

1 communities, subject matter jurisdiction should be conferred upon the Office of
2 Administrative Hearings.

3 5. The Administrative Law Judge concluded that because Respondent was
4 not a “planned community” as defined by statute, the Office of Administrative Hearings
5 and the Arizona Department of Real Estate lacked jurisdiction over the petitions.

6 6. On July 7, 2017, the Commissioner entered the final order accepting the
7 Administrative Law Judge’s recommended decision.

8 7. On September 18, 2017, Petitioner filed a “notice of rehearing” with the
9 Arizona Department of Real Estate. On September 26, 2017, the Commissioner granted
10 Petitioner’s request for rehearing.

11 8. Rehearing in these matters was set to convene on February 20, 2018.

12 9. Prior to the hearing, Respondent filed a Renewal of its Motion to Dismiss
13 asserting that the Arizona Department of Real Estate continued to lack jurisdiction over
14 the matters set forth in the consolidated petitions.

15 10. Because the motion was potentially dispositive, oral argument was held in
16 lieu of hearing.

17 11. During oral arguments, Petitioner argued that because the developer built
18 walls and a sign at the entrance of the community and Respondent had maintained the
19 landscaping around the sign since that time, Respondent had a “covenant to maintain
20 roadways” that would give the Arizona Department of Real Estate jurisdiction over the
21 issues because Respondent was a “planned community.” Petitioner’s argument was
22 based largely on his interpretation that “roadway” in the statute included “roadway
23 systems,” which would include the land at the entrance of the community.

24 12. Respondent argued that the landscaping surrounding the sign did not
25 constitute a roadway and that because the statute defines a “planned community” as a
26 real estate development that includes “a covenant to maintain roadways”, Respondent
27 was not subject to the jurisdiction of the Arizona Department of Real Estate.

28 **CONCLUSIONS OF LAW**

29 1. A lack of subject matter jurisdiction cannot be waived and must be
30 addressed because “[a]dministrative decisions that reach beyond an agency’s statutory

1 power are void.” *Ariz. Bd. of Regents for & on Behalf of Univ. of Ariz. v. State ex rel. State*
2 *of Ariz. Pub. Safety Ret. Fund Manager Adm’r*, 160 Ariz. 150, 156 (App. 1989). See also
3 *Swichtenberg v. Jack Brimer*, 171 Ariz. 77, 828 P.2d 1218 (App. 1991). Similarly, “it is
4 settled that . . . [j]urisdiction of the subject matter cannot be conferred upon a court by, or
5 be based on, the estoppel of a party to deny that it exists.” *Swichtenberg*, 171 Ariz. at 81,
6 828 P.2d at 1222, *citing*, 21 C.J.S. *Courts* § 108 at 161. *Accord* 20 Am. Jur. 2d *Courts* §
7 95 at 455. For this reason, the statutes, not the parties, lay out the boundaries of
8 administrative jurisdiction.

9 2. A.R.S. § 33-1802 provides in pertinent part:

10 In this chapter and in the community documents, unless the context
11 otherwise requires:

12

13 4. “Planned community” means a real estate development that includes real
14 estate owned and operated by or *real estate on which* an easement to
15 maintain roadways or *a covenant to maintain roadways is held by a*
16 *nonprofit corporation or unincorporated association of owners*, that is
17 created for the purpose of managing, maintaining or improving the property
18 and in which the owners of separately owned lots, parcels or units are
19 mandatory members and are required to pay assessments to the
20 association for these purposes. Planned community does not include a
21 timeshare plan or a timeshare association that is governed by chapter 20 of
22 this title or a condominium that is governed by chapter 9 of this title.

23 Emphasis added. Before it was amended in 2014, the statute only required the ownership
24 of real estate for an association to be considered a planned community. See *Sunrise*
25 *Desert Vistas v. Salas*, 1 CA-CV 14-052 (Ct. App. 2016) at footnote 2 (noting revision) and
26 ¶ 8 (providing language of prior version).¹

27 3. Regardless of whether Respondent had a covenant to maintain the area
28 around the walls and sign at the entrance of the community, the Administrative Law Judge
29 declines Petitioner’s invitation to interpret “roadways” in the statute to mean “areas
30 adjacent to roadways” such that Respondent’s maintenance of the area around the walls
and sign at the entrance of the community renders Respondent a “planned community.”

¹ This unpublished case is cited only as persuasive, rather than controlling, authority.

1 4. Because Respondent is not a “planned community” as defined by statute,
2 the Office of Administrative Hearings and the Arizona Department of Real Estate lack
3 jurisdiction over these Petitions. Petitioner remains free, however, to file an action in a
4 court of competent jurisdiction as specified by Respondent’s community documents.

5 **RECOMMENDED ORDER**

6 In view of the foregoing, the Petitions in these consolidated matters are
7 dismissed with prejudice.

8 Done this day, March 15, 2018.

9 /s/ Tammy L. Eigenheer
10 Administrative Law Judge

11 **NOTICE**

12 **This administrative law judge order, having been issued as a result of**
13 **a rehearing, is binding on the parties. A.R.S. § 32-2199.02(B). A party**
14 **wishing to appeal this order must seek judicial review as prescribed**
15 **by A.R.S. § 41-1092.08(H) and title 12, chapter 7, article 6. Any such**
16 **appeal must be filed with the superior court within thirty-five days**
17 **from the date when a copy of this order was served upon the parties.**
18 **A.R.S. § 12-904(A).**

19 Transmitted by either mail, e-mail, or facsimile March 15, 2018 to:

20 Judy Lowe, Commissioner
21 Arizona Department of Real Estate
22 2910 North 44th Street, Room 100
23 Phoenix, AZ 85018
24 Attn:
25 jlowe@azre.gov
26 LDettorre@azre.gov
27 AHansen@azre.gov
28 djones@azre.gov
29 DGardner@azre.gov
30 ncano@azre.gov
By Felicia Del Sol

Thomas Satterlee
270 W. La Canoa
Green Valley AZ 85614

James A. Robles
722 East Osborn Road, Suite 100
Phoenix, Arizona 85014
jarobles@pchhlaw.com