

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 JO ANN RIPLEY

8 Petitioner,

9 vs

10 AGUA DULCE HOMEOWNERS
11 ASSOCIATION,

12 Respondent.

No. 14F-H1414005-BFS

**ADMINISTRATIVE
LAW JUDGE DECISION**

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15 **HEARING:** September 2, 2014, at 8:00 a.m.

16 **APPEARANCES:** Jo Ann Ripley (hereinafter "Ms. Ripley" or "Petitioner")
17 appeared on her own behalf. Agua Dulce Homeowners Association (hereinafter "Agua
18 Dulce") was represented by its attorney, Craig Armstrong, Esq., Brown Olcott, PLLC.

19 **ADMINISTRATIVE LAW JUDGE:** M. Douglas

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21 Evidence and testimony were presented and the following Findings of Fact,
22 Conclusions of Law, and Recommended Order are made:

23 **FINDINGS OF FACT**

- 24 1. The Department of Fire, Building and Life Safety (the "Department") is
25 authorized by statute to receive Petitions for Hearings from members of
26 homeowners' associations and from homeowners' associations in Arizona.
- 27 2. Agua Dulce is a homeowners' association located in Tucson, Arizona.
- 28 3. Ms. Ripley owns a residence in and is a member of Agua Dulce.
- 29 4. Ms. Ripley filed a petition with the Department alleging that Agua Dulce
30 had violated the provisions of A.R.S. § 33-1804(C) and (D). Petitioner specifically
alleged as follows:

1 On February 28, 2014, petitioner discovered [that] the Association
2 removed objections, changed votes and altered previously
3 approved minutes of Board of Directors' meeting on October 30,
4 November 5, and November 26, 2013, and misrepresented the
Association's actions to homeowners by publishing the altered
documents on the Association's website.

- 5 5. Respondent's Answer to the Petition provided, in part, as follows:
6 All of the complaint items in the petition are denied.

7
8 **Testimony of Jo Ann Ripley**

9 6. Ms. Ripley testified that she had previously been the President of the
10 Board of Directors (hereinafter "board") and Information Officer for Agua Dulce. Ms.
11 Ripley stated that the approved minutes that were published on the Agua Dulce
12 website for the board meetings that were held on October 30, November 5, and
13 November 26, 2013, had been improperly altered by the board. Ms. Ripley testified
14 that she had prepared a partial transcript of a personal recording that she had made
15 of the November 26, 2013 board meeting.¹ Ms. Ripley tried to play the recording
16 during the hearing but it was inaudible.

17 7. Ms. Ripley testified that the minutes for the October 30, 2013 board
18 meeting included items that were not present on the recording that she made of the
19 meeting. Ms. Ripley stated that there were numerous changes in the minutes for the
20 October 30, 2013 board meeting.²

21 8. Ms. Ripley testified that the minutes for the November 5, 2013 board
22 meeting did not include objections that she made during the meeting and that the
23 minutes were not in accordance with her notes of the meeting, as supported by her
24 recording of the November 5, 2013 board meeting.³

25 9. Ms. Ripley testified that the minutes for the November 26, 2013 board
26 meeting were altered and not in accordance with her notes of the meeting, as
27 supported by her recording of the November 26, 2013 meeting.⁴

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¹ See Exhibit 2 (Transcript of recording of November 26, 2013 board meeting).

² See Exhibit 3 (Petitioner's corrected minutes for October 30, 2013 board meeting).

³ See Exhibit 5 (Petitioner's corrected minutes for November 5, 2013 board meeting).

⁴ See Exhibit 6 (Petitioner's corrected minutes for November 26, 2013 board meeting).

1 10. Ms. Ripley testified that Agua Dulce’s published minutes did not include all
2 items discussed during the October 30, November 5, November 26, 2013 board
3 meetings and that the minutes were altered by adding items that were not discussed
4 during the board meetings. Ms. Ripley stated that she had requested that Agua
5 Dulce remove the altered minutes from Agua Dulce’s website.

6 11. Ms. Ripley acknowledged that she had served on the board for Agua
7 Dulce from 2011, through February 26, 2014.

8 12. Ms. Ripley acknowledged that Agua Dulce had requested copies of her
9 recordings of board meetings. Ms. Ripley stated that she did not know how to make
10 copies of the recordings. Ms. Ripley testified that she had offered to allow members
11 of Agua Dulce to listen to her recordings of the board meetings.

12 **Testimony of Linda Ware**

13 13. Linda Ware (hereinafter “Ms. Ware”) testified that she had lived in Agua
14 Dulce for approximately seven years and that she was currently president of the
15 board. Ms. Ware stated that she was familiar with the petition at issue. Ms. Ware
16 testified that the minutes for the meetings of the board are not supposed to be
17 transcripts of the meetings.

