

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

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

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

6
7 Kevin W. Schafer & Patricia A. Lawton,

No. 25F-H027-REL

8 Petitioners,

**ADMINISTRATIVE LAW JUDGE
DECISION**

9 v.

10 Sycamore Springs Homeowners
11 Association, Inc.,

12 Respondent.

13
14 **HEARING:** July 22, 2025

15 **APPEARANCES:** Craig Cline, Esq. represented Petitioners Kevin W. Schafer and
16 Patricia A. Lawton, who were present. Nikolas Thompson, Esq. represented
17 Respondent Sycamore Springs Homeowners Association, Inc. Kristin Rawlette
18 appeared as a witness.

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

20 **EXHIBITS ADMITTED INTO EVIDENCE:** Petitioners' Exhibits 1-8, and 11;
21 Respondent's Exhibits A-E and H-J

22 **FINDINGS OF FACT**

23 1. On or about December 2, 2024, Kevin W. Schafer and Patricia A.
24 Lawton ("Petitioners") filed a Homeowners Association (HOA) Dispute Process Petition
25 ("Petition") with the Arizona Department of Real Estate ("Department") alleging
26 violations of the Bylaws and CC&Rs by Sycamore Springs Homeowners Association,
27 Inc. ("Respondent"), as well as statutory violations. Petitioners indicated two issues
28 would be presented, paid the appropriate \$1,000.00 filing fee, and asserted violations of
29 A.R.S. §§ 10-11601, 10-11620, 33-1805, 33-1810, Bylaws Article 10.1.1 and 10.3,

1 Article 7.6.3 and 7.6.4, Article 5.1, and the CC&Rs Article X Section 3, for issue number
2 one, and A.R.S. 33-1803, CC&Rs Article IX Sections 10 and 18, Article XI Sections 1
3 and 5, for issue number two.

4 2. On or about January 28, 2025, the Department issued a Notice of
5 Hearing in which it set forth the issues for hearing as follows:

6 Petitioners allege Respondent of violating the following:

- 7 1. A.R.S. §§ 10-11601, 10-11620, 33-1805, 33-1810, Bylaws Article
8 10.1.1, 10.3, Article 7.6.3, 7.6.4, Article 5.1, and CC&R Article X
9 Section 3 by failing to “follow governing documents & State laws
10 with respect to preparation of mandatory records and documents;
11 retention of required records and documents; and/or fulfillment of
12 Owner requests for same. [errors in original]”
13
14 2. A.R.S. § 33-1803, CC&Rs Article IX Section 10, Section 18,
15 Article XI Section 1, Section 5, HOA Hearing and Fine Policy by “.
16 . . misinterpreting the CC&Rs . . .” in regards to the Petitioners’
17 security devices.

18 3. At hearing, Petitioner Patricia Lawton testified on her own behalf.
19 Respondent presented the testimony of Kristin Rawlette, Board President.

20 **REFERENCED STATUTES FOR ISSUE NUMBER 1:¹**

21 4. A.R.S. § 10-11601. Corporate records

22 A. A corporation shall keep as permanent records minutes of all meetings
23 of its members and board of directors, a record of all actions taken by the
24 members or board of directors without a meeting and a record of all
25 actions taken by a committee of the board of directors on behalf of the
26 corporation.

27 B. A corporation shall maintain appropriate accounting records.

28 C. A corporation or its agent shall maintain a record of its members in a
29 form that permits preparation of a list of the names and addresses of all
30 members and in alphabetical order by class of membership showing the
number of votes each member is entitled to cast and the class of
memberships held by each member.

¹ The statutes are set forth in their entirety due to the fact that Petitioners did not specify a particular provision(s) in reference to their allegations.

1 D. A corporation shall maintain its records in written form or in another
2 form capable of conversion into written form within a reasonable time.

3 E. A corporation shall keep a copy of all of the following records at its
4 principal office, at its known place of business or at the office of its
5 statutory agent:

6 1. Its articles or restated articles of incorporation and all
7 amendments to them currently in effect.

