

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 William P. Lee,

8 Petitioner,

9  
10 vs

11 Greenlaw Townhouses Unit Two HOA,

12 Respondent

**No. 14F-H1415007-BFS**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

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14  
15 **HEARING:** February 4, 2015, at 8:00 a.m.

16 **APPEARANCES:** William P. Lee (hereinafter "Petitioner" or "Mr. Lee") appeared  
17 on this own behalf. Greenlaw Townhouses Unit Two HOA (hereinafter "Greenlaw" or  
18 "Respondent") was represented by Keith Hammond, Esq., Keith A. Hammond P.C.

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

20  
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 authorized by  
25 statute to receive Petitions for Hearings from members of homeowners' associations  
26 and from homeowners' associations in Arizona.
- 27 2. Greenlaw is a homeowners' association located in Flagstaff, Arizona.
- 28 3. Petitioner owns a residence in and is a member of Greenlaw.
- 29 4. Petitioner filed a petition with the Department alleging that Greenlaw had violated  
30 certain provisions of its Bylaws and applicable Arizona statutes. Petitioner alleged that  
Greenlaw had violated the provisions of A.R.S. §§ 33-1812(A)(4), 33-1813(A)(1), 33-

1804(B), (D)(2), and (E), and that Greenlaw had violated its Bylaw Articles III, IV, and

XI. Petitioner specifically alleged as follows:

a. April 30, 2014, Date on the Cover Letter/Notice included with the Ballot to Amend Bylaw Article IV Section 2. The amendment was done in an improper and deceitful manner, in violation of Bylaw Article XI Section 1&2; Bylaw Article II Section 3&4; A.R.S. § 33-1812(A)(4); A.R.S. § 33-1804(B), (E); and ignoring that more than three Directors have been elected at every Annual Meeting since I bought my townhouse in 2001.

b. Sept. 30, 2014. Date on the Cover Letter/Notice included with the "Secret Ballot" to remove me from the Board. This Special Meeting/Election was done in an improper and deceitful manner in violation of A.R.S. § 33-1813(A)(1); A.R.S. § 33-1812(A)(4); A.R.S. § 33-1804(B),(D)(2),(E); Bylaw IV Section 5; Bylaw III Section 3&4.

c. Sept. 30, 2014. Misuse of an Emergency Board Meeting, and the resulting Cover Letter/Notice and Special Meeting/Election, to harass and libel me. In violation of A.R.S. § 33-1804(B), (D)(2), (E); A.R.S. § 33-1813(A)(1); Bylaw Article IV(7); Bylaw Article III Section[s] 3 & 4.

5. Greenlaw's Answer to the Petition provided, in relevant part, as follows:

The Board of [Greenlaw] denies the allegations contained in alleged violation description "a".

All of the documents that support this denial were included in Petitioner's Petition. A vote of the members was sought to increase the size of the Board from 3 to 5 or 7 directors. This overwhelmingly passed once a quorum was achieved. As far as the absentee ballots not specifying a date and time by which the ballot must be delivered to the Board as required by A.R.S. § 33-1812(A)(4), this information was left off in order to allow the property manager to contact missing voters to get them to vote in order to achieve a quorum. In the past achieving a quorum for this Association has proven difficult and has cost the Association additional sums for repeated mailing to achieve a result. The reason for the special election is set forth in the documents provided by Petitioner. This was a non-controversial issue and was only done to allow greater participation of the Members and to be in compliance with Article IV, Section 2 of the Bylaws. Petitioner concedes that "*more than three directors have been elected at every annual meeting since [he] bought [his] townhouse*



1 removal from the Board was improper. Mr. Lee asserted that the Bylaws for Greenlaw  
2 were clear. Mr. Lee stated that the Bylaws specifically prevented a change in the size  
3 of the Board by members by the Board. Mr. Lee testified that the members of  
4 Greenlaw must vote to increase the size of the Board and that the majority of members  
5 must approve and increase the size of the Board. Mr. Lee stated that a simple quorum  
6 was insufficient to pass such a vote.

7 7. Mr. Lee acknowledged that he sent a letter out to a litigant who was involved in a  
8 lawsuit with Greenlaw. Mr. Lee testified that the letter was mailed with the knowledge  
9 of the other members of the Board. Mr. Lee stated that "there was no question" that  
10 the other Board members were aware of the letter and that he believed that he had  
11 their approval. Mr. Lee denied that he had ever been abusive to anyone on the Board.  
12 Mr. Lee testified that there had been no request from the members of Greenlaw to  
13 remove him from the Board.

