

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2 Suzanne Thomas

**No. 25F-H075-REL**

3 Petitioner,

**ADMINISTRATIVE LAW JUDGE  
DECISION**

4 v.

5 Woodland Hills Improvement Association,

6 Respondent.  
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8 **HEARING:** March 16, 2026 and March 24, 2026

9 **APPEARANCES:** Suzanne Thomas appeared on behalf of herself. Melissa Tone  
10 appeared on behalf of Woodland Hills Improvement Association.

11 **ADMINISTRATIVE LAW JUDGE:** Velva Moses-Thompson

12 **EXHIBITS ADMITTED INTO EVIDENCE:** Exhibits 1 through 32 submitted by  
13 Suzanne Thomas.  
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15 **FINDINGS OF FACT**

16 1. The Arizona Department of Real Estate (Department) is authorized by statute  
17 to receive and to decide petitions for hearings from members of homeowners'  
18 associations and from homeowners' associations in Arizona.

19 2. Woodland Hills Improvement Association (Association) is a homeowners'  
20 association whose members own lots in the Woodland Hills I development in Tucson,  
21 Arizona.

22 3. Suzanne Thomas (Ms. Thomas) owns a lot in Woodland Hills I.

23 4. On or about July 22, 2025, Ms. Thomas filed a single-issue petition alleging  
24 that the Association violated section 8.1 of its Covenants, Conditions, and Restrictions  
25 (CC&Rs) by failing to, "...maintain the common area/grounds in accordance with our  
26 CC&R's, Section 8.1,pages 10/11... monthly dues cover "mowing grass, caring for  
27 grounds", the board has made it clear they will not plant our winter grass this fall  
28 claiming it is now a special assessment; this was communicated via email in May of  
29 2025."  
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1 5. The Association's CC&Rs provide, in relevant part, as follows:  
2 .....

3 8. Assessments. Each Owner covenants that each Townhouse is subject to  
4 an assessment in an amount to be determined by the Association.

5 8.1 Owner's Pro-rata Share of Operating Expenses. Each Owner of a  
6 Townhouse Unit shall pay his/her pro-rata share of the actual cost to the  
7 Association of all taxes, repair, replacement and maintenance of the Common  
8 Areas and of the maintenance of other facilities and activities including, but not  
9 limited to, mowing grass, caring for the grounds, sprinkler system, swimming pool  
10 and other charges including fire and other hazard insurance premiums and a  
11 liability insurance policy in the face amount of not less than \$1,000,000.00. This  
12 policy, in addition to public liability insurance, shall cover repair and construction  
13 work to all of the assets and property owned by or to be maintained by the  
14 Association.

15 .....  
16 8.7 Special Assessments. Subject to any limitations set forth in the By-Laws,  
17 Special Assessments may be levied in addition to Regular Assessments for (1)  
18 constructing capital improvements; (2) correcting an inadequacy in the current  
19 operating account; (3) defraying, in whole or in part the cost of any construction,  
20 reconstruction, unexpected repair or replacement of improvements in the  
21 Dwelling Unit(s) or Common Area; or (4) paying for such other matters as the  
22 Board may deem appropriate for the Subdivision. Special Assessments shall be  
23 levied in the same manner as Regular Assessments. Special Assessments shall  
24 be approved by two-thirds (13) of the Members who are voting in person or by  
25 proxy at a meeting called for this purpose, or in the alternative, by two thirds (13)  
26 of the members voting by ballot, in the event that a meeting is not called to vote  
27 on the imposition of the Assessment.

28 6. The petition was referred to the Office of Administrative Hearings for an  
29 evidentiary hearing.

30 7. A hearing was held on March 16, 2026 and March 24, 2026.

8. At hearing, Ms. Thomas testified on behalf of herself and presented the  
testimony of Frank Cushing and Barbara Evans. The Association presented the  
testimony of Melissa Tone, Clair Lazar, Terry Turner, and Shawn Koptiva.

**Testimony of Suzanne Thomas**

9. Because the CC&Rs require that the Association's actual costs for mowing  
and sprinkling of the lawn be included in an owner's assessment, Ms. Thomas  
contended that CC&R 8.1 mandates that the Association plant grass.

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**Testimony of Frank Cushing**

10. Approximately 12 years ago, the Association informally agreed that its members would pay for grass in the fall as payment became due. The Association agreed that the payment would be made in the fall because it did not want to increase the monthly dues in the event that a member wanted to sell his or her home.

**Testimony of Barbara Evans**

11. Ms. Evans has lived in the Association since 2008. At the time, there was Bermuda grass in the Association. Because the Bermuda grass was not lasting, the Association agreed to begin installing Ryegrass.

**Testimony of Melissa Tone**

12. Ms. Tone is the Secretary for the Association's Board of Directors (Board). Ms. Tone stated that the Association has increased its savings since it stopped planting grass and using its sprinklers system. The community is 53-years old. Ms. Tone stated that most landscaping companies have stopped planting grass in Tucson, Arizona. The previous company that the Association hired to plant grass and failed to do so for weeks. Ms. Tone stated that there were pine needles and broken limbs during the summer before the new board was elected. The new company rakes weekly.

13. Ms. Tone believes that the Association should not plant grass because Tucson is close to losing a large amount of its cap allotment from the Colorado River. Ms. Tone stated that when the Association plants grass, it only exists for five months out of the year. Ms. Tone stated that the homeowners on the east side of the community do not have the same green grass as the homeowners on the west side of the community. Ms. Tone stated that the cost to seed grass is close to 6,000.

