

1 With the need for the Committee to meet quorum on a monthly
2 basis to conduct business in an efficient manner for the
3 homeowners, and recognizing your commitments and
4 schedule often necessitate your absence, the Board has
5 selected a new member for the Committee.

6 Again, we thank you for your term service as a Committee
7 member, John.

8 Respectfully,

9 Board of Directors
10 The Foothills Community Association

11 6. On July 16, 2019, Michael Owen, sent an electronic mail message (e-mail)
12 to Petitioner which provided, in relevant part, as follows, "The truth of the matter is,
13 since April of 2015 you have attended only 19 of the 54 DRC meetings and only 4 of the
14 last 18." Mr. Owen sent the e-mail to Petitioner after he contacted the Community
15 Manager about his removal.

16 7. In August of 2019, Petitioner filed a single-issue petition with the Department
17 that alleged that Respondent removed him from the DRC for a pretextual reason.
18 Petitioner also alleged that he was removed from the DRC in bad faith. Petitioner
19 alleged that Respondent had violated Articles of Incorporation 1, 5, 6, 11, 12, and 15.¹
20 Petitioner also alleged that Respondent had violated Article II, Section 2.3, Article III,
21 Section 3.5, and Article IV, Section 4.8(c) of Respondent's Bylaws.

22 8. Respondent filed a timely response to the petition.

23 9. The matter was referred to the Office of Administrative Hearings for an
24 evidentiary hearing.

25 10. On October 2, 2019, the Department issued a Notice of Hearing setting
26 the above-captioned matter for hearing on November 8, 2019 at the Office of
27 Administrative Hearings in Phoenix, Arizona.²

28 11. The Notice of Hearing shows that Petitioner alleges that

29 ¹ Respondent's Articles of Incorporation in the petition. Respondent's Bylaws are located in Exhibit R6.

30 ² The hearing was continued to January 15, 2020.

1 Respondent Foothills Community Association violated Articles of Incorporation 1, 5, 6,
2 11, 12, and 15 in a single-issue petition.

3 12. At hearing, Petitioner testified on behalf of himself. Respondent presented
4 the testimony of Respondent's Community Manager, Patricia Wontor, and Michael
5 Owen.

6 13. Petitioner explained that he is an Air Force Reservist, a realtor, and a pilot for
7 American Airlines. Although Petitioner has the ability to modify his schedule as a pilot, it
8 is more difficult to do so when he is "on call". Petitioner informed the Board in 2011 of
9 his schedule when he was asked to join the DRC.

10 14. Petitioner explained that it became more difficult for him to attend the DRC
11 meetings after the meeting time was changed to from 3pm to 2pm. The DRC meetings
12 were held the second Wednesday of every month. Petitioner asserted that he
13 consistently informed the DRC of whether he could attend a meeting after receiving an
14 email regarding a DRC meeting. Petitioner also asserted that not all members attended
15 every meeting.

16 15. Petitioner expressed dissatisfaction because no one previously expressed
17 concern to him about his absence from DRC meetings.

18 16. Petitioner asserted that his removal from the DRC "wreaked of politics."

19 17. Ms. Wontor is an employee of Premier Community Management.
20 Ms. Wontor is the community manager assigned to Respondent. Ms. Wontor has
21 worked as a community manager for 16 years and managed master planned
22 communities during the last 12 years. Ms. Wontor implements board policies and
23 oversees the day to day operations of HOAs. She communicates the decision of the
24 Board to its homeowners.

25 18. Ms. Wontor explained that she sends out notices of meetings and
26 agendas. The notices of meetings and agendas are uploaded to Respondent's website.
27 Ms. Wontor stated that the Board removed Petitioner and appointed new members at a
28 board meeting.

29 19. Ms. Wontor explained that she sends out a notices of Respondent's annual
30 member meetings. Ms. Wontor explained that Petitioner would have been sent notice

1 of Respondent's Board of Director's Open Session Meetings that were held on May 22,
2 2019 and June 26, 2019.