8 2. Its bylaws or restated bylaws and all amendments to them
9 currently in effect.

10 3. Resolutions adopted by its board of directors relating to the
11 characteristics, qualifications, rights, limitations and obligations of
12 members or any class or category of members.

13 4. The minutes of all members' meetings and records of all actions
14 taken by members without a meeting for the past three years.

15 5. All written communications to members generally within the past
16 three years, including the financial statements furnished for the past
17 three years under section 10-11620.

18 6. A list of the names and business addresses of its current
19 directors and officers.

20 7. Its most recent annual report delivered to the commission under
21 section 10-11622.

22 8. An agreement among members under section 10-3732.

23 F. Notwithstanding this chapter, a condominium association shall comply
24 with title 33, chapter 9 and a planned community association shall comply
25 with title 33, chapter 16 to the extent that this chapter is inconsistent with
26 title 33, chapters 9 and 16.

27 5. A.R.S. § 10-11620 Financial statements for members

28 A. Except as provided in the articles of incorporation or bylaws of a
29 corporation organized primarily for religious purposes, a corporation on
30 written demand from a member shall furnish that member its latest annual
financial statements that may be consolidated or combined statements of

1 the corporation and one or more of its subsidiaries or affiliates, as
2 appropriate, and that include a balance sheet as of the end of the fiscal
3 year and statement of operations for that year. If financial statements are
4 prepared for the corporation on the basis of generally accepted accounting
5 principles, the annual financial statements shall also be prepared on that
6 basis.

7 B. If the annual financial statements are reported on by a certified public
8 accountant, that report shall accompany them. If not, the statements shall
9 be accompanied by a statement of the president or the person responsible
10 for the corporation's accounting records both:

11 1. Stating that person's reasonable belief whether the statements
12 were prepared on the basis of generally accepted accounting
13 principles and, if not, describing the basis of preparation.

14 2. Describing any respects in which the statements were not
15 prepared on a basis of accounting consistent with the statements
16 prepared for the preceding year.

17 **6. A.R.S. § 33-1805 Association financial and other records**

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

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

1. Privileged communication between an attorney for the
association and the association.

2. Pending litigation.

1 3. Meeting minutes or other records of a session of a board
2 meeting that is not required to be open to all members pursuant to
3 section 33-1804.

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

11 5. Records relating to the job performance of, compensation of,
12 health records of or specific complaints against an individual
13 employee of the association or an individual employee of a
14 contractor of the association who works under the direction of the
15 association.

16 C. The association shall not be required to disclose financial and other
17 records of the association if disclosure would violate any state or federal
18 law.

19 7. A.R.S. § 33-1810 Board of directors; annual audit

20 Unless any provision in the planned community documents requires an
21 annual audit by a certified public accountant, the board of directors shall
22 provide for an annual financial audit, review or compilation of the
23 association. The audit, review or compilation shall be completed no later
24 than one hundred eighty days after the end of the association's fiscal year
25 and shall be made available upon request to the members within thirty
26 days after its completion.

27 **REFERENCED CC&RS FOR ISSUE NUMBER 1:**

28 8. CC&R Article X Section 3

29 Association Books and Records. The Association shall make available to
30 Owners, First Mortgagees and insurers or guarantors of any such First
Mortgage current copies of this Declaration, the Articles of Incorporation,
Bylaws, rules and regulations, books, records and financial statements of
the Association. "Available" shall mean available for inspection, upon
request, during normal weekday business hours or under other
reasonable circumstances.

REFERENCED BYLAWS FOR ISSUE NUMBER 1:

1 9. Article 10.1.1

2 A pro forma operating statement (budget) for each fiscal year shall be
3 distributed not less than thirty (30) days before the beginning of the fiscal
4 year.

