

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2 In the Matter of:

No. 24F-H033-REL-RHG

3 John Krahn, Janet Krahn, Joseph
4 Pizzicaroli, Michael Holland, John R Krahn
5 Living Trust, and Janet Krahn Living Trust

**ADMINISTRATIVE LAW JUDGE
DECISION**

6 Petitioners,
7 vs.

8 Tonto Forest Estates Homeowners
9 Association

10 Respondent.

11
12 **HEARING:** November 4, 2025 and January 30, 2026, with the record held open
13 until February 13, 2026, to allow Petitioners to submit an additional exhibit into
14 evidence.

15 **APPEARANCES:** John Krahn appeared on behalf of the John R. Krahn Living
16 Trust. Jill Burns appeared on behalf of the Estate of Pizzicaroli. Michael Holland
17 appeared on behalf of himself. Austin Baillio, Esq. appeared on behalf of Tonto Forest
18 Estates Homeowners Association.

19 **ADMINISTRATIVE LAW JUDGE:** Velve Moses-Thompson

20 **EXHIBITS ADMITTED INTO EVIDENCE:** Petitioners Exhibits H033-1, H033-4,
21 H033-5, H033-8, H033-9, H033-10, H033-12, H033-17, H033-19, H002-1, H002-2,
22 H002-4, H002-5, H002-7, H002-9, H002-13, H002-14, H002-22, H002-27, H006-1,
23 H006-10, H002-18, H009-5, H009-6, H006-9, , H009-14, H009-17, H009-18, H009-19,
24 and H009-21. Respondent's Exhibits 2, 3, 6, and 15.

25
26 **FINDINGS OF FACT**

27 1. The Arizona Department of Real Estate (Department) is authorized by statute
28 to receive and to decide Petitions for Hearings from members of homeowners'
29 associations (HOAs) in Arizona.

1 2. Tonto is an HOA whose members own lots in Tonto Forest Estates in Mesa,
2 Arizona.¹

3 3. At all times relevant to this matter, The John R. Krahn Living Trust/Janet
4 Krahn Living Trust, Joseph Pizzicaroli, and Michael Holland own homes in Tonto Forest
5 Estates and are members of Tonto.

6 4. John Krahn is the trustee of the John R. Krahn Living Trust/Janet Krahn
7 Living Trust (Krahn).

8 5. The following facts are undisputed:

9 (a) Approximately 10% of Tonto consists of empty lots. See the second
10 hearing audio record November 4, 2025 at 5:00 to 10:00 minutes.

11 There are 52 lots within Tonto. See the second hearing audio record
12 November 4, 2025 at 15:00 to 20:00 minutes.

13 (b) Each developed lot has its own personal septic system. See the
14 second hearing audio record November 4, 2025 at 15:00 to 20:00
15 minutes.

16 (c) There is no centralized septic system in Tonto. The septic systems are
17 not connected to each other. See the second hearing audio record
18 November 4, 2025 at 15:00 to 20:00 minutes.

19 (d) Krahn and other members of Tonto, owned empty lots in addition to
20 their primary residence in Tonto.

21 (e) Tonto was charging an assessment for septic-related obligations to
22 every lot, regardless of whether there was a dwelling unit on the same
23 or whether it was empty.

24 6. Tonto's Board decided to invoke insurance coverage for its directors and
25 officers (D&O) while discussing litigation strategy in a lawsuit filed by Krahn against the
26 Board.

27 7. During a service call in February of 2024 for a sewer system owned by a

28 ¹ The Administrative Law Judge has read and considered each page of each admitted exhibit, even if not
29 mentioned in this Decision. The Administrative Law Judge has also considered the testimony of every
30 witness, even if the witness is not specifically mentioned in this Decision.

1 Tonto member, the technician determined that the P-series float needed to be replaced.
2 See Exhibit H002-2. The cost of the service call was \$250.00. The price of the P-series
3 float part was \$75.00. It is undisputed that Tonto reimbursed the member \$75 for the
4 price of the P-series float. See id.