3 20. The minutes of Respondent's May 22, 2019 Board of Director's Open Session
4 Meeting (May 22, 2019 meeting) meeting show that new members of the DRC would be
5 appointed in the coming month.

6 21. The minutes of Respondent's June 26, 2019 Board of Director's Open
7 Session Meeting (June 26, 2019 meeting) show that two new members of the DRC
8 were appointed and two others were appointed as alternate members. The
9 appointment was approved unanimously.

10 22. The Agenda for the May 22, 2019 meeting and Revised Agenda for the June
11 26, 2019 meeting show that the DRC would be discussed at both meetings.

12 23. Mr. Owen explained that he served on the DRC with Petitioner and is a
13 member of the Board. Mr. Owen explained that Petitioner was removed and replaced
14 during the June 26, 2019 meeting. Mr. Owen explained that although alternates are
15 called when a quorum cannot be met, those alternates are not available. Mr. Owen
16 explained that all homeowners have access to the website. Although the Board can
17 increase the size of the DRC, the Board chose not to do so. Mr. Owen explained that
18 Petitioner as not removed for political reasons. Petitioner was removed due to their
19 inability to meet quorum.

20 24. Article IV, Section 4.8(c) of Respondent's Bylaws require that the
21 secretary keep the minutes of all meetings and proceedings of the Board and of the
22 Members. See Exhibit R6, pg4.

23 25. Petitioner also contended at hearing that he was removed from the DRC
24 in violation of Arizona Revised Statutes (A.R.S.) § 10-3830.

25 **CONCLUSIONS OF LAW**

26 1. A.R.S. § 32-2199(B) permits an owner or a planned community organization
27 to file a petition with the Department for a hearing concerning violations of Title 33,
28 Chapter 16. This matter lies with the Department's jurisdiction.

29 2. The Administrative Law Judge does not have jurisdiction to determine
30 whether Respondent violated A.R.S. § 10-3830.

1 3. Petitioner bears the burden of proof to establish that Respondent violated
2 Articles of Incorporation 1, 5, 6, 11, 12 and 15 by a preponderance of the evidence.³
3 Petitioner bears the burden of proof to establish that Respondent violated Article II,
4 Section 2.3, Article III, Section 3.5, and Article IV, Section 4.8(c) of the Bylaws.
5 Respondent bears the burden to establish affirmative defenses by the same evidentiary
6 standard.⁴

7 4. “A preponderance of the evidence is such proof as convinces the trier of fact
8 that the contention is more probably true than not.”⁵ A preponderance of the evidence is
9 “[t]he greater weight of the evidence, not necessarily established by the greater number of
10 witnesses testifying to a fact but by evidence that has the most convincing force; superior
11 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
12 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather
13 than the other.”⁶

14 5. Petitioner failed to establish by a preponderance of the evidence that
15 Respondent removed him from the DRC for a pretextual reason. The preponderance of
16 the evidence shows that Respondent removed Petitioner and replaced him with a new
17 member due to its desire to meet quorum on a monthly basis.

18 6. Upon consideration of the evidence presented, the Administrative Law
19 Judge concludes that Petitioner failed to establish that Respondent violated Article II,
20 Section 2.3, Article III, Section 3.5, and Article IV, Section 4.8(c) of Respondent’s
21 Bylaws.

22 7. Petitioner failed to establish that Respondent violated Articles 1, 5, 6, 11,
23 12, and 15 of its Articles of Incorporation.

24 8. Because Petitioner did not establish that Respondent violated any statute
25 or Bylaw charged in his petition, his petition must be dismissed.

26
27 ³ See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior Court*, 74
28 Ariz. 369, 372, 249 P.2d 837 (1952).

29 ⁴ See A.A.C. R2-19-119(B)(2).

30 ⁵ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁶ BLACK’S LAW DICTIONARY at page 1220 (8th ed. 1999).

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