

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Thomas W. Sweeney,

No. 21F-H2120027-REL

4 Petitioner,

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 vs.

6
7 Warner Ranch Landing Association,

8 Respondent

9
10 **HEARING:** January 25, 2021

11 **APPEARANCES:** Petitioner Thomas W. Sweeney appeared on his own behalf. Austin
12 Baillio, Esq. represented Respondent Warner Ranch Landing Association. Christopher
13 Reynolds and Michael Goldberg provided testimony on behalf of Respondent Warner
14 Ranch Landing Association.

15 **ADMINISTRATIVE LAW JUDGE:** Sondra J. Vanella

16
17 **FINDINGS OF FACT**

18 1. On or about November 18, 2020, Petitioner Thomas W. Sweeney filed a
19 Homeowners Association (HOA) Dispute Process Petition ("Petition") with the Arizona
20 Department of Real Estate ("Department") alleging a violation of community documents
21 by Respondent Warner Ranch Landing Association. Petitioner indicated a single issue
22 would be presented, paid the appropriate \$500.00 filing fee, and asserted a violation of
23 Article 8, Section 8.1.5 of the CC&Rs.

24 2. On or about December 22, 2020, the Department issued a Notice of Hearing
25 in which it set forth the issue for hearing as follows:

26 The Association has increase[d] annual assessments in violation of Article
27 VIII Section 8.1.5 of the Community Document CC&Rs.

28 3. At hearing, Petitioner testified on his own behalf and Respondent presented
29 the testimony of Michael Goldberg and Christopher Reynolds.

1 4. The relevant portion of the CC&Rs sets forth the following:

2 8.1.5 Maximum Annual Assessment.

3 The Annual Assessments provided for herein shall not at any time exceed
4 the Maximum Annual Assessment, as determined in accordance with this
5 Subsection 8.1.5. For the fiscal year ending December 21, 1987, the
6 Maximum Annual Assessment shall be Eight Hundred Forty Dollars
7 (\$840.00) per year for each Lot. Thereafter, unless a greater increase is
8 approved by the affirmative vote of two-thirds (2/3) of the votes of each class
9 of Members represented in person or by valid proxy at a meeting of
10 Members duly called for such purpose, the Maximum Annual Assessment
11 for any fiscal year shall be equal to the Maximum Annual Assessment for
12 the immediately preceding fiscal year increased at a rate equal to the
13 greater of: (a) the percentage increase for the applicable fiscal year over the
14 immediately preceding fiscal year in the Consumer Price Index—All Urban
15 Consumers—All Items (1967=100 Base) published by the Bureau of Labor
16 Statistics of the U.S. Department of Labor (or its successor governmental
17 agency), or, if such index is no longer published by said Bureau or
18 successor agency, in the index most similar in composition to such index; or
19 (b) five percent (5%). Notwithstanding the foregoing, the Board may,
20 without approval of the Members, increase the Maximum Annual
21 Assessment for any fiscal year by an amount sufficient to permit the Board
22 to meet any increases over the preceding fiscal year in : (i) premiums for any
23 insurance coverage required by the Declaration to be maintained by the
24 Association; or (ii) charges for utility services necessary to the Association's
25 performance of its obligations under this Declaration, in either case (i) or (ii)
26 notwithstanding the fact that the resulting increase in the Maximum Annual
27 Assessment is at a rate greater than otherwise permitted under the
28 preceding sentence. Nothing herein shall obligate the Board to levy, in any
29 fiscal year, Annual Assessments in the full amount of the Maximum Annual
30 Assessment for such fiscal year, and the election by the Board not to levy
Annual Assessments in the full amount of the Maximum Annual
Assessments for any fiscal year shall not prevent the Board from levying
Annual Assessments in subsequent fiscal years in the full amount of the
Maximum Annual Assessment for such subsequent fiscal years (as
determined in accordance with this Subsection 8.1.5). In the event that, for
any fiscal year, the Board elects to levy an Annual Assessment at less than
the full amount of the Maximum Annual Assessment for such fiscal year, the
Board may, if in its reasonable discretion the circumstances so warrant,
subsequently levy a supplemental Annual Assessment during said fiscal
year so long as the total of the Annual Assessments levied during such
fiscal year does not exceed the Maximum Annual Assessment for such
fiscal year.