5 10. Article 10.3

6 Inspection of Association's Books and Records. The membership
7 register, current copies of the project documents, financial statements,
8 books of account and minutes of meetings of the Members, the Board and
9 committees of the Board and the Association shall be made available for
10 inspection and copying by Members of the Association, First Mortgagees
11 and insurers or guarantors of First Mortgages or by their duly appointed
12 representatives, at any reasonable time and for a purpose reasonably
13 related to their interests as Members, as First Mortgagees or as insurers
14 or guarantors of First Mortgages, at the office of the Association or at such
15 other place on weekdays during normal business hours following at least
16 forty-eight (48) hours' written notice to the Board by the Member, First
17 Mortgagee or insurer or guarantor of a First Mortgage desiring to make the
18 inspection. Any Member, First Mortgagee or insurer or guarantor of a First
19 Mortgage desiring copies of any document shall pay the reasonable cost
20 of reproduction. Every Director shall have the absolute right at any
21 reasonable time to inspect all books, records and documents of the
22 Association. The right to inspection by a Director includes the right to
23 make extracts and copies of documents.

24 11. Article 7.6.3

25 Secretary. The Secretary shall record the votes and keep the minutes of
26 all meetings and proceedings of the Board and of the Members, serve
27 notice of meetings of the Board and of the Members, keep appropriate
28 current records showing Members of the Association together with their
29 addresses and perform such other duties as required by the Board.

30 12. Article 7.6.4

 Treasurer. The Treasurer shall receive and deposit in appropriate bank
 accounts all monies of the Association, disburse such funds as directed by
 resolution of the Board and keep proper books of account and prepare or
 have prepared financial statements as required in these Bylaws.

 13. Article 5.1

1 Regular Meetings. Regular Meetings of the Board shall be conducted at
2 least quarterly at a time and place within or near the Property as may be
3 fixed by the Board. Notice of the time and place of regular meetings shall
4 be given to each Director, personally or by mail, telephone or telegraph, at
5 least three (3) days prior to the day named for the meeting.

6 14. Ms. Lawton testified that she served for three years as President of the
7 Board and therefore, has an understanding of the governing documents.

8 15. On or about May 27, 2024, Ms. Lawton requested five sets of Board
9 meeting minutes that were not available on Respondent's website or portal.² On or
10 about June 20, 2024, Mission Management, Respondent's property management
11 company, provided minutes for the requested February 28, 2023 meeting via email.

12 16. Ms. Lawton testified that when she made the request for the meeting
13 minutes, five sets of minutes were not on the portal or Respondent's website, and that is
14 why she requested them.

15 17. Ms. Lawton's request was made on May 27, 2024. The next day, on May
16 28, 2024, Mission Management responded to the request stating that "[a]ll of the
17 minutes are posted on the portal and are accessible to you there."³ Two minutes later,
18 Ms. Lawton responded as follows: "Please re-read my memo. These were not on the
19 portal!"⁴ Shortly thereafter, on May 28, 2024, Mission Management responded, "I
20 checked my files and I do not have them. Kristin told me to have you check [the
21 website] she said that they should be on there."⁵

22 18. On June 3, 2024, Mission Management uploaded the January 2022
23 minutes, as well as the August 2022 and September 2022 minutes.⁶

24 19. As of the hearing date, two of the five requested sets of meeting minutes
25 have not been posted. Ms. Lawton acknowledged during her testimony that she never
26 made a request to inspect the documents or offer to pay for copies of the documents.

27 ² See Petitioners' Exhibit 8.

28 ³ *Id.*

29 ⁴ *Id.*

30 ⁵ *Id.*

⁶ *Id.*

1 20. On or about July 1, 2024, Ms. Lawton requested annual audits/
2 compilations for fiscal years 2022 and 2023. Mission Management provided
3 Respondent's 2022 Federal and State tax returns. Ms. Lawton asserted that
4 Respondent was not in compliance with statutory requirements because Respondent
5 did not complete the audits/compilations within 180 days after the last day of the fiscal
6 year. Ms. Lawton contended that for fiscal year 2023, Respondent had until June 28,
7 2024, to complete the audits/compilations. Ms. Lawton testified that Respondent,
8 through Mission Management, informed her on July 1, 2024, that the 2023 taxes had
9 not yet been filed, and that Respondent did not provide any information or
10 documentation concerning fiscal year 2022. On or about October 2, 2024, Mission
11 Management emailed Ms. Lawton the 2023 Federal and State tax returns without the
12 requested audit/compilation. Ms. Lawton asserted that Respondent is on a "cash basis"
13 for accounting, and therefore, the taxes and audits/compilations could have been
14 completed on a timely basis.

