

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3 RICHARD M. LECKEY

4 Petitioner,

5 vs.

6 DREAMLAND VILLA COMMUNITY CLUB

7 Respondent.

**No. 08F-H089008-BFS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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12 On January 20, 2009, a pre-hearing conference was held between the parties  
13 and the Administrative Law Judge at which time Richard M. Leckey ("Petitioner")  
14 clarified the single issue he wished to proceed with at the instant administrative hearing.  
15 Petitioner identified his single issue as being the validity of 404 signatures used as  
16 proxy votes at a January 2004 balloting<sup>1</sup>, which resulted in Dreamland Villa Community  
17 Club ("Respondent") becoming a planned community.<sup>2</sup>

18 Petitioner asserted that Respondent violated: Article V, Section 1 of the  
19 Respondent's Constitution, Article X, Sections 1 and 3, and Article XI, Section 3 and  
20 3(c) of Respondent's By-Laws.

21 The parties were afforded an opportunity to present oral argument in support of  
22 and against dismissal of the Petition.

23 Respondent argued that the act Petitioner complained of pre-dates the effective  
24 date of the enabling legislation that provided for administrative hearings regarding  
25 planned communities. Respondent also asserted that its Constitution is not a planned  
26 community document as defined in A.R.S. § 33-1802 and is not properly before this  
27 Tribunal. Respondent maintained that for the remaining allegations of violations of  
28 Respondent's By-Laws, even if they were to be considered violations that occurred, the

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<sup>1</sup> Subsequent to the above-mentioned oral argument, Petitioner filed a document captioned "Correction of Testimony", a copy of which is attached, wherein he states that signatures at issue were either counted as regular or absentee ballots..

<sup>2</sup> Prior to such action, Respondent operated as a voluntary club.

1 act complained of pre-dates the effective date of the enabling legislation and thus no  
2 violation of the cited By-Laws provisions can be found.

3 Petitioner asserted that even though the act complained of occurred in January  
4 2004, he did not become aware of such act until November 2007, which is after  
5 September 21, 2006, the effective date of the enabling legislation.

6 Although Petitioner represented that the above-mentioned alleged violations are  
7 cited in his Petition, it appears that the following alleged violations are not specifically  
8 cited in the Petition: Article X, Section 3, and Article XI, sections 3 and 3(c) of  
9 Respondent's by-Laws.

10 The powers and duties of administrative agencies such as the Office of  
11 Administrative Hearings are limited to those granted by statute and do not have any  
12 common law or inherent powers. *Ayala v. Hill*, 136 Ariz. 88, 664 P. 2d 238 (App. 1983).  
13 The Office of Administrative Hearings has limited jurisdiction in cases such as the  
14 instant one and can only determine whether the Association violated provisions of the  
15 planned community documents, i.e. Articles of Incorporation, Bylaws, Covenants  
16 Conditions and Restrictions or has violated A.R.S. Title 33, Chapter 9 or 16. See A.R.S.  
17 §§ 41-2198 and 41-2198.01(B).

18 Upon review of the documents that the parties filed with the Department of Fire,  
19 Building and Life Safety and consideration given to the information and arguments  
20 presented by the parties at the pre-hearing conference, the Administrative Law Judge  
21 concludes that Petitioner's single issue pertains to an act that occurred prior the  
22 effective date of the enabling legislation and does not give rise to a cause of action that  
23 can be brought before this Tribunal. The enabling legislation does not provide for any  
24 retroactive effect. Therefore, for any cause of action that exists it must come into  
25 existence or continue to exist after the enabling legislation. The instant matter does not  
26 present as an ongoing or current dispute within the spirit and intent of the enabling  
27 legislation. Consequently, it is unnecessary to address the alleged violations of  
28 Respondent's By-Laws, because there can be no violation found if there is no cause  
29 of action.  
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1 With respect to the alleged violation of Respondent's Constitution, the  
2 Administrative Law Judge concludes that such document is not a planned community  
3 document within the meaning of A.R.S. § 33-1802 and, therefore, the Administrative  
4 Law Judge does not have the jurisdiction to address whether a violation of that  
5 document occurred. Parenthetically, even if the document were to be considered a  
6 planned community document, the alleged act that pertains to the alleged violation of  
7 Respondent's Constitution occurred prior to the enabling legislation, and, as concluded  
8 above, no cause of action would exist that could be addressed by this Tribunal.

9 Based on the above,

10 **IT IS ORDERED** granting Respondent's Request to Dismiss Petition and  
11 vacating this matter from the docket of the Office of Administrative Hearings. Pursuant  
12 to A.R.S. § 41.2198.04(A), this Order is the final administrative decision and it is not  
13 subject to a request for rehearing.

14 Done this 26th day of January, 2009.

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18 Lewis D. Kowal  
19 Administrative Law Judge  
20

21 Copy e-mailed/mailed this \_\_\_\_ day of  
22 \_\_\_\_\_, 2009 to:

23 Robert Barger, Director  
24 Department of Fire Building and Life Safety - H/C  
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By \_\_\_\_\_