

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 KENNETH NOWELL,

8 Petitioner,

9
10 vs

11 GREENFIELD VILLAGE RV RESORT,

12 Respondent.

No. 14F-H1415011-BFS

**ADMINISTRATIVE LAW JUDGE
DECISION**

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14 **HEARING:** April 21, 2015

15 **APPEARANCES:** Kenneth Nowell on his own behalf; Steven D. Leach, Esq. for
16 Respondent

17 **ADMINISTRATIVE LAW JUDGE:** Thomas Shedden

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19 **FINDINGS OF FACT**

20 1. On March 9, 2015, the Arizona Department of Fire, Building and Life
21 Safety ("Department") issued a Notice of Hearing setting the above-captioned matter for
22 hearing at 8:00 a.m. April 21, 2015, at the Office of Administrative Hearings in Phoenix,
23 Arizona.

24 2. Petitioner Kenneth Nowell is a resident of Respondent Greenfield Village
25 RV Resort Association, Inc.

26 3. Greenfield Village is operated under its Articles of Incorporation, Bylaws,
27 and Covenants, Conditions, and Restrictions (CC&Rs¹), which are referred to
28 collectively as the "Community Documents".

29 4. Ron Thorstad is the Association's president.

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¹ In some documents and at the hearing, the CC&Rs were also referred to as the "Declaration."

1 5. On December 11, 2014, Mr. Nowell filed with the Department a Multi-Issue
2 Petition alleging that Greenfield Village had violated sections 3.25, 6.4 and 6.5 of its
3 CC&Rs and sections 6.4 and 10.2 of its Bylaws.

4 6. As pertinent to this Decision,² Mr. Nowell's allegations relate primarily to
5 three events: the Association's purchase and financing of land and related
6 improvements, the Board's purchase of an option to buy that same land, and the
7 Board's approval of construction of a beverage serving center.³

8 Summary of Pertinent Provisions of the Community Documents⁴

9 7. Greenfield Village's Articles of Incorporation provide that the Association
10 shall be operated for the purposes set out in the CC&Rs, including the acquisition,
11 construction, management, maintenance, and care of Association property, and that the
12 Association intends to engage in activities including acquisition of property. Articles of
13 Incorporation at §§ 2 and 3.

14 8. The Association consists of Members who are Lot Owners in Greenfield
15 Village. CC&Rs at § 1.9.

16 9. The business and affairs of the Association are managed and conducted
17 by an elected Board. Bylaws at § 4.1.

18 10. Unless the CC&Rs, the Bylaws, or the Articles of Incorporation specifically
19 require a vote of the Membership, the Board may act on the Association's behalf.
20 CC&Rs at § 4.1; see *also* CC&Rs at § 11.9.

21 11. The Association may exercise rights expressly provided in the CC&Rs, the
22 Articles of Incorporation, or the Bylaws, and any rights and privileges that are
23

24 ² Mr. Nowell's petition raised two additional issues: (1) that the ballot used in the election held on
25 February 12, 2014 was flawed because it included capital expenditures and land acquisition in the same
26 item; and (2) the Board fired the Park Manager, in violation of the CC&Rs and the "Code of Ethics." In an
27 Order dated April 9, 2015, the undersigned Administrative Law Judge granted Greenfield Village's
28 Motion to dismiss these two issues.

29 ³ At the hearing, Mr. Nowell presented little evidence in support of his allegations and he acknowledged
30 that he was not sure what allegations he had raised in his Petition. Mr. Nowell explained that this was
 because he had initially raised about twenty alleged violations, but he was not allowed to include all of
 those alleged violations in his Petition.

⁴ The CC&Rs, the By-Laws, and Articles of Incorporation were attached to Greenfield Village's Motion for
 Summary Judgment filed on March 12, 2015. At the hearing, the parties agreed that these documents
 and the administrative record should be considered part of the hearing record.

1 reasonable to imply from the existence of the rights expressly granted in the CC&Rs.
2 CC&Rs at § 11.9.

3 12. The CC&Rs provide that the Association shall take appropriate action to
4 maintain, repair, replace, and improve the Common Areas and recreational facilities.
5 CC&Rs at § 4.1.

6 13. Nothing shall be altered, constructed in or removed from the Common
7 Area that changes the nature and purposes to which the Common Area is dedicated
8 without the consent of the Association. CC&Rs at § 3.25.

9 14. There are two types of general assessments: those for operating expenses
10 and those for a Replacement and Repair Reserve Fund. CC&Rs at § 6.4.

11 15. Operating expenses are intended to cover expenses that the Association
12 is required to perform and expenses that the Association deems appropriate in order to
13 carry out the purposes of the Association. CC&Rs at § 6.4(a).

