

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

2
3 **ALJCERT ALJ decision certified as final**

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5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 THOMAS SATTERLEE,

8 Petitioner,

9
10 VS

11 GREEN VALLEY COUNTRY CLUB
12 VISTAS II POA,

13 Respondent.

No. 15F-H1515008-BFS

**ADMINISTRATIVE
LAW JUDGE DECISION**

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

16 **APPEARANCES:** Thomas Satterlee (hereinafter "Petitioner" or "Mr. Satterlee")
17 appeared on his own behalf. Green Valley Country Club Vistas II POA (hereinafter
18 "Respondent" or "Green Valley Vistas") was represented by its attorney, Michael Steven
19 Shupe, Esq., Goldschmidt and Shupe PLLC.

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

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

24 **FINDINGS OF FACT**

- 25 1. The Department of Fire, Building and Life Safety (the "Department") is
26 authorized by statute to receive Petitions for Hearings from members of homeowners'
27 associations and from homeowners' associations in Arizona.
- 28 2. Respondent is a homeowners' association located in Green Valley, Arizona.
- 29 3. Petitioner owns a residence in and is a member of Green Valley Vistas.
- 30 4. Petitioner filed a petition with the Department alleging that Respondent had
violated certain provisions of its Bylaws and applicable Arizona statutes. Petitioner

1 alleged that Respondent had violated the provisions of its Bylaw Articles XIII, XIV and
2 XV. Petitioner specifically alleged as follows:

3 On 1/29/2015, between 1:00 and 3:00 PM the Board attempted,
4 by membership vote, to change and rewrite the Association's
5 Articles of Inc., CC&R's, and the By-Laws without first following
6 the articles mentioned above. Specifically, they failed to cite the
7 original sections, to be changed, followed by the proposed
8 sections. Failure to do so makes comparison virtually impossible.

9
10 5. Respondent's Answer to the Petition provided, in relevant part, as follows:

11 3.2. Section XXIII of the CC&Rs states that:

12 "The aforesaid provisions, conditions, restrictions and covenants,
13 each and all thereof, shall run with the land and continue and
14 remain in full force and effect at all times and against all persons
15 until January 1, 2000, at which time said covenants shall be
16 automatically extended for successive periods of ten years unless
17 by a majority of the owners of records of the lots in said
18 subdivision it is agreed to change said covenants in whole or in
19 part."

20 3.3. A document entitled "Changes Updating the Articles of
21 Incorporation, CCRS & By-Laws Country Club Vistas II Property
22 Owners Assn. March 1992" ("1992 Update") was recorded on
23 March 26, 1992, in Docket 9256 at page 683, office of the Pima
24 County Recorder.

25 3.4. The 1992 Update was adopted before January 1, 2000,
26 which is the first possible renewal date as set forth in Section 3.2
27 above, and, even more importantly, was not approved by
28 Respondent's members, as required by (a) Articles XIII-XV of the
29 original Articles of Incorporation of Green Valley County Club
30 Vistas II Property Owners Association, Inc. (Exhibit C, attached
hereto and incorporated herein by this reference) and (b) by the
provision of the CC&Rs cited in Section 3.2 above.

3.5. Therefore, the 1992 Update is not a valid amendment to the
pertinent planned communities documents for the Association.

3.6. In 2014, the Association's Board of Directors and, in
particular, its then-President Howard Marvin, spent many hours
reviewing the planned community documents for County Club
Vistas II, preparing revised versions and working with undersigned

1 counsel to put the revised documents in final form for distribution
2 to the Association members for a vote.

3 3.7. Amended and Restated Articles of Incorporation, CC&Rs and
4 Bylaws were distributed to the Association members in November
5 2014. The documents were reorganized, revised and updated
6 extensively; therefore, it was not possible to list every change
7 from the old documents to the new.

8 3.8. The final vote on the revised planned community documents
9 was preceded by three meetings (October 18, 2014; January 8,
10 2015; and January 29, 2015) to which members were invited to
11 review the revised planned community documents with the Board
12 and ask any questions. The associations' attorney was present
13 on the October 18th and January 29th meetings. Upon information
14 and belief, Petitioner attended all three meetings.

15 3.9. At its annual meeting on January 29, 2015, the Association
16 finalized voting on Amended and Restated Declaration of
17 Covenants, Conditions and Restrictions; Amended and Restated
18 Articles of Incorporation, and all three documents were adopted
19 by the Association members.

20 3.10. Petitioner's complaint asserts that the Association did not
21 follow the requirements for amendments set forth in the 1992
22 Update; however, Petitioner's assertion is denied because the
23 1992 Update is not a valid amendment.