5 8. On August 12, 2024, Krahn received a written notice that the condition of
6 his property was in violation of the community documents. The notice stated, in relevant
7 part, “the following violation of the covenants was noted: Each Owner of a Lot shall be
8 responsible for the Maintenance of his Lot, and all buildings, Residences, landscaping
9 or other Improvements, in order to keep with the aesthetics of the community.” See
10 Exhibit H006-1. The notice included a photograph of a tree along with the words,
11 “Please cut tree back.” See id.

12 **Docket No. 24F-H033-REL**

13 9. On or about December 18, 2023, Krahn and Mr. Pizzicaroli filed a
14 single-issue petition, with the Department. Through the petition, Krahn alleged that
15 Respondent had violated Arizona Revised Statutes (A.R.S.) § 33-1802 and Tonto’s
16 Covenants, Conditions, and Restrictions (CC&Rs) § 4.32, by “assessing
17 empty/undeveloped lots (that do not contain any septic system) to pay for septic-related
18 expenses.” Tonto filed a written answer to the petition, denying any violation of
19 applicable statute, bylaw, or CC&Rs by assessing empty/undeveloped lots (that do not
20 contain any septic system) to pay for septic-related expenses.

21 **Docket No. 25F-H002-REL**

22 10. On or about June 28, 2024, Krahn and Mr. Holland filed a single-issue
23 petition with the Department that alleged that Tonto had violated section 4.32 of Tonto’s
24 Covenants, Conditions, and Restrictions (CC&Rs), by reimbursing a member of Tonto
25 for the replacement of a part of her sewage treatment system. Tonto filed a written
26 answer to the petition, denying any violation of applicable statute, bylaw, or CC&Rs by
27 reimbursing the Tonto member for the repair of the system.

28 **Docket No. 25F-H006-REL**

1 (c) That the findings of fact or decision is arbitrary, capricious, or an abuse of
2 discretion.

3 (d) That the findings of fact or decision is not supported by the evidence or is
4 contrary.

5 18. The Department referred the petition to OAH for a rehearing.

6 19. A rehearing was held on November 4, 2025 and January 30, 2026.

7 20. At hearing, Krahn testified on behalf of himself. Mr. Holland testified on
8 behalf of himself. Tonto presented the testimony of Dwight Jolivette, the President of
9 Tonto's Board.

10 21. At hearing, Mr. Jolivette testified that he reviewed the definition of repair in
11 the dictionary and understands that it includes restoration by replacing a part.
12 Mr. Jolivette explained that it has been difficult to distinguish between a repair and a
13 replacement. Mr. Jolivette explained that the Board considers whether a repair adds
14 value or extends the life of the system. Tonto issued a policy reminder that provided,
15 "Per CC&R 4.32, all replacements of large septic items are Owner-paid. This includes
16 both the material replacement and the labor involved. Replacements can include but are
17 not limited to Pumps, Brushes, Screens, and Lids." See Exhibit H002-15. Mr. Jolivette
18 stated that the Board did not consider the P-Series Float to be a large septic item.

19 **RELEVANT CC&RS AND STATUTES**

20 22. A.R.S. § 33-1803 provides as follows:

21 A. Unless limitations in the community documents would result in a lower limit
22 for the assessment, the association shall not impose a regular assessment that
23 is more than twenty percent greater than the immediately preceding fiscal
24 year's assessment without the approval of the majority of the members of the
25 association. Unless reserved to the members of the association, the board of
26 directors may impose reasonable charges for the late payment of
27 assessments. A payment by a member is deemed late if it is unpaid fifteen or
28 more days after its due date, unless the community documents provide for a
29 longer period. Charges for the late payment of assessments are limited to the
30 greater of fifteen dollars or ten percent of the amount of the unpaid assessment
and may be imposed only after the association has provided notice that the
assessment is overdue or provided notice that the assessment is considered
overdue after a certain date. Any monies paid by the member for an unpaid

1 assessment shall be applied first to the principal amount unpaid and then to the
2 interest accrued.