14. The Association plans to maintain the grounds through zero-scaping and attracting pollinators and birds that are common in the region. However, the Association has not proceeded with its plan due to Ms. Thomas's petition and the hearing.

15. Ms. Tone believes that the money for seeding has always been a special assessment. The Board conducted a vote for a special assessment for seeding, but it did not receive a sufficient amount of votes to pass.

16. Ms. Tone does not believe that the CC&Rs require seeding. Ms. Tone stated

1 that the CC&Rs state that maintenance may include mowing grass and the repairing the  
2 pool. Ms. Tone testified to the effect that grass maintenance is only required if grass  
3 exists in the community.

4 **Testimony of Clair Lazar**

5 17. Ms. Lazar is the President of the Association. Ms. Lazar has served as the  
6 President since November of 2024. Ms. Lazar stated that the common area is under the  
7 jurisdiction of the Board. The Board plans to make the area beautiful with more heat  
8 tolerant landscaping. Ms. Lazar stated that she sympathized with Ms. Thomas's  
9 expectation for seeding and maintaining grass. However, Ms. Lazar stated that the  
10 Association has no duty to have grass. The Board is committed to maintaining the  
11 common area and making it beautiful. The Board plans to install heat tolerant plants and  
12 cacti. The Board wants to create a friendly environment of bees, butterflies, and birds.  
13 The Board intends to offer a year-round option of color, textures, and attractive scenery  
14 instead of half a year of dead grass or Winter Ryegrass. A representative from Big Bully  
15 turf presented an option to the Association of four separate 800 to 1,000 square feet of  
16 turf as a quote with artificial grass. The islands would be strategically located in the  
17 common area so that all 19 homes can enjoy the area.

18 **Testimony of Terry Turner**

19 18. The Board began investigation into new landscaping companies and found  
20 that most of the Tucson area landscapers were transitioning to low water use  
21 landscaping and removing grass to reduce water consumption. The Board has been  
22 receiving planting options and creative ideas to find a beautiful solution for the common  
23 area.

24 **Testimony of Shawn Kopriva**

25 19. Mr. Kopriva is the Treasurer for the Association. Mr. Kopriva stated that the  
26 Board incorporated desert landscape into the budget for 2025 in the common area. In  
27 the past, the mowing and watering of grass was close to 74% of the Association's  
28 budget.  
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**CONCLUSIONS OF LAW**

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2 1. A.R.S. § 32-2199(B) permits an owner or a planned community organization  
3 to file a petition with the Department for a hearing concerning violations of planned  
4 community documents under the authority Title 33, Chapter 16.<sup>1</sup> Such petitions will be  
5 heard before the Office of Administrative Hearings, an independent state agency.

6 2. Arizona non-profit organizations are governed by Chapters 24 through 40 of  
7 Title 10, the Arizona Non-Profit Corporation Act, A.R.S. §§ 33-3101 to 33-11702.

8 3. Ms. Thomas bears the burden of proof to establish that the Association violated  
9 CC&R § 8.1 by a preponderance of the evidence.<sup>2</sup> The Association bears the burden to  
10 establish affirmative defenses by the same evidentiary standard.<sup>3</sup>

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

18 5. In Arizona, if a restrictive covenant is unambiguous, it is enforced to give  
19 effect to the intent of the parties.<sup>6</sup> "Restrictive covenants must be construed as a whole  
20 and interpreted in view of their underlying purposes, giving effect to all provisions  
21 contained therein."<sup>7</sup>

22 6. The evidence presented at hearing shows that CC&R § 8.1 requires that each  
23 owner, "pay his/her pro-rata share of the actual cost to the Association of all taxes,  
24 repair, replacement and maintenance of the Common Areas and of the maintenance of

25 <sup>1</sup> See A.R.S. § 33-1803, which authorizes homeowners associations in planned communities to enforce  
the development's CC&Rs.

26 <sup>2</sup> 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  
Ariz. 369, 372, 249 P.2d 837 (1952).

27 <sup>3</sup> See A.A.C. R2-19-119(B)(2).

28 <sup>4</sup> MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

29 <sup>5</sup> BLACK'S LAW DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).

30 <sup>6</sup> See *Powell v. Washburn*, 211 Ariz. 553, 556 ¶ 9, 125 P.3d 373, 376 (2006).

<sup>7</sup> *Lookout Mountain Paradise Hills Homeowners' Ass'n v. Viewpoint Assocs.*, 867 P.2d 70, 75 (Colo. App. 1993) (quoted in *Powell*, 211 Ariz. at 557 ¶ 16, 125 P.3d at 377).

1 other facilities and activities including, but not limited to, mowing grass, caring for the  
2 grounds, sprinkler system, swimming pool...”

3 7. Upon consideration of the evidence presented at hearing, the Administrative  
4 Law Judge concludes that the Association is not required to plant grass under CC&R §  
5 8.1 or any other governing documents.

6 8. At hearing, Mr. Cushing testified that the Association voted several years ago  
7 to require that owners pay for seeding in the fall. However, Mr. Cushing also testified  
8 that the decision was informal. Moreover, there was no evidence presented that the  
9 Associations’ governing documents were amended to impose such a requirement.

10 9. The Administrative Law Judge concludes that the Association did not violate  
11 CC&R § 8.1.

12 **ORDER**

13 **IT IS ORDERED** that Suzanne Thomas’s petition against Woodland Hills  
14 Improvement Association is dismissed.

15 **NOTICE**

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

21 Done this day, April 13, 2026.

22 /s/ Velva Moses-Thompson  
23 Administrative Law Judge

24 Transmitted by either mail, e-mail, or facsimile April 13, 2026 to:

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26 Commissioner  
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