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**Final agency action regarding decision below:**

**ALJFIN ALJ Decision final by statute**

**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

**ROBERT SWINEHART,**

Petitioner,

vs.

**SPANISHBROOK CONDOMINIUM  
ASSOCIATION**

Respondent.

No. 07F-H067019-BFS

**ADMINISTRATIVE  
LAW JUDGE DECISION**

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**HEARING:** March 9, 2007. The record closed on March 12, 2007.

**APPEARANCES:** Petitioner Robert Swinehart appeared on his own behalf. Joseph T. Tadano, Esq. represented Respondent Spanishbrook Condominium Association.

**ADMINISTRATIVE LAW JUDGE:** Daniel G. Martin

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Robert Swinehart filed a petition with the Department of Fire, Building and Life Safety (the "Department") alleging that Spanishbrook Condominium Association had violated Title 33, Arizona Revised Statutes, the Spanishbrook Declaration of Restrictions, and the Spanishbrook Bylaws. Based on the evidence of record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Order:

**FINDINGS OF FACT**

1. Spanishbrook Condominium ("Spanishbrook") is a condominium community located in Sun City, Arizona. Spanishbrook is comprised of 16 condominium units and related common areas.

2. The condominium owners in Spanishbrook are subject to a Declaration of Restrictions (the "Declaration") that was adopted and recorded in September 1974. See Exhibit B.

Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007  
(602) 542-9826

3. Pursuant to the terms of the Declaration, responsibility for the management of Spanishbrook is vested in a Board of Management (the "Board"). See

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1 Exhibit B. At present, the Board consists of a Chairman, Vice-Chairman, Secretary,  
2 Treasurer, and a member responsible for lawn maintenance. The Board receives  
3 assistance in its day-to-day operations from Colby Management, Inc. ("Colby"), a  
4 provider of accounting and management services.

5 4. In 1994, the Spanishbrook condominium owners adopted bylaws (the  
6 "Bylaws") that, among other things, govern the composition of the Board and the  
7 manner in which decisions affecting Spanishbrook are to be made. See Exhibit B.

8 5. Robert Swinehart is the owner of a unit in Spanishbrook located at 10329  
9 West Spanish Moss Lane.

10 6. On January 5, 2007, Mr. Swinehart filed a petition with the Department  
11 alleging that the Spanishbrook Condominium Association (the "Association") had  
12 violated Title 33, Arizona Revised Statutes, the Declaration, and the Bylaws.  
13 Specifically, Mr. Swinehart alleged:

14 Board failed to attend a special meeting called by 25 percent of the  
15 members. (Citing Paragraph 23 of the Declaration, and A.R.S. §  
16 33-1248(B)).

17 Conflict of interest not declared at an open meeting: Board  
18 member Bill Tucker was paid \$237 for sprinkler repairs. (Citing  
19 A.R.S. § 33-1243(C)).

20 Secret meetings are the norm. (Citing Article II, Paragraph (D)(1)  
21 of the Bylaws, and A.R.S. §§ 33-1248(A), 33-1203, and 33-1213).

22 Board approved expenditures without a noticed meetings [*sic*].  
23 (Citing A.R.S. §§ 33-1248(A) and 33-1255(C)(2)).

24 Board spent over the \$1,000-spending limit without a vote of the  
25 members: \$2,800 for sprinkler modification. (Citing Article II,  
26 Paragraphs (E)(3), (F)(2), and (H)(1) of the Bylaws, and A.R.S. §§  
27 33-1248(C) and 33-1255(C)(2)).

28 Board approved a motion for a \$250-special assessment without a  
29 noticed meeting. (Citing Article II, Paragraphs (E)(2) and (G)(3) of  
30 the Bylaws, and A.R.S. § 33-1248(A)).

Voting and tabulation for the \$250-special assessment was in a closed meeting without notification to the members. (Citing A.R.S. § 33-1248(A)).