14 16. The Replacement and Repair Reserve Fund is to be maintained for the
15 periodic replacement and repair of improvements in the Common Area. CC&Rs at §
16 6.4(b).

17 17. Special assessments may be used for construction, reconstruction, repair,
18 or replacement of items in the Common Area. CC&Rs at § 6.5.

19 18. The budget and associated general assessments must be ratified by the
20 Association members following the procedures set out in the Bylaws. CC&Rs at §§ 6.4
21 and 6.5.

22 19. The Bylaws require that the budget and any general and special
23 assessments be ratified by a majority of votes cast at a meeting of the Association.
24 Bylaws at § 6.1.

25 20. The Board may not approve any "capital expenditure (as opposed to a
26 maintenance expense) in excess of \$20,000" without approval of members holding a
27 majority of eligible votes cast at a meeting of the Association membership. Bylaws at §
28 6.4.

29 21. The Board may only enter into contracts and incur such expenses as are
30 provided for in the annual or supplemental budget. Bylaws at § 10.1.

1 22. The Association may not borrow in excess of \$20,000 unless approved of
2 by members holding a majority of eligible votes cast at a meeting of the Association
3 membership. Bylaws at § 10.2.

4 23. When the Articles of Incorporation conflict with the Bylaws, the Articles
5 control. When the CC&Rs conflict with the Bylaws, the CC&Rs control. Bylaws at §
6 12.2.

7 The Land Purchase and Funding of Improvements

8 24. On February 12, 2014, the Association held an election in which there
9 were six issues on the ballot. Exhibit 1 is a summary of the ballot issues and a sample
10 ballot. Relevant to this matter are Issues # 2, #3, #5, and #6, which were all approved
11 by a majority of the voters.

12 25. Through Issue #2, the Association voted to purchase and improve land
13 located at 4711 East Main Street, in Mesa (the "land"), with the purchase price being
14 \$940,000 and the price of improvements being an estimated \$862,500.

15 26. Through Issue #5, the Association approved a special assessment to pay
16 for improvements to the land.

17 27. Under the land-purchase agreement, the seller is to be paid in five annual
18 installments. The Association also arranged for a loan to cover the cost of improving the
19 land. Through Issue #6, the Association approved borrowing up to \$1,598,500, which
20 was the estimated maximum for these two loans.

21 28. Through Issue #3, the Association approved a general assessment and
22 budget that included the funds required to pay the seller the amount due in 2014/15.

23 29. As approved of in the election, the land was purchased using funds
24 generated through the general assessment and the improvements to the land were
25 funded by the special assessment. No reserve funds were used to purchase the land or
26 to pay for the improvements.

27 30. Because the land purchase is being paid for over the course of five years,
28 each year's payment must be approved in the annual budget for that year. The
29 payments for the first two years were so approved, and the remaining three years will
30 each need to be approved in the applicable year. Members were given the option of

1 paying their assessments over five years or in advance. Approximately 87% of the
2 membership paid the full amounts in advance.

3 31. Mr. Nowell alleges that the Association levied a special assessment to pay
4 for the land and to pay for improvements to that land without obtaining approval of two-
5 thirds of the membership. The preponderance of the evidence, however, shows that the
6 land was paid for using a general assessment, not a special assessment.

7 32. Neither general assessments nor special assessments require approval of
8 two-thirds of the membership, but rather only a majority. CC&Rs at §§ 6.4 and 6.5;
9 Bylaws at § 6.1.

10 33. Mr. Thorstad provided credible testimony that the general and special
11 assessments have been ratified by the Association as required by the CC&Rs and the
12 Bylaws.

13 34. Mr. Nowell alleges that the CC&Rs do not grant the Association authority
14 to acquire property. In support of his allegation, Mr. Nowell asserts that the purpose of
15 the Association as set out in Section 4.1 of the CC&Rs, does not include acquiring
16 property. Mr. Nowell also asserts that the CC&Rs, Bylaws, and Articles do not support
17 such action by the Association.

18 35. The Articles of Incorporation show however that the Association may
19 acquire property. Articles of Incorporation at §§ 2 and 3.

20 36. Mr. Nowell also alleges that purchasing land is not a purpose for which a
21 general assessment can be levied. But this allegation is predicated on Mr. Nowell's
22 mistaken opinion that the Association may not purchase land.

23 The \$20,000 Option

24 37. Several years ago, the Association voted against purchasing the land at
25 issue in this matter. After that election and before the election of February 12, 2014, the
26 Board authorized a \$20,000 expenditure to purchase an option on the land. The
27 \$20,000 was taken from operating funds, not reserve funds.

28 38. Mr. Nowell alleges that the Association was required to vote on the
29 \$20,000 expenditure.
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Thomas Shedden
Administrative Law Judge

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Transmitted electronically to:

Gene Palma, Director
Department of Fire Building and Life Safety