1 5. A.R.S. § 33-1803(A) provides that an HOA cannot “impose a regular
2 assessment that is more than [20%] greater than the immediately preceding fiscal year's
3 assessment”

4 6. Petitioner asserted at hearing that his interpretation of Section 8.1.5 of the
5 CC&Rs is that the maximum allowable annual assessment of 5% “only applies if the
6 consumer price index no longer exists.” Petitioner testified that he purchased his home in
7 2011 and at that time, an \$820.00 semi-annual assessment was in place and continued
8 for the following six years, until 2018. In 2018, the annual assessment increased by 5%.
9 Petitioner testified that in 2021, annual dues were increased by 10%. Petitioner testified
10 that in 2020, the semi-annual assessment was \$925.40, and that the 2021 semi-annual
11 assessment should be \$962.70. Petitioner further asserted that he believes the 10%
12 increase was put in place due to the Members rejecting a request for a special
13 assessment. Petitioner did not present any evidence in support of his position, but rather,
14 only offered his own interpretation of Section 8.1.5 of the CC&Rs.

15 7. Christopher Reynolds, the Community Manager for Respondent, testified
16 that Section 8.1.5 of the CC&Rs states that annual assessments can increase
17 automatically pursuant to the Consumer Price Index (“CPI”) (or another index), or by 5%,
18 and that the Board is not required to raise annual assessments every year. Mr. Reynolds
19 explained that the maximum annual assessment in 1987 was \$840.00. Mr. Reynolds
20 further explained that the CPI has never been greater than 5% since 1987 except for in
21 June 2008. Mr. Reynolds testified that if the annual assessment had automatically
22 increased by 5% each year beginning in 1988, by 2021, the annual assessment would
23 have been \$4,412.81, unless the Board approved a greater increase. Mr. Reynolds
24 acknowledged that pursuant to statute, there cannot be more than a 20% increase from
25 the previous year’s annual assessment. Mr. Reynolds testified that for the 2021 annual
26 assessment, the Board voted to raise the assessment by 10% from the previous year
27 because the Association’s reserves are not adequately funded for the Association’s
28 projects, such as road improvements.

29 8. Michael Goldberg, Vice-president of the Board for the past eight years,
30 testified that he was involved in the budgeting process, and that in 2020, the annual

1 assessment was \$1,898.50, and that \$4,202.67 would have been the maximum allowable
2 annual assessment. Mr. Goldberg testified that the 2021 annual assessment was raised
3 10% by the Board, which is actually \$2,324.00 less than the maximum allowable
4 assessment, that this was communicated to the Members, and is in compliance with
5 section 8.1.5.

6 9. Petitioner argued that Respondent has exceeded the maximum annual
7 assessment.

8 10. Respondent argued that the third sentence of Section 8.1.5 is an exception
9 to the maximum rate increase if the Members vote for such an increase, that the 5%
10 allowable amount was used to calculate the maximum annual assessment, and that the
11 10% increase is below the maximum allowable increase per statute.

12 **CONCLUSIONS OF LAW**

13 1. Arizona statute permits an owner or a planned community organization to
14 file a petition with the Department for a hearing concerning violations of planned
15 community documents or violations of statutes that regulate planned communities.
16 A.R.S. § 32-2199. That statute provides that such petitions will be heard before the Office
17 of Administrative Hearings.

18 2. Petitioner bears the burden of proof to establish by a preponderance of the
19 evidence that Respondent violated Article 8.1.5 of its CC&Rs. See ARIZ. REV. STAT.
20 section 41-1092.07(G)(2); A.A.C. R2-19-119(A) and (B)(1); see also *Vazanno v. Superior*
21 *Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952). Respondent bears the burden to establish
22 affirmative defenses by the same evidentiary standard. See A.A.C. R2-19-119(B)(2).

23 3. "A preponderance of the evidence is such proof as convinces the trier of fact
24 that the contention is more probably true than not." MORRIS K. UDALL, ARIZONA LAW OF
25 EVIDENCE § 5 (1960). A preponderance of the evidence is "[t]he greater weight of the
26 evidence, not necessarily established by the greater number of witnesses testifying to a fact
27 but by evidence that has the most convincing force; superior evidentiary weight that, though
28 not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a
29 fair and impartial mind to one side of the issue rather than the other." BLACK'S LAW
30 DICTIONARY at page 1220 (8th ed. 1999).

1 Transmitted through US Mail to:

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