18 14. Ms. Ware testified that the minutes were “bare bones” or summary
19 minutes. Ms. Ware stated that there were a lot of “he said, she said” disputes
20 regarding the minutes in Ms. Ripley’s petition. Ms. Ware testified that the board
21 reviewed the contested minutes before the board ratified them.

22 15. Ms. Ware testified that Agua Dulce did not have electronic recordings of
23 its meetings because the property management company that had been responsible
24 for the recording of meetings had erased the recordings so that the tapes could be
25 utilized again.

26 16. Ms. Ware testified that Agua Dulce had repeatedly requested the copies of
27 the recordings of the disputed meetings that Ms. Ripley supposedly had in her
28 possession. Ms. Ware stated that Petitioner had failed to provide Agua Dulce with
29 copies of the recordings despite Agua Dulce’s repeated requests that she do so.
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1 17. Ms. Ware testified that the new property management company was now
2 maintaining recordings of all board meetings. Ms. Ware stated that board had also
3 expanded the amount of time provided for the monthly board meetings in an attempt
4 to provide additional access to the members of Agua Dulce.⁵

5 18. Ms. Ware testified that Ms. Ripley was removed as a president of the
6 board and as information officer for Agua Dulce following a dispute regarding
7 contract performance by a security camera company.⁶ Ms. Ware stated that Ms.
8 Ripley had previously been responsible for the posting the minutes on the website
9 for Agua Dulce. Ms. Ware testified that when the board discovered that the minutes
10 had not been published, the board took immediate steps to ensure that the minutes
11 were published on the website for Agua Dulce.

12 19. Ms. Ware's testimony is found to be credible.

13 **Testimony of Daniel Castillo**

14 20. Daniel Castillo (hereinafter "Mr. Castillo") testified that he is the current
15 property manager for Agua Dulce. Mr. Castillo stated that he started managing
16 Agua Dulce on January 7, 2014. Mr. Castillo testified that he had three years'
17 experience as a property manager.

18 21. Mr. Castillo testified that he was aware of the dispute regarding the Agua
19 Dulce board meeting minutes.⁷ Mr. Castillo stated that the previous property
20 manager had failed to maintain recordings of the board meetings. Mr. Castillo
21 testified that he had requested copies of the recordings made by Ms. Ripley. Mr.
22 Castillo stated that Ms. Ripley did not provide any recordings to him, despite his
23 request.

24 22. Mr. Castillo testified that Agua Dulce's minutes were "bare bones"
25 minutes. Mr. Castillo stated that the minutes would include motions, actions, and
26 important topics. Mr. Castillo testified that the minutes would not reflect any
27 discussions that took place during the board meetings.

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30 ⁵ See Exhibit R-7 (October 22, 2013 minutes).

⁶ See Exhibit R-6 (November 26, 2013 minutes).

⁷ See Exhibit R-16 (March 18, 2014 email chain).

1 23. Mr. Castillo testified that minutes did not contain a transcript of the
2 meeting. Mr. Castillo stated that in his personal experience, other HOAs follow the
3 same procedure. Mr. Castillo testified that he was not aware of any HOA that
4 provided transcription services for board meetings.

5 24. Mr. Castillo acknowledged that Ms. Ripley had offered to play her
6 recordings of the board meetings to the board.

7 25. Mr. Castillo's testimony is found to be credible.

8 **Testimony of Mark Carroll**

9 26. Mark Carroll (hereinafter "Mr. Carroll") testified that he had previously
10 been a member of the board. Mr. Carroll stated that he recently stepped down from
11 the board due to health concerns. Mr. Carroll testified that he was aware of Ms.
12 Ripley's dispute regarding the minutes for Agua Dulce.

13 27. Mr. Carroll testified that when Ms. Ripley was president of Agua Dulce, the
14 meetings were recorded by the property manager. Mr. Carroll stated that the
15 property manager used her personal recorder and the recordings were utilized by
16 the property manager to help her type the minutes of the board meeting. Mr. Carroll
17 testified that after the minutes were prepared, the property manager would use the
18 same tape to record the next meeting.

19 28. Mr. Carroll testified that no recordings were maintained by the property
20 manager or Agua Dulce. Mr. Carroll stated that the recordings were not official
21 records of Agua Dulce. Mr. Carroll testified that the disputed minutes of the board
22 meetings had been approved and ratified by the board.

23 29. Mr. Carroll testified that he was not aware that the property manager was
24 not maintaining the recordings of the board meetings until he and Ms. Ware asked to
25 listen to the tapes of the meetings whose minutes were in dispute. Mr. Carroll stated
26 that he had believed that the property manager had been maintaining a library of
27 tapes of the board meetings. Mr. Carroll testified that Agua Dulce discovered that no
28 recordings were maintained by the property manager. Mr. Carroll opined that there
29 was no requirement that electronic recordings of the board meetings be maintained.
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1 2. Pending or contemplated litigation.