3 B. After notice and an opportunity to be heard, the board of directors may
4 impose reasonable monetary penalties on members for violations of the
5 declaration, bylaws and rules of the association. Notwithstanding any provision
6 in the community documents, the board of directors shall not impose a charge
7 for a late payment of a penalty that exceeds the greater of fifteen dollars or ten
8 percent of the amount of the unpaid penalty. A payment is deemed late if it is
9 unpaid fifteen or more days after its due date, unless the declaration, bylaws or
10 rules of the association provide for a longer period. Any monies paid by a
11 member for an unpaid penalty shall be applied first to the principal amount
12 unpaid and then to the interest accrued. Notice pursuant to this subsection shall
13 include information pertaining to the manner in which the penalty shall be
14 enforced.

15 C. A member who receives a written notice that the condition of the property
16 owned by the member is in violation of the community documents without
17 regard to whether a monetary penalty is imposed by the notice may provide the
18 association with a written response by sending the response by certified mail
19 within twenty-one calendar days after the date of the notice. The response shall
20 be sent to the address identified in the notice.

21 D. Within ten business days after receipt of the certified mail containing the
22 response from the member, the association shall respond to the member with a
23 written explanation regarding the notice that shall provide at least the following
24 information unless previously provided in the notice of violation:

- 25 1. The provision of the community documents that has allegedly been violated.
- 26 2. The date of the violation or the date the violation was observed.
- 27 3. The first and last name of the person or persons who observed the violation.
- 28 4. The process the member must follow to contest the notice.

29 E. Unless the information required in subsection D, paragraph 4 of this section
30 is provided in the notice of violation, the association shall not proceed with any
action to enforce the community documents, including the collection of attorney
fees, before or during the time prescribed by subsection D of this section
regarding the exchange of information between the association and the
member and shall give the member written notice of the member's option to
petition for an administrative hearing on the matter in the state real estate

1 department pursuant to section 32-2199.01. At any time before or after
2 completion of the exchange of information pursuant to this section, the member
3 may petition for a hearing pursuant to section 32-2199.01 if the dispute is within
4 the jurisdiction of the state real estate department as prescribed in section 32-
5 2199.01

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23. A.R.S. § 33-1804 provides, in relevant part, as follows:

A. Notwithstanding any provision in the declaration, bylaws or other documents to the contrary, all meetings of the members' association and the board of directors, and any regularly scheduled committee meetings, are open to all members of the association or any person designated by a member in writing as the member's representative and all members or designated representatives so desiring shall be allowed to attend and speak at an appropriate time during the deliberations and proceedings..... Any portion of a meeting may be closed only if that closed portion of the meeting is limited to consideration of one or more of the following:

1. Legal advice from an attorney for the board or the association. On final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, the board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.

2. Pending or contemplated litigation.
.....

24. CC&R 4.32 provides:

Required Sewage Treatment System. Each owner who purchases a Lot within the Property acknowledges that it shall be required to construct and install, at such Owner's sole cost and expense, an AdvanTex sewage treatment system manufactured by Orenco Systems...as part of the construction of an Dwelling Unit on such Owner's Lot...After installation of the Required Sewage Treatment System, the Association shall assume responsibility for the monitoring, maintenance and repair of the Required Sewage Treatment System, with the costs thereof to be included as part of the Assessments payable by such Owner. *If the Required Sewage Treatment System requires any capital improvements or replacements, such capital improvements or replacements shall be the responsibility of the Owner.* (emphasis added).

CONCLUSIONS OF LAW

1
2 1. A.R.S. § 32-2199(B) permits an owner or a planned community organization
3 to file a petition with the Department for a hearing concerning violations of planned
4 community documents under the authority Title 33, Chapter 16.² Such petitions will be
5 heard before the Office of Administrative Hearings, an independent state agency.

6 2. Petitioners bear the burden of proof to establish that Respondent violated
7 A.R.S. § 33-1802, A.R.S. § 33-1803, A.R.S. § 33-1804, and CC&R § 4.32 by a
8 preponderance of the evidence.³ Respondent bears the burden to establish affirmative
9 defenses by the same evidentiary standard.⁴

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

17 4. “A cardinal rule of statutory interpretation is to give full effect to each statutory
18 word or phrase so that no part is rendered void, superfluous, contradictory or
19 insignificant.”⁷ Similarly, if a restrictive covenant is unambiguous, it is enforced to give
20 effect to the intent of the parties.⁸ “Restrictive covenants must be construed as a whole
21 and interpreted in view of their underlying purposes, giving effect to all provisions
22 contained therein.”⁹

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23 ² See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce
24 the development’s CC&Rs.