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1 Board turned over management to Colby Management at a secret  
2 meeting. (Citing A.R.S. § 33-1248(A)).

3 Board failed to comply with a petition of 25% of the members to call  
4 a special meeting. (Citing A.R.S. § 33-1248(B)).

5 Illegal use of proxies instead of ballots with a yes or no choice; and  
6 votes counted per person instead of per unit to increase  
7 assessments from \$180 to \$200. (Citing Paragraph 9(D) of the  
8 Declaration and A.R.S. § 33-1250(C)).

9 Letter dated 12/8/06 requesting budget summary was denied.  
10 (Citing A.R.S. § 33-1243(D)).

11 Letter dated 12/8/06 requesting minutes of all board meetings was  
12 denied. (Citing Article II, Paragraph (C)(7) of the Bylaws, and  
13 A.R.S. § 33-1258(A)).

14 Letter dated 12/8/06 requesting review of financial records was  
15 denied. (Citing Paragraph 12(N) of the Declaration, and A.R.S. §  
16 33-1258(A)).

17 See Petition, a copy of which is contained in the Administrative Record.

18 7. On November 16, 2006, the Department forwarded Mr. Swinehart's  
19 petition to the Association.

20 8. On December 5, 2006, the Association, through counsel, filed a response  
21 to Mr. Swinehart's petition.

22 9. On December 12, 2006, the Department issued a Notice of Hearing  
23 setting this matter for hearing before the Office of Administrative Hearings, an  
24 independent state agency. Having considered all of the evidence presented, the  
25 Administrative Law Judge addresses each of Mr. Swinehart's allegations in turn.<sup>1</sup>

26 *Alleged Failure to Call Special Meeting*

27 10. In early May 2006, four unit owners (Bob and Theresa Swinehart, Dan and  
28 Marcia Zientek, Iris Mitrick, and Irene Cumnock) distributed an "urgent" flyer indicating  
29 that an "informational and important meeting" of Spanishbrook unit owners  
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<sup>1</sup> Where appropriate, Mr. Swinehart's allegations are grouped together for ease of analysis.

1 would convene on May 8, 2006. According to Mr. Swinehart's petition, the Board failed  
2 to attend that meeting, in violation of Paragraph 23 of the Declaration and A.R.S. § 33-  
3 1248(B).

4 11. The Declaration is silent with regard to meetings of the Board, special or  
5 otherwise.

6 12. The Bylaws (Article II, Section D) state with respect to meetings:

7 Meetings of the Board of Management and special meetings of the  
8 unit owners shall be called by the Chairman of the Board when  
9 necessary.

10 1. The annual Meeting of the unit owners shall be held during  
11 the month of February. Notice of this meeting, and all special  
12 meetings shall be furnished to all owners ten (10) days in  
13 advance of the meeting, with a resume of the agenda and a  
14 blank proxy form included.

15 2. The Board of management shall order a special meeting to  
16 be held upon receipt of a written request signed by a majority of  
17 existing owners.

18 See Exhibit B.

19 13. A.R.S. § 33-1248(B) provides:

20 Notwithstanding any provision in the condominium documents, all  
21 meetings of the association and the board shall be held in this  
22 state. A meeting of the association shall be held at least once each  
23 year. Special meetings of the association may be called by the  
24 president, by a majority of the board of directors or by unit owners  
25 having at least twenty-five per cent, or any lower percentage  
26 specified in the bylaws, of the votes in the association. Unless  
27 otherwise provided in the articles or the bylaws of the association,  
28 not fewer than ten nor more than fifty days in advance of any  
29 meeting of the unit owners, the secretary shall cause notice to be  
30 hand delivered or sent prepaid by United States mail to the mailing  
address of each unit or to any other mailing address designated in  
writing by the unit owner. The notice of any meeting of the unit  
owners shall state the time and place of the meeting. The notice of  
any special meeting of the unit owners shall also state the purpose  
for which the meeting is called, including the general nature of any  
proposed amendment to the declaration or bylaws, any changes in  
assessments that require approval of the unit owners and any  
proposal to remove a director or officer. The failure of any unit

owner to receive actual notice of a meeting of the unit owners does not affect the validity of any action taken at that meeting.