15 21. Regarding the financial records requested, Ms. Lawton acknowledged that
16 she never informed Respondent that she did not receive the 2022 compilation/audit with
17 the 2022 taxes.

18 22. Kristin Rawlette, Board President, testified that initially the Secretary was
19 responsible for the minutes. However, Respondent terminated its previous
20 management company and hired another management company prior to hiring Mission
21 Management in 2023. In the transition to Mission Management, the previous
22 management company lost some of Respondent's documentation, including the
23 December 2023 minutes. Ms. Rawlette credibly testified that minutes were taken at the
24 December 2023 meeting and those minutes were approved, however, Respondent was
25 unable to obtain them from the previous management company. Ms. Rawlette testified
26 that Ms. Lawton was aware of the "issues" with the previous management company
27 because she attended every meeting.

28 23. Ms. Rawlette testified that the Board stopped taking minutes, on advice of
29 counsel, due to all of Ms. Lawton's requests. Ms. Rawlette explained that Respondent's
30 counsel informed Respondent of a change in the law that only requires a Board to keep

1 minutes if taken but does not require a Board to take meeting minutes. Ms. Rawlette
2 testified that minutes are only taken when there is a vote.

3 24. Ms. Rawlette testified that the documents that were requested by Ms.
4 Lawton are generally available on the portal, such as the minutes and budget reports.
5 Ms. Rawlette further testified that Ms. Lawton did not request an inspection of the
6 documents, but rather she requested copies from Mission Management with no offer to
7 pay for them.

8 **REFERENCED STATUTES FOR ISSUE NUMBER 2:**

9 25. A.R.S. § 33-1803

10 Assessment limitation; penalties; notice to member of violation

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

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

C. A member who receives a written notice that the condition of the
property owned by the member is in violation of the community documents

1 without regard to whether a monetary penalty is imposed by the notice
2 may provide the association with a written response by sending the
3 response by certified mail within twenty-one calendar days after the date
4 of the notice. The response shall be sent to the address identified in the
5 notice.

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

- 11 1. The provision of the community documents that has allegedly
12 been violated.
- 13 2. The date of the violation or the date the violation was observed.
- 14 3. The first and last name of the person or persons who observed
15 the violation.
- 16 4. The process the member must follow to contest the notice.

17 E. Unless the information required in subsection D, paragraph 4 of this
18 section is provided in the notice of violation, the association shall not
19 proceed with any action to enforce the community documents, including
20 the collection of attorney fees, before or during the time prescribed by
21 subsection D of this section regarding the exchange of information
22 between the association and the member and shall give the member
23 written notice of the member's option to petition for an administrative
24 hearing on the matter in the state real estate department pursuant to
25 section 32-2199.01. At any time before or after completion of the
26 exchange of information pursuant to this section, the member may petition
27 for a hearing pursuant to section 32-2199.01 if the dispute is within the
28 jurisdiction of the state real estate department as prescribed in section 32-
29 2199.01.

30 **REFERENCED CC&Rs FOR ISSUE NUMBER 2:**

26. Article IX Section 10
27 No Annoying Light, Sounds or Odors. No light shall be emitted from any
28 Dwelling Lot that is unreasonably bright or causes unreasonable glare. No
29 sound shall be emitted from any Dwelling Lot that is unreasonably loud or
30 annoying. No odor shall be emitted from any Dwelling Lot that is noxious
or offensive to others.

