

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

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3 **ALJCERT ALJ decision certified as final**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

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7 JOSEPH DEBENEDICTIS,
8 Petitioner,

9 vs

10 SUNRISE DESERT VISTAS PROPERTY
11 OWNERS ASSOCIATION,
12 Respondent.

No. 12F-H1212006-BFS

**ADMINISTRATIVE
LAW JUDGE DECISION**

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14 **HEARING:** September 12, 2012

15 **APPEARANCES:** Petitioner Joseph DeBenedictis was represented by M. Philip
16 Escolar, Esq. Respondent Sunrise Desert Vistas Property Owners Association was
17 represented by Grace Violette, President.

18 **ADMINISTRATIVE LAW JUDGE:** Tammy L. Eigenheer

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20 **RULING**

21 This hearing involved an allegation made by Petitioner Joseph DeBenedictis that
22 Sunrise Desert Vistas Property Owners Association (Respondent) violated a provision
23 of the Declaration of Covenants, Conditions and Restrictions Affecting Real Property
24 (CC&Rs) by not imposing a \$400 initial regular assessment on parcels transferred to a
25 new party. The Administrative Law Judge concludes that Petitioner failed to prove that
26 Respondent violated the CC&Rs.

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28 **FINDINGS OF FACT**

29 1. At all times relevant to this matter, Petitioner resided in the
30 community known as Sunrise Desert Vistas (SDV).

1 2. In this proceeding, Petitioner bears the burden of proving by a
2 preponderance of the evidence that Respondent violated the CC&Rs. A.A.C. R2-19-
3 119.

4 3. A preponderance of the evidence is “[e]vidence which is of greater
5 weight or more convincing than the evidence which is offered in opposition to it; that is,
6 evidence which as a whole shows that the fact sought to be proved is more probable than
7 not.” BLACK’S LAW DICTIONARY 1182 (6th ed. 1990).

8 4. Petitioner argued the CC&Rs required the assessment and
9 collection of a \$400 initial regular assessment each time a parcel in SDV was
10 transferred to a new party. Petitioner maintained that Respondent violated the CC&Rs
11 by failing to assess and collect the \$400 initial regular assessment referenced in
12 Paragraph 4.G of the CC&Rs.

13 5. Respondent argued the CC&Rs required the assessment and
14 collection of a \$400 initial regular assessment only when a parcel in SDV was first
15 transferred from the developer to a party or when a parcel was first divided from a larger
16 parcel. Respondent alleged that it would be violating the CC&Rs if it assessed and
17 collected the \$400 initial regular assessment referenced in Paragraph 4.G of the
18 CC&Rs each time a parcel was transferred to a new party.

19 6. Assuming, *arguendo*, that Petitioner’s interpretation of the
20 CC&Rs is valid, Petitioner failed to present any evidence to establish that a parcel in
21 SDV had been transferred to a new party since the settlement agreement had been
22 entered into and that Respondent had failed to assess or collect the \$400 initial regular
23 assessment from that party as Petitioner argued the CC&Rs required.

24 7. While the settlement agreement may be evidence of
25 Respondent’s possible future action when a parcel is transferred to a new party, nothing
26 in evidence established an existing violation of the CC&Rs. It would inappropriate for
27 the Administrative Law Judge in this case to address possible future violations of the
28 CC&Rs.

29 8. Therefore, Petitioner failed to establish that Respondent violated
30 the CC&Rs.