24 3.9 (11). Petitioner's complaint asserts that the Association did
25 not follow the requirements for amendments set forth in Articles
26 XIII, XIV, and XV of the Articles of Incorporation; however, the
27 ballot that was distributed to the Association members (Exhibit D
28 attached hereto and incorporated herein by this reference) shows
29 that approval of owners of a majority of the Lots in Country Club
30 Vistas II was required (and was obtained). Therefore, Petitioners'
assertion is denied.

Hearing Evidence

6. Mr. Satterlee testified that the changes updating the Articles of Incorporation, CCRS & By-Laws of Green Valley were recorded in March 1992, and that the recorded changes were passed out to all new homeowners. Mr. Satterlee said that Respondent failed to comply with the provisions of the updated 1992 Articles of Incorporation by failing to cite the original sections to be changed, followed by the proposed sections in

1 Respondent's January 29, 2015 annual meeting. Mr. Satterlee asserted that he was
2 protesting the method used to make changes to the Articles of Incorporation, not the
3 changes that were actually made. Mr. Satterlee said "they wanted power and they
4 wanted it now." Mr. Satterlee said that he believed that the Board for Respondent
5 "never had any intention to give members an opportunity to review and participate" in
6 the decision-making process."

7 7. Mr. Satterlee acknowledged that he had no proof that the updated 1992
8 Articles of Incorporation had actually been voted on by the members of Green Valley
9 Vistas. Mr. Satterlee asserted that "no prudent man" would have recorded the updated
10 1992 Articles of Incorporation unless they had been properly voted on.

11 8. Michael Simpson (hereinafter "Mr. Simpson") testified that he had been a
12 member of Green Valley Vistas for approximately two and one-half years. Mr. Simpson
13 said that he believed that Respondent's Board had an agenda at the January 29, 2015
14 annual meeting and that the Board did not provide the members with sufficient time to
15 review and discuss the changes to the Articles of Incorporation. Mr. Simpson asserted
16 that the January 29, 2015 changes to the Articles of Incorporation were in violation of
17 the updated 1992 Articles of Incorporation.

18 9. Mike Koning (hereinafter "Mr. Koning") testified that Board did not provide the
19 members with sufficient time to present their questions during meetings with the Board.
20 Mr. Koning said that at the first meeting with the Board, he was told to "sit down and
21 shut up."

22 10. Linda Clemens (hereinafter "Ms. Clemens") testified that she was the
23 Secretary for the Board for Respondent. Ms. Clemens said that she had been a
24 member of the Board in various capacities for a number of years. Ms. Clemens said
25 that she could find no evidence that the recorded updated 1992 Articles of Incorporation
26 had ever been voted on by the members of Green Valley Vistas. Ms. Clemens said that
27 there was no certification or language that the updated 1992 Articles of Incorporation
28 had been approved by the members of Green Valley Vistas or the majority of lot
29 owners.

30 11. Ms. Clemens testified that she was present for the October 14, 2014,

1 January 8, 2015, and January 29, 2015 meetings. Ms. Clemens said that she believed
2 that Mr. Satterlee, Mr. Simpson, and Mr. Koning were also present for the meetings.
3 Ms. Clemens said that the changes set forth in the CC&Rs and Articles of Incorporation
4 during the January 29, 2015 annual meeting were necessary to protect the members of
5 Green Valley Vistas. Ms. Clemens said that there was a lot of discussion during the
6 annual meeting and that the changes were voted on and approved by the vast majority
7 of owners of Green Valley Vistas.

8 12. Howard Marvin (hereinafter "Mr. Marvin") testified that he had been
9 president of Green Valley Vistas from January 2012, through January 2015. Mr. Marvin
10 stated that when he was president of Green Valley Vistas he noticed that many "strange
11 things had happened" and that mistakes had been made by previous Board members.
12 Mr. Marvin said that the changes that were approved by majority vote on January 29,
13 2015, were necessary to protect the members of Green Valley Vistas because some of
14 the previous CC&Rs and Articles of Incorporation had not been properly done.

15 **GREEN VALLEY BYLAWS REFERENCED AT THE HEARING**

16
17
18 1. The March 1992 Changes Updating Articles of Incorporation, CC&RS &
19 Bylaws for Green Valley provides, in relevant part, as follows:

20 Article XIII of the Articles of Incorporation shall be read as follows:

21 Any amendment of the Articles of Incorporation shall be voted on
22 by written ballot only. The ballot shall contain the original article
23 proposed to be amended followed by the proposed amendment.
24 The ballot shall be mailed to all eligible members of the
25 corporation at least three weeks before the election. It shall
26 require a majority vote of the ballots submitted to pass
27 amendment.

