

1 Bylaws....” Petitioner states that this action is in violation of
2 Bylaws Article III Section A Paragraph 3.5, Sections B
3 Paragraph 3.7, and Article IV Paragraph 4.2.

4 3. “...held a Board Meeting on 9/22/2022 not called or
5 scheduled by the Board of members, but was organized by
6 the HOA Manager who is not authorized to call a board
7 meeting.” Petitioner states that this action is in violation of
8 Bylaws Article III Section B. Article IV Section 6.7(b), Article I
9 Paragraph 1.3.”

10 4. “violated ARS 33-1804 A by prohibiting the recording of
11 open session 6:30-7:30 PM on October 24th, 2022.”

12 5. “In the Open Board Meeting at 6:30-7:30 PM on October
13 24th, which was held through Zoom videoconferencing, the
14 HOA didn’t allow the opposing side of the issues to be spoken
15 as they muted in the videoconference.” Petitioner states that
16 this action is in violation of ARSS 33-1804.

17 3. Petitioner Senol Pekin testified on his own behalf and presented the
18 testimony of Julie Willowby, Shelly Nelson, and Sherry Swanson¹. Respondent Artisan
19 Ranch Community Association presented the testimony of Susanne Easterday
20 Roskens, the Director of Respondent’s Board, and Mandy Rogers, an employee of
21 Respondent’s Community Manager, AAM, LLC.

22 4. Respondent’s Bylaws Article II, Section 2.3 provide, in relevant part, as
23 follows:

24 The first meeting of the Association, whether a regular or
25 special meeting, shall be held within one year after
26 incorporation of the Association. Subsequent regular annual
27 meetings shall be held on the second Wednesday of April of
28 each year.

29 5. Respondent’s Bylaws Article III, Section B. 3.7 provide, in
30 relevant part, as follows:

Organizational Meetings.

Each Board shall hold an organizational meeting within a
reasonable time after newly-elected or newly-appointed
directors take office.

¹ The Administrative Law Judge has read and considered each page of each admitted exhibit, even if not mentioned in this Decision. The Administrative Law Judge has also considered the testimony of every witness, even if the witness is not specifically mentioned in this Decision.

1 6. Respondent's Bylaws, Article IV 4.2 provide, in relevant part,
2 as follows:

3 The officers of the Association shall be elected by the Board at
4 an organizational meeting of the Board taking place pursuant
5 to Section 3.5

6 7. The evidence presented at hearing shows that Respondent failed to hold
7 its regular annual meeting on the second Wednesday of April 2022 as required under
8 Respondent's Bylaws Article II Paragraph 2.3. Instead, Respondent held its regular
9 annual meeting in May of 2022.

10 8. In August of 2022, Respondent conducted an organizational meeting
11 during its board of directors meeting where the Board appointed officers of the
12 Association. See Respondent's Exhibit D. Respondent contended at hearing that the
13 Bylaws not require that the organizational meeting be held separate from any other
14 board meeting.

15 9. In September of 2022, the Board's president, Susanne Roskens
16 requested that Mandy Rogers organize a board meeting, because the Board was
17 unable to obtain a sufficient amount of votes regarding a landscaping issue related to
18 over seeding, and it was important to make a prompt decision. Accordingly, Ms. Rogers
19 organized a board meeting for September 22, 2022.

20 10. The Board conducted a board meeting on October 24, 2022, Ms. Rogers
21 informed the homeowners that they were not allowed to record the board meeting,
22 without admonishing participants that the prohibition only applied to closed sessions.
23 Ms. Rogers placed Petitioner on mute at different times during the board meeting. At
24 hearing, Ms. Rogers explained that she placed Petitioner on mute because he was
25 generally aggressive. However, the evidence shows that Petitioner had several times to
26 speak during the board meeting and even suggested that he could discuss one of the
27 board meeting items with another Board member after the meeting. Ms. Rogers also
28 stated at hearing that the Board required advanced notice of anyone recording the
29 board meeting.
30

CONCLUSIONS OF LAW

1 1. A.R.S. § 32-2199(B) permits an owner or a planned community
2 organization to file a petition with the Department for a hearing concerning violations of
3 planned community documents under the authority Title 33, Chapter 16.² Such petitions
4 will be heard before the Office of Administrative Hearings, an independent state agency,

5 2. Petitioners bear the burden of proof to establish that Respondent violated
6 the Act or Respondent’s Bylaws by a preponderance of the evidence.³ Respondent bears
7 the burden to establish affirmative defenses by the same evidentiary standard.⁴

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

15 4. A.R.S. §1804 (A) provides:

16 A. Notwithstanding any provision in the declaration, bylaws or
17 other documents to the contrary, all meetings of the members'
18 association and the board of directors, and any regularly
19 scheduled committee meetings, are open to all members of
20 the association or any person designated by a member in
21 writing as the member's representative and all members or
22 designated representatives so desiring shall be permitted to
23 attend and speak at an appropriate time during the
24 deliberations and proceedings. The board may place
25 reasonable time restrictions on those persons speaking
during the meeting but shall permit a member or member's
designated representative to speak once after the board has
discussed a specific agenda item but before the board takes
formal action on that item in addition to any other opportunities

26 ² See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce
27 the development’s CC&Rs.

28 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
29 Ariz. 369, 372, 249 P.2d 837 (1952).

30 ⁴ See A.A.C. R2-19-119(B)(2).

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

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

1 to speak. The board shall provide for a reasonable number of
2 persons to speak on each side of an issue. **Persons**
3 **attending may audiotape or videotape those portions of**
4 **the meetings of the board of directors and meetings of**
5 **the members that are open. The board of directors of the**
6 **association shall not require advance notice of the**
7 **audiotaping or videotaping and may adopt reasonable**
8 **rules governing the audiotaping and videotaping of open**
9 **portions of the meetings of the board and the**
10 **membership, but such rules shall not preclude such**
11 **audiotaping or videotaping by those attending, unless**
12 **the board audiotapes or videotapes the meeting and**
13 **makes the unedited audiotapes or videotapes available to**
14 **members on request without restrictions on its use as**
15 **evidence in any dispute resolution process.** Any portion of
16 a meeting may be closed only if that closed portion of the
17 meeting is limited to consideration of one or more of the
18 following:

19 Emphasis in bold.

20 5. Respondent did not dispute that it failed to hold an annual board meeting
21 in April of 2022. However, Respondent contends that it was simply a technical violation
22 and there was no harm to Petitioner. Respondent argued that such violations are
23 permitted under A.R.S. § 10-4701(e).

24 6. Upon consideration of the written evidence and testimony provided at
25 hearing, the Administrative Law Judge concludes that the preponderance of the
26 evidence shows that Respondent violated Respondent's Bylaws Article II Paragraph 2.3
27 when it failed to hold an annual meeting in April of 2022. While A.R.S. § 10-3701(e)
28 provides that the failure of to hold an annual meeting at the time prescribed in the
29 Bylaws does not affect the validity of a corporate action, the section does not provide an
30 exception to the adherence to Bylaws that require a set time for an annual meeting.

7. The preponderance of the evidence shows that Respondent violated
A.R.S. § 33-1804 when it informed the homeowners that they were not allowed to
record the board meeting.

1 Susan Nicolson
2 Commissioner
3 SNicolson@azre.gov
4 AHansen@azre.gov
5 vnunez@azre.gov
6 djones@azre.gov
7 labril@azre.gov

8 Senol Pekin
9 spekin@msn.com

10 Ashley N. Moscarello
11 ashley@goodlaw.legal

12 By: OAH Staff
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30