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

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

15 5. Discussion of a member's appeal of any violation cited or
16 penalty imposed by the association except on request of the
17 affected member that the meeting be held in an open session.

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

C. Notwithstanding any provision in the declaration, bylaws or
other community documents, for meetings of the board of
directors that are held after the termination of declarant control of

1 the association, notice to members of meetings of the board of
2 directors shall be given at least forty-eight hours in advance of the
3 meeting by newsletter, conspicuous posting or any other
4 reasonable means as determined by the board of directors. An
5 affidavit of notice by an officer of the corporation is prima facie
6 evidence that notice was given as prescribed by this section.
7 Notice to members of meetings of the board of directors is not
8 required if emergency circumstances require action by the board
9 before notice can be given. Any notice of a board meeting shall
10 state the time and place of the meeting. The failure of any
11 member to receive actual notice of a meeting of the board of
12 directors does not affect the validity of any action taken at that
13 meeting.

14 D. Notwithstanding any provision in the declaration, bylaws or
15 other community documents, for meetings of the board of
16 directors that are held after the termination of declarant control of
17 the association, all of the following apply:

- 18 1. The agenda shall be available to all members attending.
- 19 2. An emergency meeting of the board of directors may be called
20 to discuss business or take action that cannot be delayed until the
21 next regularly scheduled board meeting. The minutes of the
22 emergency meeting shall state the reason necessitating the
23 emergency meeting. The minutes of the emergency meeting shall
24 be read and approved at the next regularly scheduled meeting of
25 the board of directors.
- 26 3. A quorum of the board of directors may meet by means of a
27 telephone conference if a speakerphone is available in the
28 meeting room that allows board members and association
29 members to hear all parties who are speaking during the meeting.
- 30 4. Any quorum of the board of directors that meets informally to
discuss association business, including workshops, shall comply
with the open meeting and notice provisions of this section without
regard to whether the board votes or takes any action on any
matter at that informal meeting.

E. It is the policy of this state as reflected in this section that all
meetings of a planned community, whether meetings of the
members' association or meetings of the board of directors of the
association, be conducted openly and that notices and agendas
be provided for those meetings that contain the information that is

1 reasonably necessary to inform the members of the matters to be
2 discussed or decided and to ensure that members have the ability
3 to speak after discussion of agenda items, but before a vote of the
4 board of directors is taken. Toward this end, any person or entity
5 that is charged with the interpretation of these provisions shall
6 take into account this declaration of policy and shall construe any
7 provision of this section in favor of open meetings

8 **CONCLUSIONS OF LAW**

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10 1. A.R.S. § 41-2198.01 permits an owner or a planned community organization to
11 file a petition with the Department for a hearing concerning violations of planned
12 community documents or violations of statutes that regulate planned communities.
13 That statute provides that such petitions will be heard before the Office of
14 Administrative Hearings.

15 2. The burden of proof at an administrative hearing falls to the party asserting a
16 claim, right, or entitlement and the standard of proof on all issue in this matter is by a
17 preponderance of the evidence. See A.A.C. R2-19-119.

18 3. Proof by “preponderance of the evidence” means that it is sufficient to persuade
19 the finder of fact that the proposition is “more likely true than not.” *In re Arnold and*
20 *Baker Farms*, 177 B.R. 648, 654 (9th Cir. BAP (Ariz.) 1994).

21 4. Ms. Ripley alleged that the published minutes for Agua Dulce failed to include all
22 items discussed during the October 30, November 5, and November 26, 2013 board
23 meetings and that the minutes were altered by adding items that were not discussed
24 during the board meetings and that the altered minutes were not accurate. Ms. Ripley
25 stated that the transcript that she prepared from one of the recordings that she had made
26 of the board meeting supported her allegations. The tape recording that Ms. Ripley
27 attempted to play at the hearing was inaudible. The minutes of the October 30,
28 November 5, and November 26, 2013 board meetings were all reviewed and then
29 approved and ratified by the board for Agua Dulce. This Tribunal concludes that Ms.
30

1 Ripley failed to satisfy her burden to prove by a preponderance of the evidence that
2 Agua Dulce violated the charged provision of A.R.S. § 33-1804.

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4 **RECOMMENDED ORDER**

5 In view of the foregoing, it is ORDERED that Agua Dulce be deemed the
6 prevailing party in this matter.

7 It is further ORDERED that this matter shall be dismissed.

8 *In the event of certification of the Administrative Law Judge Decision by the*
9 *Director of the Office of Administrative Hearings, the effective date of this Order will*
10 *be five (5) days from the date of that certification.*

11 Done this day, September 17, 2014.

12 /s/ M. Douglas
13 Administrative Law Judge

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15 Transmitted electronically to:

16
17 Gene Palma, Director
18 Department of Fire Building and Life Safety
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