14. None of the authorities presented by Mr. Swinehart obligated the Board to attend the May 8, 2006 meeting. Further, even if Mr. Swinehart's petition could be construed as alleging that the Board failed to *call* a special meeting, such allegation would fail because, as Mr. Swinehart acknowledged at hearing, "we didn't request a special meeting. We requested an informal, and informational, and important meeting to discuss and resolve issues." 3/9/07 Hearing Record at 2:47:53-2:48:10.

*Alleged Failure to Declare Conflict of Interest*

15. On May 9, 2006, Ralph Esqueda performed repairs to the Spanishbrook irrigation system. Mr. Esqueda was a regular provider of such services.

16. Ordinarily, invoices for work within Spanishbrook are submitted to Colby for processing and payment. On this occasion, however, Mr. Esqueda requested that Bill Tucker, Spanishbrook's treasurer at that time, pay him in cash as he was leaving on a trip to Mexico. Mr. Tucker gave Mr. Esqueda a personal check in the amount of \$237.00, the amount of the invoice. See Exhibit D.

17. Mr. Tucker submitted a purchase order to Colby for reimbursement for the \$237.00 he had paid to Mr. Esqueda. Colby paid that purchase order in the amount of \$237.00. See Exhibits 3 and D.

18. Mr. Swinehart alleged that the payment to Mr. Tucker created a conflict of interest that, pursuant to A.R.S. § 33-1243(C), should have been declared at an open meeting of the Board.

19. A.R.S. § 33-1243(C) provides:

If any contract, decision or other action for compensation taken by or on behalf of the board of directors would benefit any member of the board of directors or any person who is a parent, grandparent, spouse, child or sibling of a member of the board of directors or a parent or spouse of any of those persons, that member of the board of directors shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the board before the board discusses or takes action on that issue and that member may then vote on that issue. Any contract entered into in violation of this subsection is void and unenforceable.



1 employee of the association or an individual employee of a  
2 contractor of the association who works under the direction of the  
3 association.

4 22. At hearing, Mr. Swinehart clarified that his primary complaint with respect  
5 to the Board's alleged secret meetings was that the Board had approved an expenditure  
6 in excess of \$1,000.00 without first obtaining approval of a majority of unit owners at a  
7 regular or special meeting. This allegation is addressed in more detail at Findings of  
8 Fact Nos. 29-39.

9 23. With regard to other alleged secret meetings, the evidence demonstrated  
10 that the Board met on May 3, 2006, May 5, 2006, and June 13, 2006, and that each  
11 such meeting was closed.

12 24. The minutes for the Board's May 3, 2006 meeting reflect that Mr. Tucker,  
13 then the Chairman, requested the meeting "to discuss the ongoing situation being  
14 caused by association member, Bob Swinehart, and his reluctance to conform to the  
15 Board's wishes in cleaning up the common area in back of his property (i.e. removing  
16 landscaping tools and equipment) despite repeated requests." See Exhibit E. The  
17 Board unanimously approved the following resolution: "The Board is resolved to  
18 remove Bob Swinehart's name as advisor to the Board. It is further resolved that Bob  
19 Swinehart is to have nothing to do with or to have any participation in Association  
20 decisions other than his 1/16 input in general meetings." See *id.*

21 25. The Association urged that the Board properly closed the May 3, 2006  
22 meeting pursuant to A.R.S. § 33-1248(A)(2) (pending or threatened litigation). Although  
23 there is a small, typed banner across the minutes stating "special executive closed  
24 session 'litigation'", the minutes do not reflect a threat of litigation, nor can such a threat  
25 be fairly inferred from the contents of the minutes.