27. Article IX Section 18
28 Nuisances. After completion of construction of any Dwelling Units and
29 landscaping of Dwelling Lots, no rubbish or debris of any kind shall be
30 placed or permitted to arise therefrom so as to render any such property
or any portion thereof unsanitary, unsightly, offensive or detrimental to any

1 other property in the vicinity thereof or to its occupants. No noise or other
2 nuisance shall be permitted to exist or operate upon such property so as
3 to be offensive or detrimental to its occupants. Without limiting the
4 generality of any of the foregoing provisions, no exterior speakers, horns,
5 whistles, bells or other sound devices except security devices used
6 exclusively for security purposes shall be located, used or placed on any
7 such property without the prior written approval of the Board, provided that
8 exterior speakers as part of a stereo system may be utilized so long as the
9 sound level is not unreasonable in the opinion of the Board. The Board in
10 its sole discretion shall have the right to determine the existence of any
11 such nuisance.

12 28. Article XI Section 1

13 Enforcement. Enforcement of the covenants, conditions, restrictions,
14 easements, reservations, liens, charges and other provisions contained in
15 this Declaration, the Articles of Incorporation and Bylaws of the
16 Association shall be by any proceeding at law or in equity against any
17 person or persons violating or attempting to violate any such provision, to
18 enjoin or restrain such violation or attempted violation or to recover
19 damages, or both, and the Association and any aggrieved Owner shall
20 have the right to institute, maintain and prosecute any such proceeding. In
21 any such action, the prevailing party shall be entitled to recover its costs
22 and reasonable attorneys' fees incurred in connection therewith. Failure by
23 the Association or any Owner to enforce any provision of this Declaration
24 or the Articles of Incorporation or Bylaws of the Association shall in no
25 event be deemed a waiver of the right to do so thereafter. Prior to any
26 decision by the Board to suspend voting rights, impose monetary penalties
27 pursuant to the provisions of this Declaration or as otherwise provided for
28 in the Articles and Bylaws, the Board shall give the sanctioned party
29 written notice of the basis for such sanction, and the sanctioned party shall
30 be granted an opportunity to be heard by the Board no less than five
(5) working days after such notice shall have been given. Prior to any
decision by the Board to suspend voting rights, impose monetary penalties
pursuant to the provisions of this Declaration or as otherwise provided for
in the Articles and Bylaws, the Board shall give the sanctioned party
written notice of the basis for such sanction, and the sanctioned party shall
be granted an opportunity to be heard by the Board no less than five (5)
working days after such notice shall have been given.

29. Article XI Section 5

Registration by Owner of Mailing Address. Each Owner shall register his
mailing address with the Association, and all notices or demands intended

1 to be served upon an Owner shall be hand delivered or sent either by
2 registered or certified mail, postage prepaid, addressed in the name of the
3 Owner at such registered mailing address. All notices, demands or other
4 notices intended to be served upon the Board or the Association shall be
5 hand delivered or sent by certified mail, postage prepaid, to 1600 S.
6 Hanley Boulevard, Suite 128, Tucson, Arizona 85737, until such address
7 is changed by the Association.

8 30. Ms. Lawton testified that Petitioners installed their security camera at
9 issue in September 2024. On or about September 23, 2024, Petitioners received a 1st
10 and Only Notice of Violation letter from Respondent that indicated: "On a recent
11 inspection, we found the following item is not in compliance with the governing
12 documents of your Association."⁷ Specifically, the letter cited CC&R Section V and
13 requested that Petitioners "Please complete a DM request and return it [to]
14 management" by October 14, 2024.⁸ The letter further advised: "If you have any
15 questions regarding this notice, please contact us at the phone number or email
16 address indicated below. If you wish to respond to this violation, you may provide a
17 written response to the association by certified mail to the above address. If the violation
18 has not been corrected by the compliance date above, a fine will be assessed to your
19 account."⁹

20 31. On November 7, 2024, Respondent sent Petitioners a Notice of Fine. The
21 Notice advised that a \$150.00 fine had been assessed against Petitioners and further
22 notified of the following: "You have the right to appeal this penalty in person or by
23 submitting a written appeal to the Board of Directors, in care of Mission Management
24 Services. Failure to resolve this issue through the hearing process will result in
25 subsequent fines in accordance with the Association's fine policy. Please notify your
26 Community Manager if you wish to be placed on the agenda."¹⁰

27 _____
28 ⁷ See Petitioners' Exhibit 3.

