

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**

6
7 MARGO L. WALTER,

8 Petitioner,

9 VS

10 KINGSWOOD OWNERS ASSOCIATION,

11 Respondent.

No. 12F-H1213012-BFS

**ADMINISTRATIVE LAW JUDGE
DECISION**

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16 **BACKGROUND**

17 Margo L. Walter ("Petitioner") filed a Petition with the Arizona Department of Fire,
18 Building, and Life Safety ("Department") alleging the following violation by the
19 Kingswood Owners Association ("Respondent"):

20 Maintenance of private property funded by HOA membership
21 dues. City of Prescott annexed private streets on June 9,
22 2000. Kingswood Owners Association has continued to
23 maintain six private driveways in violation of Articles and
24 CC&R. Maintenance consists of periodic snow removal and
25 crack sealing. No agreement exists for this maintenance.

26 Respondent then filed a Response to Petition with the Department. In that
27 response, Respondent requested that the Petition be dismissed because the
28 Department lacked jurisdiction over Respondent, pursuant to A.R.S. § 41-2198.01,
29 because it is neither a mobile home park, a condominium, nor a planned community.

30 The Department forwarded the above-captioned matter to the Office of
Administrative Hearings, an independent agency, for an evidentiary hearing. A hearing
is scheduled to convene on April 4, 2013, at 8:00 a.m.

1 4. A.R.S. § 33-1802(4) defines a planned community as follows:

2 "Planned community" means a real estate
3 development which includes real estate owned and
4 operated by a nonprofit corporation or unincorporated
5 association of owners that is created for the purpose
6 of managing, maintaining or improving the property
7 and in which the owners of separately owned lots,
8 parcels or units are mandatory members and are
9 required to pay assessments to the association for
10 these purposes. Planned community does not include
11 a timeshare plan or a timeshare association that is
12 governed by chapter 20 of this title.

13 5. It is uncontroverted that Respondent, a nonprofit corporation, does not own any
14 real estate since it sold its private streets to the City of Prescott in 2000.
15 Therefore, Respondent is not a planned community pursuant to A.R.S. § 33-
16 1802(4).

17 6. Because Respondent is not a planned community pursuant to A.R.S. § 33-
18 1802(4), the Department lacks jurisdiction over Respondent under A.R.S. §§ 41-
19 2198 and 41-2198.01(B). Therefore, the Petition should be dismissed for lack of
20 jurisdiction.

21 7. Respondent is not entitled to its attorneys fees and costs pursuant to A.R.S. §
22 41-1092.12 because that statute applies specifically to the Arizona Department of
23 Environmental Quality.

24 **RECOMMENDED ORDER**

25 IT IS ORDERED that the Petition in this matter be dismissed.

26 IT IS FURTHER ORDERED that Respondent's request for an award of its costs
27 and attorneys fees pursuant to A.R.S. § 41-1092.12 be denied.

28 *In the event of certification of the Administrative Law Judge Decision by the*
29 *Director of the Office of Administrative Hearings, the effective date of the Order shall be*
30 *the date of the certification.*

Done this day, March 29, 2013.

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/s/ Brian Brendan Tully
Administrative Law Judge

Transmitted electronically to:
Gene Palma, Director
Department of Fire Building and Life Safety