26 26. The minutes for the Board's May 5, 2006 meeting reflect that the meeting  
27 was called to discuss repairs to the sprinkler system. In addition, there was discussion  
28 "about recent neighborhood hostility". See Exhibit E. The minutes describe this  
29 discussion as follows:  
30

1 A discussion about recent neighborhood hostility took place. This  
2 centered on lawn maintenance equipment and work attempted to  
3 be done. There was an altercation by one member, considered to  
4 be "out of order". His hostility was aimed at Bill Tucker. Mr. Tucker  
5 reported the incident to the "authorities". Mr. Tucker felt that this  
6 personal affront was too much for him to continue on with his  
7 position of Chairman. He resigned and appointed Dick Lawson,  
8 Vice Chairman, to assume the balance of his term. Mr. Tucker will  
9 become treasurer at the request of the Chair.

10 27. As it did with the May 3, 2006 meeting minutes, the Association urged that  
11 the Board properly closed the May 5, 2006 meeting pursuant to A.R.S. § 33-1248(A)(2).  
12 Although there is again a small, typed banner across the minutes stating "special  
13 executive closed session 'litigation'", the minutes do not reflect a threat of litigation, nor  
14 can such a threat be fairly inferred from the contents of the minutes.

15 28. The minutes for the Board's June 13, 2006 meeting specifically reflect that  
16 the Board discussed "possible litigation against the Board and Association by Robert  
17 Swinehart." See Exhibit E. Thus, such discussion was properly closed. However, the  
18 Board also discussed the transition to Colby, and voted to hire Colby. This portion of  
19 the meeting plainly did not involve pending or threatened litigation, and should not have  
20 been closed.

21 *Board Expenditures; Expenditure in Excess of \$1,000 Spending Limit*

22 29. In or about April 2006, Spanishbrook's lawn maintenance provider advised  
23 Robert Tomich, in his capacity as the Board member responsible for lawn maintenance,  
24 that the irrigation system was losing pressure due to build-up within the pipes, and that  
25 the reduced pressure was preventing sprinkler heads at the far ends of the system from  
26 operating properly.

27 30. Mr. Tomich was advised that two repair options existed. The first option,  
28 which was the more costly of the two, was to replace the source water pipes. The  
29 second option was to add additional water circuits, thus reducing the number of  
30 sprinkler heads per circuit.

1           31. In or about April 2006, the Board authorized Mr. Tomich to proceed with  
2 the second repair option at a cost of \$2,800.00. There is no evidence that the Board  
3 reached this decision at either a general or special meeting, and the Association  
4 acknowledged at hearing that no such meeting had taken place.

5           32. By letter to the Spanishbrook owners dated May 9, 2006, the Board  
6 explained the nature of the repair and the expense that would be incurred, and  
7 requested that the owners approve a \$250.00 special assessment to cover the cost.  
8 This assessment is addressed in more detail at Findings of Fact Nos. 40-45.

9           33. In his petition, Mr. Swinehart alleged that the Board's approval of the  
10 sprinkler repair in the absence of a noticed meeting and vote of the members  
11 constituted a violation of A.R.S. §§ 33-1248(A) and (C), and 33-1255(C)(2), and Article  
12 II, Sections E(3), F(2), and H(1) of the Bylaws.

13           34. A.R.S. § 33-1248(C) provides:

14           Unless otherwise provided in the articles or bylaws of the  
15 association, for meetings of the board of directors that are held  
16 after the termination of declarant control of the association, notice  
17 to unit owners of meetings of the board of directors shall be given  
18 at least forty-eight hours in advance of the meeting by newsletter,  
19 conspicuous posting or any other reasonable means as determined  
20 by the board of directors. An affidavit of notice by an officer of the  
21 association is prima facie evidence that notice was given as  
22 prescribed by this section. Notice to unit owners of meetings of the  
23 board of directors is not required if emergency circumstances  
24 require action by the board before notice can be given. Any notice  
25 of a board meeting shall state the time and place of the meeting.  
26 The failure of any unit owner to receive actual notice of a meeting  
27 of the board of directors does not affect the validity of any action  
28 taken at that meeting.