29 ⁸ *Id.*

30 ⁹ *Id.*

¹⁰ See Petitioners' Exhibit 8.

1 32. Ms. Lawton testified that her neighbor complained about Petitioners'
2 security camera. Ms. Lawton testified that the security camera is not a commercial
3 camera, is suited for residences, and is not unlike other residents' security cameras.

4 33. Ms. Lawton testified that Petitioners' security camera does not have lights
5 or sounds activated and is subject to a "carve out." Ms. Lawton testified that after
6 Petitioners were cited, Respondent cited others and then revamped the Design
7 Guidelines in 2024, with no criteria for security cameras.

8 34. Ms. Lawton asserted that Respondent did not follow its own rules and
9 violated statute as the letters were not sent by certified mail and Petitioners were fined
10 before an opportunity for a hearing.

11 35. Petitioners have not paid the fine and Respondent has not enforced the
12 fine. Petitioners have not submitted a design modification request to Respondent. Ms.
13 Lawton testified that she did not request a hearing with the Board because she did not
14 believe it would be "fair and just" and she wanted a hearing before the State.

15 36. Ms. Rawlette testified that all security cameras require a design
16 modification request and that all homeowners who have installed security cameras have
17 to submit such request whether or not they were previously installed, herself included.

18 37. Ms. Rawlette referenced Article 5 Section 3 of the CC&Rs:

19 Review by Committee. No structure, improvement or any attachment to an
20 existing structure shall be made or constructed upon any Dwelling Lot, no
21 alteration of the exterior of a structure or improvement shall be made and
22 no change in the final grade nor the installation of any landscaping to any
23 part of any Dwelling Lot shall be performed unless complete plans and
24 specifications, including a construction schedule therefor, shall have first
25 been submitted to and approved *in writing* by the Architectural Control
26 Committee. The Architectural Control Committee shall exercise its best
27 judgement to the end that all attachments, improvements, construction,
28 landscaping and alterations to structures (collectively referred to in this
29 Article VI as Architectural Improvements") harmonize with the existing
30 natural surroundings and conform to the terms and provisions of this
Declaration. Owners shall be given wide latitude in the design of Dwelling
Units. The Architectural Control Committee approval shall not be deemed
to mean construction soundness or compliance with applicable zoning or
building codes. Decisions of the Architectural Control Committee are
binding and conclusive.

1
2 38. Ms. Rawlette testified that she took photographs of Petitioners' security
3 camera and testified that while doing do, she observed that the camera's "eye" followed
4 her and that the face of the camera moves, tracking movements with a 360 degree
5 rotation.¹¹ Ms. Rawlette testified that Petitioners' neighbor's entire backyard is visible by
6 the security device and that the neighbors are concerned with their lack of privacy given
7 that they have young children.

8 CONCLUSIONS OF LAW

9 1. Arizona statute permits an owner or a planned community organization to
10 file a petition with the Department for a hearing concerning violations of planned
11 community documents or violations of statutes that regulate planned communities.¹²
12 That statute provides that such petitions will be heard before the Office of Administrative
13 Hearings.

14 2. Petitioners bear the burden of proof to establish that Respondent committed
15 the alleged violations by a preponderance of the evidence.¹³ Respondent bears the
16 burden to establish affirmative defenses by the same evidentiary standard.¹⁴

17 3. "A preponderance of the evidence is such proof as convinces the trier of
18 fact that the contention is more probably true than not."¹⁵ A preponderance of the
19 evidence is "[t]he greater weight of the evidence, not necessarily established by the
20 greater number of witnesses testifying to a fact but by evidence that has the most
21 convincing force; superior evidentiary weight that, though not sufficient to free the mind
22 wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one
23 side of the issue rather than the other."¹⁶

24 Alleged Violation Number 1:

25 4. A.R.S. § 32-2199 sets forth the following:

26 ¹¹ See Respondent's Exhibit J.