25 ³ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74
26 Ariz. 369, 372, 249 P.2d 837 (1952).

27 ⁴ See A.A.C. R2-19-119(B)(2).

28 ⁵ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

29 ⁶ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

30 ⁷ *Westburne Supply, Inc. v. Diversified Design and Construction, Inc.*, 170 Ariz. 598, 600, 826 P.2d 1224,
1226 (Ct. App. 1992).

⁸ See *Powell v. Washburn*, 211 Ariz. 553, 556 ¶ 9, 125 P.3d 373, 376 (2006).

⁹ *Lookout Mountain Paradise Hills Homeowners’ Ass’n v. Viewpoint Assocs.*, 867 P.2d 70, 75 (Colo. App.
1993) (quoted in *Powell*, 211 Ariz. at 557 ¶ 16, 125 P.3d at 377).

1 A.R.S. § 33-1803 (E) and (D)(4). However, the association is not required under A.R.S.
2 33-1803 (E) to include the specific provision of the CC&Rs that was violated before
3 enforcing the community documents. Krahn provided no evidence to establish that at
4 the time that he filed an appeal with the Department, Krahn responded to the violation
5 notice by certified mail, and Tonto failed to provide notice to Petitioners of the specific
6 violation of the CC&Rs that was allegedly violated within 10 business days. Krahn has
7 failed to establish that Tonto violated A.R.S. § 33-1803(D)(1).

8 **Docket No. 25F-H009-REL**

9 8. The preponderance of the evidence shows that Tonto invoked D&O
10 insurance during an executive session concerning Tonto's response to a lawsuit filed by
11 Krahn. Under A.R.S. § 33-1804 (A)(2), any portion of a board meeting may be closed to
12 consider pending litigation. Petitioners have failed to establish by a preponderance of
13 the evidence that Tonto violated A.R.S. § 33-1804.

14 **ORDER**

15 **IT IS ORDERED** that Petitioners are considered the prevailing party in Docket No.
16 24F-H033-REL. Respondent shall pay Petitioners their filing fee of \$500.00, to be paid
17 directly to Petitioners within thirty (30) days of this Order.

18 **IT IS FURTHER ORDERED** that Respondent is directed ordered to comply with
19 the requirements of CC&R § 4.32 going forward.

20 **IT IS FURTHER ORDERED** that a civil penalty is not appropriate.

21 **IT IS FURTHER ORDERED** that Respondent is considered the prevailing party in
22 Docket No. 25F-H002-REL, Docket No. 25F-H006-REL, and Docket No. 25F-H009-
23 REL.

24 **IS FURTHER ORDERED** that the petitions in Docket No. 25F-H002-REL, Docket
25 No. 25F-H006-REL, and Docket No. 25F-H002-REL are dismissed.

26 **NOTICE**

27 **This administrative law judge order, having been issued as a result of**
28 **a rehearing, is binding on the parties. A.R.S. § 32-2199.02(B). A party**
29 **wishing to appeal this order must seek judicial review as prescribed**
30 **by A.R.S. § 41-1092.08(H) and title 12, chapter 7, article 6. Any such**
appeal must be filed with the superior court within thirty-five days

1 **from the date when a copy of this order was served upon the parties.**
2 **A.R.S. § 12-904(A).**

3 Done this day, March 4, 2026.

4 /s/ Velva Moses-Thompson
5 Administrative Law Judge
6

7 Transmitted by either mail, e-mail, or facsimile March 4, 2026 to:

8 Susan Nicolson
9 Commissioner
10 Arizona Department of Real Estate

11 Attn:

12 snicolson@azre.gov

13 mneat@azre.gov

14 lrecchia@azre.gov

15 labril@azre.gov

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29 By: OAH Staff
30