29           35. Article II, Section E of the Bylaws provides, in pertinent part:

30           The Board of Management shall be responsible for the  
administration of the By-Laws and the Declaration of Restrictions  
which govern the use and occupancy of these sixteen (16)  
duplexes.

1. Management of the finances shall be supervised by the  
Treasurer and controlled by the Board of Management through the  
service of an accounting firm, bank, or savings and loan association

for collection and disbursement of funds as selected and directed by the Board of Management.

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1 2. The Board shall establish monthly maintenance and/or  
2 assessment charges based on accepted policies of operation and  
3 past experience. Any change in assessment must be approved at  
4 a general meeting of owner members.

5 3. The monthly assessment of each unit agreed to in the current  
6 budget shall be paid by the owner member either to the selected  
7 accounting firm or bank, or by an automatic deduction from the  
8 owner member's checking account, said assessment being payable  
9 on or before the first day of each month. The monies thus collected  
10 shall be known as the Operating Fund and will be used in  
11 satisfaction of budget items. *Other items may be authorized by the  
12 Board of Management, but limited to One Thousand (\$1,000.00)  
13 Dollars in any one instance. Amounts greater shall be approved by  
14 a majority of the unit owners.*

15 See Exhibit 4 (emphasis added).

16 36. Article II, Section F of the Bylaws provides, in pertinent part:

17 1. A major maintenance fund, composed of any funds held by the  
18 Condominium association in excess of those authorized in the  
19 budget for current operating expenses, or held in bank reserve for  
20 contingencies, shall be controlled by the Board of Management.

21 2. Expenditures in excess of One Thousand (\$1,000.00) dollars  
22 are to be made by special authority of the membership as provided  
23 for hereinafter in Section H-1 of these By-Laws . . . .

24 See Exhibit 4.

25 37. Article II, Section H of the Bylaws provides:

26 1. Major expenditures must be approved by a majority of all unit  
27 owners at a regular or special meeting. Major expenditures will be  
28 any cost to the Spanishbrook Condominium exceeding One  
29 thousand (\$1,000.00) dollars.

30 2. The proposed major expenditure shall be fully presented to the  
owners at least ten (10) days before the meeting. If a special  
assessment is necessary to complete this major expenditure,  
approval will be obtained at this meeting.

See Exhibit 4.

38. At hearing, the Association asserted that the Board was required to act  
immediately to repair the sprinkler system, as to do otherwise would have resulted in  
significant damage to Spanishbrook's common areas. The Administrative Law Judge

1 finds this argument unpersuasive. As the Board itself states in its May 9, 2006 letter:  
2 “During the last three years, the irrigation system on both the west and east ends of our  
3 property has been losing pressure causing the grass to die.” See Exhibit 4 (emphasis  
4 added). The sprinkler repair plainly posed an issue about which the Board had long  
5 been aware, and was of sufficient gravity and expense that the Board should have  
6 sought approval for the expenditure in advance, at a general or special meeting, as  
7 required by the Bylaws.

8 39. The Board appeared to suggest that because it subsequently sought  
9 approval for the repair through its request for a special assessment (see Findings of  
10 Fact Nos. 40-45, below), it satisfied the requirement of the Bylaws that it obtain approval  
11 from the condominium owners for the expenditure. The deficiency in this argument is  
12 that once the Board decided to proceed with the repairs, the owners had little choice but  
13 to approve the special assessment, as the alternative was to forego other needed  
14 improvements (such as painting).

15 *\$250 Special Assessment; Voting and Tabulation for \$250 Special Assessment*

16 40. As set forth above, on May 9, 2006 the Board sought authorization for a  
17 \$250.00 special assessment to cover the cost of the sprinkler repairs. The Board  
18 included with its letter to the unit owners of that date a ballot that it requested be  
19 returned not later than June 1, 2006. See Exhibit G.