27 ¹² See A.R.S. § 32-2199.

28 ¹³ See A.R.S. section 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazzano v. Superior Court*, 74 Ariz.
369, 372, 249 P.2d 837 (1952).

29 ¹⁴ See A.A.C. R2-19-119(B)(2).

30 ¹⁵ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

¹⁶ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 Pursuant to title 41, chapter 6, article 10, an administrative law judge shall
2 adjudicate complaints regarding and ensure compliance with:

- 3 1. Title 33, chapter 9 and condominium documents.
- 4 2. Title 33, chapter 16 and planned community documents.

5 5. Therefore, Petitioners' allegations that Respondent violated A.R.S. §§ 10-
6 11601 and 10-11620 are inapplicable to the instant matter and not within the purview of
7 this Tribunal.

8 6. Regarding Petitioner's allegation that Respondent violated A.R.S. § 33-
9 1805, the statute indicates in pertinent part, "all financial and other records of the
10 association shall be made *reasonably* available for examination . . ." Based on the facts
11 and circumstances presented herein, the Administrative Law Judge concludes that
12 Respondent made the requested documents *reasonably* available and therefore,
13 Petitioners failed to establish a violation of this statute. Respondent's explanation that
14 certain meeting minutes were misplaced or lost due to the transition between
15 management companies is a reasonable explanation as to why the documents were not
16 initially made available. When three of the five requested meeting minutes were
17 located, they were posted to the portal. The other two sets of minutes were not found,
18 and therefore, could not be *reasonably* made available. Regarding the financial
19 documents requested, Respondent provided the 2022 taxes and Petitioners never
20 informed Respondent that they did not receive the compilation/audit for 2022.
21 Regarding the 2023 financial records, Respondent's explanation that its accountant
22 requested an extension is a reasonable explanation for why those documents were not
23 produced. Respondent was not yet in possession of those documents.

24 7. Petitioners allege a violation of A.R.S. § 33-1810. As set forth above,
25 Respondents explained that its accountant requested an extension for the 2023 taxes
26 and compilation. Respondent provided the 2022 taxes, and inadvertently did not
27 include the requested audit/compilation. However, Petitioners admittedly did not inform
28 Respondent that they did not receive the audit/compilation from that year. Further,
29 Article X Section 2 of the CC&Rs provides: "[t]he Association shall provide annual

1 financial statements *for the immediately preceding fiscal year*, free of charge, to an
2 Owner, any First Mortgagee or any insurer or guarantor of such a first mortgage so
3 requesting within a reasonable time after written request therefor. Audited statements
4 shall be furnished only if paid for by the person requesting such a statement.”

5 Petitioners made the request in 2024, and therefore were only entitled to receive the
6 annual financial statements for 2023. The audited statements requested were required
7 to be paid for by Petitioners and Petitioners did not do so. Therefore, the Administrative
8 Law Judge concludes that Petitioners failed to establish a violation of A.R.S. § 33-1810.

9 8. Petitioners allege a violation of CC&Rs Article X Section 3. Petitioners
10 admittedly did not request an inspection of the documents and therefore, the
11 Administrative Law Judge concludes that Petitioners failed to establish a violation of this
12 provision of the CC&Rs.

13 9. Petitioners allege a violation of the Bylaws Article 10.1.1. Based on the
14 evidence of record, Petitioners did not establish a violation of this provision of the
15 Bylaws.

16 10. Petitioners allege a violation of the Bylaws Article 10.3. This provision
17 states in pertinent part:

18 The membership register, current copies of the project documents,
19 financial statements, books of account and minutes of meetings of the
20 Members, the Board and committees of the Board and the Association
21 *shall be made available for inspection and copying by Members of the
Association, . . . Any Member . . . desiring copies of any document shall
pay the reasonable cost of reproduction.*

22 Petitioners admittedly never requested to inspect and copy any documents and
23 Petitioners did not pay for the reasonable cost of reproduction. Therefore, Petitioners
24 failed to establish a violation of this provision of the Bylaws.