14 8. Judith W. Kyrala (hereinafter "Ms. Kyrala") testified that she is the secretary for the  
15 Board. Ms. Kyrala stated that she is a homeowner in Greenlaw and had been a  
16 member of the Board since 2001. Ms. Kyrala said that she was a member of the Board  
17 when Mr. Lee was removed from the Board.

18 9. Ms. Kyrala asserted that the Petitioner was difficult to work with. Ms. Kyrala testified  
19 that "the straw that broke the camel's back" was when Petitioner sent a letter out to a  
20 litigant who was involved in a lawsuit with Greenlaw without the knowledge or approval  
21 of the Board.

22 10. Ms. Kyrala testified that the amendment to increase the size of the Board was in  
23 conformance with the Bylaws of Greenlaw. Ms. Kyrala stated the amendment to  
24 increase the size of the Board and the amendment to remove Mr. Lee from the Board  
25 were approved by the majority of the members of Greenlaw. Ms. Kyrala said that  
26 elections were held to allow members to vote on the amendments.

27 11. Ms. Kyrala testified that the Board did not act unilaterally. Ms. Kyrala stated that  
28 Greenlaw increased the number of Board members because it was important for the  
29 functioning of the Board not to have an even number of Board members. Ms. Kyrala  
30 said that it was difficult to get a quorum. Ms. Kyrala said that the Board sought legal

1 advice on the issue and followed the advice that was given.

2 12. Ms. Kyrala testified that Board meetings are always open to members of  
3 Greenlaw and that the Board encourages members to participate. Ms. Kyrala stated  
4 that Greenlaw tried to get members to run for election to the Board. Ms. Kyrala said  
5 that it was difficult to get members to serve on the Board.

6 13. Melanie Lashlee (hereinafter "Ms. Lashlee") testified that she is the Community  
7 Association Manager for Greenlaw. Ms. Lashlee stated that she works for HOMECEO.  
8 Ms. Lashlee said she had worked for HOMECEO for approximately two years.

9 14. Ms. Lashlee testified that she believed that the Board had been unable to change  
10 the number of directors before because of the inability to achieve a quorum of  
11 homeowners to vote in an election. Ms. Lashlee stated that the Board obtained a legal  
12 opinion regarding the change in the size of the Board. Ms. Lashlee said that the  
13 Petitioner disagreed with the legal opinion and that the disagreement created  
14 dissension on the Board.

15 15. Ms. Lashlee testified that the dissension led to a special meeting to amend the  
16 bylaws of Greenlaw to increase the size of the Board. Ms. Lashlee stated that a  
17 quorum was achieved for the increase in the size of the Board. Ms. Lashlee said that  
18 the ballot measure passed with a majority of votes. Ms. Lashlee stated that it  
19 constantly takes work to get members to return their ballots and cast their votes.

20 16. Ms. Lashlee testified that after the measure passed, Greenlaw conducted an  
21 annual meeting and the Board voted to increase the authorized number of directors to  
22 five. Ms. Lashlee stated that Petitioner's name was on the ballot but that he did not  
23 receive enough votes to be re-elected to the Board. Ms. Lashlee testified that  
24 Petitioner was aggressive and volatile in meetings and difficult to deal with. Ms.  
25 Lashlee stated that Petitioner issued a letter to a litigant that was involved in a lawsuit  
26 with Greenlaw. Ms. Lashlee said Petitioner signed the letter with the name of the  
27 Board. Ms. Lashlee stated that the Board was unaware that Petitioner was going to  
28 issue a letter on the Board's behalf.

29 17. Ms. Lashlee testified that the Petitioner was contentious in meetings of the Board  
30 while he was a member of the Board. Ms. Lashlee stated that ultimately a decision

1 was made to remove Petitioner from the Board. Ms. Lashlee said the ballot to remove  
2 Petitioner as a Board member was a secret ballot. Ms. Lashlee stated more than a  
3 quorum was achieved for the vote to remove the Petitioner as a member of the Board.

4 **GREENLAW BYLAWS REFERENCED AT THE HEARING**

5 1. Article III provides, in relevant part, as follows:

6 Section 3:

7 Special meetings of the lot owners, for any purpose or purposes,  
8 unless otherwise prescribed by statute or by the Articles of  
9 Incorporation, may be called at any time by the President, or by  
10 the Board of Directors, or by any two or more members of the  
11 Board of Directors, or by any one or more shareholders holding  
12 not less than one-third of the voting power of the corporation.

