emergency Email Meeting: Approval of Office Supplies for Treasurer; Re: Emergency Email Meeting: Approval of Office Supplies for Treasurer; Re: Emergency Email Meeting: Approval of Office Supplies for Treasurer; Fwd: Emergency Email Meeting: Approval of Office Supplies for Treasurer;

Hi Tom,

Please see the attached messages. I did not include them in my update as they contain no noteworthy comments beyond the basic approval. I did not feel it necessary to include the board votes when everybody approved. I would have noted objections or other comments. There is no email from me for my approval, I just included my vote in the total.

There are only 6 homeowner messages attached. The last homeowner I was interacting with on the chain was Michelle Aerni and she did not expressly state her approval in an email, so I may have miscounted by one as a result. Her emails are not included here as they were questions about the soon to be happening work on Vista Dr.

I have copied the rest of the board as they had not seen all of these emails either.

Best,

Michael Olley

From: t barrs <bdsplans@gmail.com>

Sent: Friday, February 23, 2024 7:34 PM

To: Michael Olley <mfdolley@hotmail.com>

Subject: Re: Emergency Email Meeting: Approval of Office Supplies for Treasurer

Michael,

Thanks for the update. Would you send me a copy of the 7 homeowner emails and the 5 individual Board approval emails for my records.

Regards,
Tom

On Thu, Feb 22, 2024 at 11:26 PM Michael Olley <mfdolley@hotmail.com> wrote:

Dear Board Members and Homeowners,

The board unanimously approved the budget for supplies last week.

Homeowner feedback was appreciated and I received 7 approvals from Homeowners! Tom Barrs sent the attached email to the board.

Thank you for your participation in this exercise.

Best,

Michael Olley

From: Michael Olley <mfdolley@hotmail.com>

Sent: Tuesday, February 13, 2024 9:28:18 PM

To: Joe Hegener <joehegener@gmail.com>; David Hughes <david@sgcl.ca>; Paul Mahoney <ps_mahoney@hotmail.com>; Susan Klinefelter <suezek@me.com>

Subject: Emergency Email Meeting: Approval of Office Supplies for Treasurer

Hello Fellow Board Members & Homeowners,

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Board members: Please respond briefly with an "Approve" or let me know if you have an objection or feel that this needs a more formal discussion by Thursday, February 15th at 11:59 PM. I will record the final vote on Friday morning.

Best,

Michael Olley