

1 ownership of lot #43. Petitioner alleged that the Board improperly purchased lots #54 and
2 #65 without holding a vote. Petitioner argued that the acquisition of these lots was
3 supposed to be discussed, and voted upon, at the October 11, 2019, meeting. Petitioner
4 was not present at that meeting. Petitioner learned of the sale on or about October 11,
5 2019. Petitioner presented the Navajo County Recorder of Deeds Special Warranty
6 Deeds as proof that the lots were purchased by Respondent.²

7 5. Petitioner argued that Respondent violated the CC&Rs Article 12.3 when it
8 purchased the lots without a 2/3 membership vote because Article 12.3 addressed a 2/3
9 membership vote and amendment of a Plat. Petitioner further argued that the purchase of
10 the lots resulted in an immediate loss of money for Respondent because Respondent did
11 not collect any homeowner's association fees from these vacant lots.

12 6. Respondent presented the testimony of Rose Thomas, Respondent's
13 Secretary and Treasurer of the Board, and Joyce Dick, Respondent's President, and
14 submitted eight exhibits.

15 7. Ms. Thomas testified that on or about July 2, 2019, the CC&Rs were
16 amended by a 2/3 membership vote per Article 12.3 in the CC&Rs.³ Article 12.3 set forth
17 the requirement of a 2/3 membership vote to amend the CC&Rs but it did not require a
18 vote for the purchase of property by the Board. Article 12.3.2 addressed the amendment
19 of the Plat and authorized Respondent to amend the Plat without obtaining approval or
20 consent of any Owner or even majority consent.

21 8. The purchase of lots #54 and #65 were addressed at the September 20,
22 2019 meeting.⁴ At that meeting, a drainage issue that affected lots #54 and #65 was
23 discussed. When Respondent presented the idea of purchasing the lots, the members
24 agreed with the idea. Petitioner was present at that meeting and agreed with the idea but
25 requested that the membership vote on it. Respondent informed Petitioner that the
26 CC&Rs did not require a vote for the purchase. Based on the members' reactions, the
27 Board unanimously decided to purchase the two lots, per Article 12.3.⁵

28 ² See Petitioner's Exhibit B.

29 ³ See Respondent's Exhibit #4.

30 ⁴ See Respondent's Exhibit #6.

⁵ See Respondent's Exhibit #7.

1 4. Article 12.3 of the CC&Rs, entitled "Amendments" provides that:

2 12.3.1 This Declaration may be amended by the written approval or
3 affirmative vote, or any combination thereof, of two-thirds (2/3) of the
4 Membership.

5 12.3.2 The Board may amend this Declaration or the Plat, without
6 obtaining the approval or consent of any Owner of First Mortgagee, in order
7 to conform this Declaration or the Plat to the requirements or guidelines of
8 the Federal National Mortgage Association, the Federal Home Loan
9 Mortgage Corporation, the Federal Housing Administration (FHA), the
10 Veterans Administration (VA) or any federal, state, or local governmental
11 agency whose approval of the Project, the Plat, or the Project Documents is
12 required by law or requested by the Declarant or the Board.

13 12.3.3 Any amendment approved pursuant to this Declaration or by the
14 Board pursuant to Subsection 12.3.2 of this Declaration shall be signed by
15 the President or Vice President of the Association and shall be recorded
16 with the County recorder of Navajo County, Arizona. Any such amendment
17 shall certify that the amendment has been approved as required by this
18 Article.

19 5. Petitioner argued that Respondent violated the CC&Rs Article 12.3 when it
20 purchased lots #54 and #65 without a vote. According to the Article 12.3, a vote is only
21 required for any amendments to the CC&Rs, not for the purchase of property or
22 amendments to the Plats. Petitioner failed to establish that the CC&Rs required a 2/3
23 membership vote for the purchase of lots #54 and #65.

24 6. Lastly, the Petition is not ripe. Although Petitioner alleged one violation in
25 her single issue Petition, Petitioner alleged a second issue at the hearing. She argued that
26 the purchase of the lots would adversely affect the finances of Respondent in the future
27 and introduced Respondent's financial statements. This argument did not establish an
28 immediate violation by Respondent.

29 7. Respondent established that the CC&Rs did not authorize the Board to
30 obtain votes to purchase lots. Moreover, after purchasing the lots, the lots remained
 vacant. Respondent did not make any amendments to the Plat. There was only testimony
 that Respondent researched its options regarding the conversion and merging of the lots.

1 8. Petitioner failed to establish by a preponderance of the evidence that
2 Respondent lacked the authority to purchase the lots without a vote. Thus, Petitioner
3 failed to sustain her burden to establish that Respondent violated Article 12.3 of the
4 CC&Rs.

5 **ORDER**

6 In view of the foregoing,

7 **IT IS ORDERED** that the Petition be dismissed.

8 **NOTICE**

9 Pursuant to A.R.S. §32-2199.02(B), this Order is binding on the parties
10 unless a rehearing is granted pursuant to A.R.S. § 32-2199.04. Pursuant to A.R.S. §
11 41-1092.09, a request for rehearing in this matter must be filed with the
12 Commissioner of the Department of Real Estate within 30 days of the service of this
13 Order upon the parties.

14 Done this day, January 13, 2020.

15 /s/ Antara Nath Rivera
16 Administrative Law Judge

17 Transmitted electronically to:

18 Judy Lowe, Commissioner
19 Arizona Department of Real Estate

20 Transmitted US Mail to:

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