13 Section 4:

14 Notices of meetings shall be in writing and signed by any officer,  
15 director or stockholder of the corporation. Such notice shall state  
16 the purpose or purposes for which the meeting is called and the  
17 time when, and the place where, it is to be held. A copy of such  
18 notice shall be either delivered personally to or shall be mailed,  
19 postage prepaid, to each stockholder of record entitled to vote at  
20 such meeting not less than ten (10) nor more than sixty (60) days  
21 before such meeting. If mailed, it shall be directed to a  
22 stockholder at his address as it appears upon the records of the  
23 corporation and upon such notice, the service thereof shall be  
24 complete, and the time of the notice shall begin to run from the  
25 date upon which such notice is deposited in the mail for  
26 transmission to such stockholder. Personal delivery of any such  
27 notice to any officer of a corporation or association, or to any  
28 member of a partnership shall constitute delivery of such notice to  
29 such corporation, association or partnership. In the event of the  
30 transfer of stock after delivery or mailing of the notice of and prior  
to the holding of the meeting, it shall not be necessary to deliver  
nor mail notice of the meeting to the transferee.

26 2. Article IV provides, in relevant part, as follows:

27 Section 2:

28 The initial number of directors shall be three (3). The number of  
29 directors may be changed any time by a vote of the shareholders.  
30

1 Section 5:

2 The entire Board of Directors or any individual director may be  
3 removed from office by a vote of shareholders by a majority of the  
4 outstanding shares entitled to vote at an election of directors.  
5 However, unless the entire board is removed, an individual  
6 director shall not be removed if the number of votes voted against  
7 the resolution of his removal exceeds the quotient arrived at when  
8 the total number of outstanding shares entitled to vote is divided  
9 by one plus the authorized number of directors. If any or all  
10 directors are so removed, new directors may be elected at the  
11 same meeting of shareholders.

12 Section 7:

13 Special meetings of the Board of Directors for any purpose or  
14 purposes may be called at any time by the President or by any  
15 two directors. Written notice of special meetings of the Board of  
16 Directors shall be given to each of the directors at least ten (10)  
17 days before the date of the meeting.

18 3. Article XI provides, in relevant part, as follows:

19 Section 1:

20 These bylaws may be repealed or amended at the annual  
21 meeting, or at any other meeting of the shareholders called for  
22 that purpose, by a vote of shareholders entitled to exercise a  
23 majority of the voting power of the corporation, or by written  
24 assent of such shareholders.

25 Section 2:

26 Subject to the right of the shareholders to adopt, amend or repeal  
27 bylaws, the Board of Directors may adopt, amend or repeal any of  
28 these bylaws other than a bylaw or amendment thereof changing  
29 the authorized number of Directors.

30 **PROVISIONS OF LAW REFERENCED AT HEARING**

1. A.R.S. § 33-1812(A)(4) provides, in relevant part, as follows:

Notwithstanding any provision in the community documents, after  
termination of the period of declarant control, votes allocated to a  
unit may not be cast pursuant to a proxy. The association shall  
provide for votes to be cast in person and by absentee ballot and,

1 in addition, the association may provide for voting by some other  
2 form of delivery, including the use of e-mail and fax delivery.  
3 Notwithstanding section 10-3708 or the provisions of the  
4 community documents, any action taken at an annual, regular or  
5 special meeting of the members shall comply with all of the  
6 following if absentee ballots or ballots provided by some other  
7 form of delivery are used:

8 (4) The ballot specifies the time and date by which the ballot must  
9 be delivered to the board of directors in order to be counted,  
10 which shall be at least seven days after the date that the board  
11 delivers the unvoted ballot to the member.

12 2. A.R.S. § 33-1813(A) provides, in relevant part, as follows:

13 Notwithstanding any provision of the declaration or bylaws to the  
14 contrary, the members, by a majority vote of members entitled to  
15 vote and voting on the matter at a meeting of the members called  
16 pursuant to this section at which a quorum is present, may  
17 remove any member of the board of directors with or without  
18 cause, other than a member appointed by the declarant. For  
19 purposes of calling for removal of a member of the board of  
20 directors, other than a member appointed by the declarant, the  
21 following apply:

22 1. In an association with one thousand or fewer members, on  
23 receipt of a petition that calls for removal of a member of the  
24 board of directors and that is signed by the number of persons  
25 who are entitled to cast at least twenty-five per cent of the votes in  
26 the association or one hundred votes in the association,  
27 whichever is less, the board shall call and provide written notice of  
28 a special meeting of the association as prescribed by section 33-  
29 1804, subsection B.