28 Article XIV of the Articles of Incorporation shall be read as follows:

29 Any amendment of the By-Laws of this Corporation shall be made
30 by written vote only. A ballot shall be prepared and it shall contain
the original By Law, or section thereof, proposed to be amended
followed by the proposed amendment. The ballot shall be mailed
to all members at least three weeks before the election. It shall

1 require a majority vote of the ballots submitted to pass the
2 amendment provided that no By-Laws shall be in conflict with the
3 Articles of Incorporation or the recorded Deed Restrictions.¹

4 1. The 1990 Covenants, Conditions & Restrictions for Country Club Vista II
5 Property Owner's Association (Respondent) was duly approved by the members of the
6 Association and was recorded on September 20, 1990. Section XXIII of the 1990
7 CC&RS provides as follows:

8 The aforesaid provisions, conditions, restrictions and covenants,
9 each and all thereof, shall run with the land and continue and
10 remain in full force and effect at all times and against all persons
11 until January 1, 2000, at which time said covenants shall be
12 automatically extended for successive period to ten years unless
13 by a majority of the owners of record of the lots in said subdivision
14 it is agreed to change said covenants in whole or in part.²

15 **PROVISIONS OF LAW REFERENCED AT HEARING**

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

17 B. Notwithstanding any provision in the community documents, all
18 meetings of the members' association and the board shall be held
19 in this state. A meeting of the members' association shall be held
20 at least once each year. Special meetings of the members'
21 association may be called by the president, by a majority of the
22 board of directors or by members having at least twenty-five per
23 cent, or any lower percentage specified in the bylaws, of the votes
24 in the association. Not fewer than ten nor more than fifty days in
25 advance of any meeting of the members the secretary shall cause
26 notice to be hand-delivered or sent prepaid by United States mail
27 to the mailing address for each lot, parcel or unit owner or to any
28 other mailing address designated in writing by a member. The
29 notice shall state the time and place of the meeting. A notice of
30 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

¹ See Respondent's Exhibit B (March 1992 Changes Updating Articles of Incorporation, CC&RS & Bylaws).

² See Respondent's Exhibit A (1990 Covenants, Conditions & Restrictions).

1 member to receive actual notice of a meeting of the members
2 does not affect the validity of any action taken at that meeting.

3 D. Notwithstanding any provision in the declaration, bylaws or
4 other community documents, for meetings of the board of
5 directors that are held after the termination of declarant control of
6 the association, all of the following apply:

7 2. An emergency meeting of the board of directors may be called
8 to discuss business or take action that cannot be delayed until the
9 next regularly scheduled board meeting. The minutes of the
10 emergency meeting shall state the reason necessitating the
11 emergency meeting. The minutes of the emergency meeting shall
12 be read and approved at the next regularly scheduled meeting of
13 the board of directors.

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

26 **CONCLUSIONS OF LAW**

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

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

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

4 4. The preponderance of the evidence established that the 1990 Covenants,
5 Conditions & Restrictions (hereinafter “1990 CC&RS”) for Respondent were duly
6 approved by the members of the Association and was recorded on September 20,
7 1990.

8 5. The preponderance of the evidence failed to support a finding that the March
9 1992 Changes Updating Articles of Incorporation, CC&RS & Bylaws for Respondent
10 were voted on and approved by members of the Association as required by the 1990
11 CC&RS.

12 6. The preponderance of the evidence established that the January 29, 2015
13 vote conducted by Respondent to change and update Respondent’s Articles of
14 Incorporation, CC&RS & Bylaws for Respondent complied with the 1990 CC&RS for
15 Respondent.

16 7. The preponderance of the evidence failed to support a finding that the
17 January 29, 2015 vote conducted by Respondent violated the open meeting
18 requirements of A.R.S. § 33-1804.

19 8. This Tribunal concludes that Petitioner failed to satisfy his burden of proof for
20 his petition.

21 **RECOMMENDED ORDER**

22 In view of the foregoing, it is ORDERED that no action is required of Respondent
23 in this matter and that the petition is dismissed.

24 *In the event of certification of the Administrative Law Judge Decision by the*
25 *Director of the Office of Administrative Hearings, the effective date of the Order will be*
26 *five days from the date of that certification.*

27 Done this day, August 27, 2015.

28 /s/ M. Douglas
29 Administrative Law Judge

30 Transmitted electronically to:

1 Debra Blake, Interim Director
2 Department of Fire Building and Life Safety

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