20 41. Fifteen of the sixteen units returned ballots, which the Board forwarded to  
21 Colby for tabulation. By letter dated June 2, 2006, Colby returned the results of the  
22 balloting: 11 “yes” votes and 4 “no” votes. See Exhibit H.

23 42. In his petition, Mr. Swinehart asserted that the request for the special  
24 assessment, and the manner in which the ballots were tabulated, constituted violations  
25 of A.R.S. § 33-1248(A) and Article II, Sections E(2) and G(3) of the Bylaws.

26 43. While Mr. Swinehart relied on Sections E(2) and G(3) of the Bylaws, the  
27 relevant provisions are those set forth in Section H, which, although reproduced above,  
28 bear repeating here:

- 29 1. Major expenditures must be approved by a majority of all unit  
30 owners at a regular or special meeting. Major expenditures will be

1 any cost to the Spanishbrook Condominium exceeding One  
2 thousand (\$1,000.00) dollars.

3 2. The proposed major expenditure shall be fully presented to the  
4 owners at least ten (10) days before the meeting. *If a special  
5 assessment is necessary to complete this major expenditure,  
6 approval will be obtained at this meeting.*

7 (Emphasis added.)

8 44. The Bylaws do not provide for approval of a special assessment in the  
9 manner employed by the Board. Instead, the Bylaws specifically contemplate that a  
10 special assessment for a major expenditure, if needed, will be approved at a meeting  
11 called to discuss that expenditure.

12 45. Because the Board failed to act in accordance with the Bylaws, the special  
13 assessment is void.<sup>2</sup>

#### 14 *Delegation of Management Responsibility*

15 46. At its June 13, 2006 meeting, the Board voted to hire Colby to take over  
16 the management of Spanishbrook. The meeting minutes state with respect to this  
17 decision:

18 The Chairman announced that he and the Treasurer have met with  
19 Colby Management and discussed the possible transfer of the  
20 Board Management to Colby. The Chair noted that Colby has a  
21 great deal of experience in this area as they manage many  
22 condominium associations in Sun City. The Chairman distributed a  
23 synopsis of the costs in hiring Colby and the duties that would be  
24 performed. After a lengthy discussion, the Board, upon motion by  
25 the Treasurer and a second by the Secretary, voted to hire Colby  
26 Management to take over the management of Spanishbrook  
27 Condominium Association and instructed the Chairman and the  
28 Treasurer to enter into a contract with Colby. It should be recorded  
29 that the vote was unanimous.

30 See Exhibit E.

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<sup>2</sup> This determination renders the tabulation issue moot. Nonetheless, it follows that if the manner of proceeding with respect to the special assessment was defective, the subsequent tabulation was also defective.





provide for votes to be cast in person and by absentee ballot and may provide for voting by some other form of delivery.

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1           57. Mr. Swinehart correctly observes that A.R.S. § 33-1250(C) bans the use of  
2 proxies. However, A.R.S. § 33-1250(C) does not apply to Spanishbrook.

3           58. Under A.R.S. § 33-1201(B), the provisions of A.R.S. Title 33, Chapter 9  
4 (which includes A.R.S. § 33-1250(C)) govern condominiums created before January 1,  
5 1986 (as is the case with Spanishbrook) only to the extent that such provisions do not  
6 conflict with the declarations, articles or bylaws of the condominium. In this case, there  
7 is a direct conflict between the statute and the governing documents in that the Bylaws  
8 specifically allow for the use of proxies. Thus, the provisions of the Bylaws control, and  
9 the use of proxies at the annual meeting cannot be deemed to have been improper.