30 2. A.R.S. § 33-1804 provides, in relevant part, as follows:

B. Notwithstanding any provision in the community documents, all  
meetings of the members' association and the board shall be held  
in this state. A meeting of the members' association shall be held  
at least once each year. Special meetings of the members'  
association may be called by the president, by a majority of the  
board of directors or by members having at least twenty-five per  
cent, or any lower percentage specified in the bylaws, of the votes  
in the association. Not fewer than ten nor more than fifty days in  
advance of any meeting of the members the secretary shall cause  
notice to be hand-delivered or sent prepaid by United States mail

1 to the mailing address for each lot, parcel or unit owner or to any  
2 other mailing address designated in writing by a member. The  
3 notice shall state the time and place of the meeting. A notice of  
4 any special meeting of the members shall also state the purpose  
5 for which the meeting is called, including the general nature of any  
6 proposed amendment to the declaration or bylaws, changes in  
7 assessments that require approval of the members and any  
8 proposal to remove a director or an officer. The failure of any  
9 member to receive actual notice of a meeting of the members  
10 does not affect the validity of any action taken at that meeting.

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

15 2. An emergency meeting of the board of directors may be called  
16 to discuss business or take action that cannot be delayed until the  
17 next regularly scheduled board meeting. The minutes of the  
18 emergency meeting shall state the reason necessitating the  
19 emergency meeting. The minutes of the emergency meeting shall  
20 be read and approved at the next regularly scheduled meeting of  
21 the board of directors.

22 E. It is the policy of this state as reflected in this section that all  
23 meetings of a planned community, whether meetings of the  
24 members' association or meetings of the board of directors of the  
25 association, be conducted openly and that notices and agendas  
26 be provided for those meetings that contain the information that is  
27 reasonably necessary to inform the members of the matters to be  
28 discussed or decided and to ensure that members have the ability  
29 to speak after discussion of agenda items, but before a vote of the  
30 board of directors is taken. Toward this end, any person or entity  
that is charged with the interpretation of these provisions shall  
take into account this declaration of policy and shall construe any  
provision of this section in favor of open meetings.

#### **CONCLUSIONS OF LAW**

1. A.R.S. § 41-2198.01 permits an owner or a planned community organization to  
file a petition with the Department for a hearing concerning violations of planned  
community documents or violations of statutes that regulate planned communities.

1 That statute provides that such petitions will be heard before the Office of  
2 Administrative Hearings.

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

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

9 4. The preponderance of the evidence established that the Board for Greenlaw  
10 failed to obtain a signed petition by the members that called for Petitioner’s removal  
11 from the Board of Directors as required by A.R.S. § 33-1813(A)(1) before holding the  
12 special meeting to remove him. This Tribunal concludes that Greenlaw violated the  
13 provisions of A.R.S. § 33-1813(A)(1).

14 5. Article XI of Greenlaw’s bylaws allows the Board at a duly noticed Board meeting  
15 by majority vote to amend the bylaws other than a bylaw or amendment changing the  
16 authorized number of directors on the Board. Article IX(1) of Greenlaw’s bylaws allows  
17 an amendment of the bylaws changing the number of authorized members on the  
18 Board to be voted on by members at a meeting of the shareholders called for that  
19 purpose. The preponderance of the evidence is insufficient and fails to support a  
20 finding that the vote conducted by Greenlaw to amend Article IV(2) violated Greenlaw’s  
21 bylaws or applicable statute.

22 6. The preponderance of the evidence failed to support a finding that the vote  
23 conducted by Greenlaw to increase the number of directors on the Board for Greenlaw  
24 violated the charged provisions of A.R.S. §§ 33-1812(A)(4), 33-1804(B), (D)(2), or (E)  
25 or any of Greenlaw’s bylaws. This Tribunal concludes that Petitioner failed to satisfy  
26 his burden of proof on this portion of his petition.

27 **RECOMMENDED ORDER**

28 In view of the foregoing, it is ORDERED that Petitioner be deemed the prevailing  
29 party in this matter.  
30

1 It is further ORDERED that Greenlaw comply with the applicable provisions of  
2 A.R.S. § 33-1813(A)(1) in the future.

3 It is further ORDERED that Greenlaw pay Petitioner one-half of his filing fee of  
4 \$2,000.00, to be paid to the Petitioner within thirty (30) days of this Order.

5 It is further ORDERED that Greenlaw pay a civil penalty of \$200.00 to the  
6 Department within thirty (30) days of this Order.

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

10 Done this day, February 16, 2015.

11 /s/ M. Douglas  
12 Administrative Law Judge

13 Transmitted electronically to:

14 Gene Palma, Director  
15 Department of Fire Building and Life Safety  
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