25 11. Petitioners allege a violation of Article 7.6.3 of the Bylaws that provides in
26 pertinent part that the Secretary “shall record the votes and keep the minutes of all
27 meetings and proceedings of the Board and of the Members . . .” Petitioners only
28 established that they requested five sets of meeting minutes, that three were eventually
29 made available when they were found, and that two sets were not available due to the

1 transition between management companies. Petitioners failed to establish that the
2 Secretary did not record the votes and keep minutes of all meetings, and therefore, did
3 not establish a violation of this provision of the Bylaws.

4 12. Petitioners allege a violation of Article 7.6.4 of the Bylaws that provides in
5 pertinent part that the Treasurer shall “keep proper books of account and prepare or
6 have prepared financial statements as required in these Bylaws.” Petitioners failed to
7 establish that the Treasurer did not keep proper books of account or prepare or have
8 prepared financial statements as required in these Bylaws. Respondent provided the
9 requested 2022 taxes, Petitioners failed to notify Respondent that they did not receive
10 the 2022 compilation, and Respondent provided a reasonable and justifiable
11 explanation regarding the 2023 financial documents.

12 13. Petitioners allege a violation of Article 5.1 of the Bylaws that provides as
13 follows:

14 Regular Meetings. Regular Meetings of the Board shall be conducted at
15 least quarterly at a time and place within or near the Property as may be
16 fixed by the Board. Notice of the time and place of regular meetings shall
17 be given to each Director, personally or by mail, telephone or telegraph, at
18 least three (3) days prior to the day named for the meeting.

19 Petitioners failed to establish a violation of this provision of the Bylaws.

20 Alleged Violation Number 2:

21 14. Petitioners allege that Respondent has misinterpreted Article IX Sections
22 10 and 18 and Article XI, Sections 1 and 5 of the CC&Rs. Article IX, Section 18 states
23 in pertinent part: “. . . No noise *or other nuisance* shall be permitted to exist or operate
24 upon such property *so as to be offensive* or detrimental to its occupants. . . . *The Board*
25 *in its sole discretion shall have the right to determine the existence of any such*
26 *nuisance.*” The credible and probative evidence of record established that the location
27 of Petitioners’ security camera has created a nuisance for Petitioners’ neighbor as it has
28 invaded Petitioners’ neighbor’s privacy.

29 15. Petitioners allege that Respondent has violated Article XI Section 1 of the
30 CC&Rs, however, Petitioners were notified of the right to a hearing before the Board.
Further, Respondent only requested that Petitioners submit a request for modification

1 as every other member of the community has been required to do, including the Board
2 President. Petitioners have refused to do so,

3 16. Petitioners allege that Respondent violated Article XI Section 5 of the
4 CC&Rs. While there may have been a technical violation of this provision, Petitioners
5 clearly received all notices pertaining to their violation.

6 17. Based on a review of the credible and relevant evidence of record, it is
7 held that Petitioners failed to establish by a preponderance of the evidence the myriad
8 of alleged violations by Respondent of statutes, CC&Rs and Bylaws.

9 **ORDER**

10 **IT IS ORDERED** that no action is required of Respondent in this matter and that
11 Petitioners' Petition is dismissed.

12 **NOTICE**

13 **Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties**
14 **unless a rehearing is granted pursuant to A.R.S. § 32-2199.04.**
15 **Pursuant to A.R.S. § 41-1092.09, a request for rehearing in this matter**
16 **must be filed with the Commissioner of the Department of Real Estate**
17 **within 30 days of the service of this Order upon the parties.**

18 Done this day, August 6, 2025.

19 /s/ Sondra J. Vanella
20 Administrative Law Judge

21
22 Transmitted by either mail, e-mail, or facsimile August 6, 2025, to:

23 Susan Nicolson, Commissioner
24 Arizona Department of Real Estate

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By: OAH Staff