10           *Request for Budget Summary, Meeting Minutes, and Financial Records*

11           59. In a letter to Ms. Daly dated December 8, 2006, Mr. Swinehart stated:

12           As an owner in the Spanishbrook Condo Association, I am entitled  
13 to and am requiring you to deliver to me a copy of the minutes of all  
14 Board meetings prior to and after you were retained as the  
Managing Agent of our Association. Per ARS 33-1258.

15           I am also requesting permission to review all financial records of  
16 the Association from March 15, 2006 to date. See ARS 33-1258.

17           The proposed budget summary has not been provided as called for  
18 in ARS 33-1243. I would expect to also see a copy of that.

19 See Exhibit K.

20           60. Ms. Daly responded to Mr. Swinehart's request by letter dated December  
21 27, 2006. Ms. Daly stated:

22           Regarding copies of meeting minutes, both prior to me and after I  
23 was retained, I have none. As I have previously informed you,  
24 since I have been Spanish Brook Community Advisor, I have not  
25 attended any Board Meetings. In addition, I have not received  
26 copies of any minutes prior to being retained. If you wish to retain  
27 [sic] copies of any minutes you will need to address the board. I  
28 understand before 2006 you were a member of the Board. You  
should have already received copies of any minutes that were  
taken during Board Meetings while you served on the board.

29           The additional request you made for financial documents needs to  
30 be more specific. You may come into the office for copies of any  
financials, bills, general ledgers, etc. at the charge of 10 cents per

1 copy. If you are looking for any documents back farther than the  
2 current end of year financials, you will need to be more specific on  
3 what it is you need. Once I have a more specific request, I will do  
4 my best to assist you.

5 The Proposed Budget will be provided to the homeowners at the  
6 board meeting which is now tentatively scheduled for January  
7 2007. At that time the board will be reviewing the proposed budget  
8 and making decisions regarding it.

9 See Exhibit K.

10 61. According to Mr. Swinehart's testimony at hearing, he did not pursue his  
11 request further after receiving Ms. Daly's reply, but instead filed the petition that gave  
12 rise to this proceeding.

13 62. The Administrative Law Judge has considered Mr. Swinehart's letter and  
14 Ms. Daly's response, and finds that although Ms. Daly's letter may not have met Mr.  
15 Swinehart's expectations, such letter did not constitute an outright denial of Mr.  
16 Swinehart's requests and therefore did not violate either statute or Spanishbrook's  
17 governing documents.

#### 18 **CONCLUSIONS OF LAW**

19 1. In this proceeding, Mr. Swinehart bears the burden to prove, by a  
20 preponderance of the evidence, the violations alleged in his petition. See Arizona  
21 Administrative Code R2-19-119.

22 2. A preponderance of the evidence is "such proof as convinces the  
23 trier of fact that the contention is more probably true than not." Morris K. Udall, ARIZONA  
24 LAW OF EVIDENCE § 5 (1960).

25 3. Based on the Findings of Fact set forth above, the Administrative  
26 Law Judge concludes that Mr. Swinehart met his burden to prove that the Association  
27 violated statute and/or Spanishbrook's governing documents with respect to petition  
28 items 3, 4, 5, 6, 7, and 8. Conversely, Mr. Swinehart failed to demonstrate that the  
29 Association violated statute and/or Spanishbrook's governing documents with respect to  
30 petition items 1, 2, 9, 10, 11, 12, and 13.



1 Original mailed this \_\_\_\_\_ day of April, 2007 to:

2 Robert Barger, Director  
3 Department of Fire Building and Life Safety - H/C  
4 ATTN: Joyce Kesterman  
5 1110 W. Washington, Suite 100  
6 Phoenix, AZ 85007

7 Copy mailed this \_\_\_\_\_ day of April, 2007 to:

8 Robert B. Swinehart  
9 10329 W. Spanish Moss Lane  
10 Sun City, AZ 85373

11 Joseph T. Tadano, Esq.  
12 Burrell & Seletos  
13 P.O. Box 41880  
14 Phoenix, AZ 85080

15 By \_\_\_\_\_

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