

1 **Final agency action regarding decision below:**

2
3 **ALJFIN ALJ Decision final by statute**

4
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 In the Matter of
8 Kay & William Long
9 vs
10 Villas at Desert Camp Association

No. 25F-H073-REL
**ADMINISTRATIVE LAW JUDGE
DECISION**

11 **HEARING:** March 13, 2026.

12 **APPEARANCES:**

13 Petitioner: Kay Long
14 William Long
15 Respondent: Kyle von Johnson, Esq.
16 Ron Stacy

17 **ADMINISTRATIVE LAW JUDGE:** Nedra-Su Kawasaki

18 **EXHIBITS ADMITTED INTO EVIDENCE:** Notice of Hearing File, provided by the
19 Department of Real Estate. Respondent's Exhibits A, C, E-Q.

20 **FINDINGS OF FACT**

21 **PETITIONERS' CLAIM**

- 22 1. Villas at Desert Camp Community Association (Respondent) was a
23 planned community association in Scottsdale, Arizona.
24 2. Kay and William Long (Petitioners) owned a home located at 9131 East
25 Hoverland Road and were members of Respondent.
26 3. On or about July 23, 2025, Petitioners filed a petition with the Arizona
27 Department of Real Estate (Department) alleging that Respondent had violated the
28 Association Covenants, Conditions, and Restrictions (CC&Rs), specifically Section 4.6.
29

1 The issue identified in the petition, for which Petitioners paid the requisite \$500.00 filing
2 fee, was as follows:

3 This Complaint specifically alleges a violation of Section 4.6 of the
4 CC&Rs, due to the Boards decision to remove turf and install desert
5 landscaping in designated common areas without a properly noticed vote
6 of membership.¹

7 4. Respondent, through Ron Stacy, Board President, filed a written response
8 to the petition, denying all complaint items.²

9 5. The Department referred the petition to the Office of Administrative
10 Hearings, an independent state agency, for an evidentiary hearing.

11 6. A hearing was held on March 13, 2026. Administrative Notice was taken of
12 the agency record.

13 REFERENCED ASSOCIATION CC&Rs³

14 7. Article 4 (The Association) provided, in relevant part, as follows:

15 § 4.6 Procedure for Change of Use of Common Areas

16 Upon (a) adoption of a resolution by the Board stating that the then current
17 use of a specified part of the Common Areas is no longer in the best
18 interests of the Owners and Members, and (b) the approval of such
19 resolution by a majority of the votes of each class of Members. . .at a
20 meeting duly called for such purpose, the Board shall have the power and
21 right to change the use thereof. . .provided such new use: (i) also shall be
22 for the common benefit of the Owners and Members, and (ii) shall be
23 consistent with any recorded tract declaration, deed restrictions or zoning
24 regulations. Alternatively, the Board upon satisfaction of Subsection 4.6(a)
25 above may, in lieu of calling a meeting, notify in writing all Members of the
26 proposed transaction and of their right to object thereto and, if no more
27 than ten percent (10%) of the Class A Memberships eligible to vote object
28 in writing within thirty (30) days after receipt of such notice, the proposed
29 transaction shall be deemed approved by the Members and a meeting of
30 the Members shall not be necessary.

§ 4.9 Areas of Association Responsibility

The Association, or its duly delegated representative, shall manage,
maintain, repair and replace the areas within the Property that are the
responsibility of the Association (“Areas of Association Responsibility”),

¹ Not. of Hr'g. File, Homeowners Association (HOA) Petition Request Form (all errors included in original).

² *Id.*, Response with Statement and Enclosures.

³ See Respondent Exhibit A.

1 and all improvements located thereon, except for any part of the Areas of
2 Association Responsibility which any governmental entity is maintaining,
3 or is obligated to maintain, in accordance with the maintenance standard
4 as determined by the Board. Subject to the Master Declarations, the
5 Board shall be the sole judge as to the appropriate maintenance, repair
6 and replacement of all Areas of Association Responsibility.

7 8. Article 8 (Use Restrictions) provided, in relevant part, as follows:

9 § 8.2 Permitted Uses, Restrictions and Maintenance – Common Areas

10 The permitted uses and restrictions for the Common Areas shall be as
11 follows: . . .

12 (c) Maintenance by Association of Common Areas

13 The Association has the right and may, at any time, as to any Common
14 Areas conveyed, leased, or transferred to it, or otherwise placed under
15 its jurisdiction, in the discretion of the Board, without any approval of
16 the Owners being required:

17 (1) Maintain the plantings on all Common Areas. For this
18 purpose, Declarant and the Association shall have the right, at any
19 time, to plant, replace, maintain and cultivate landscaping, shrubs,
20 trees, and plantings on any Common Areas and on such
21 easements over an Owner's Lot as may have been granted to
22 Declarant or the Association, regardless of whether any Owner or
23 the Association is responsible hereunder for maintenance of such
24 areas. No Owner shall remove, alter, injure or interfere in any way
25 with any landscaping, shrubs, trees, grass or plantings placed upon
26 any Common Areas without the prior written consent of Declarant
27 or the Association. Declarant and the Association shall have the
28 right to enter upon or cross over any Lot, at any reasonable time,
29 for the purpose of planting, replacing, maintaining or cultivating
30 such landscaping, shrubs, trees, grass or plantings and shall not be
liable for trespass for so doing;

. . . .

(4) Replace injured and diseased trees or other vegetation on all
Common Areas, and plant trees, shrubs and ground cover to the
extent that the Board deems necessary or advisable;

. . . .

(12) The Board shall be the sole judge as to the appropriate
maintenance within the Common Areas, as well as the Lots;

9. Article 11 (Miscellaneous) provided, in relevant part, as follows:

1 modifications were made according to the reviewed submittal and determined the
2 property was compliant with DC Ranch Association landscape and architectural
3 guidelines, and Community Wide Standards.⁹

4 **COMMON AREAS**

5 16. On April 22, 2025, at Respondent's annual Board meeting, members
6 discussed the Board's plan for a turf area redesign in common areas, specifically in
7 front of villas 9191, 9179, and 9167, and two areas in the park.¹⁰ The Board noted that
8 all three areas were marked with red flags for member inspection, the DC Ranch
9 Modification Committee was aware of the project, and Desert Earth Works would
10 provide CAD drawings for irrigation changes and plant selections, copies of which were
11 also available to all residents on request.¹¹

12 17. The parties did not dispute that the above-referenced areas were, in fact,
13 common areas.

14 **PETITIONERS' TESTIMONY**

15 18. Petitioner Kay Long testified that Respondent converted the landscaping
16 in three separate areas totaling approximately 2,500 square feet. Ms. Long argued that
17 "change of use" was defined as any change in the appearance, character, function,
18 nature, or way a space was used. Ms. Long further argued that CC&R § 4.6, required
19 member approval before a substantial alteration to the function, character, or
20 appearance of the common areas occurred. She contended the conversion from turf to
21 desertscape constituted a change in use because the functional use of the common
22 area was altered, as it could no longer be used for recreational purposes. On
23 questioning, Ms. Long testified that the converted areas were still common and open,
24 but more limited in functional use. Ms. Long further contented that while Respondent
25 relied on CC&R § 8.2, it only allowed Respondent to replace vegetation as part of
26 landscape maintenance, which addressed maintenance while preserving the original
27 character of the area.

28 **RESPONDENT'S TESTIMONY**

29 ⁹ See Respondent Exhibit M.

30 ¹⁰ See Respondent Exhibit I.

¹¹ See *id.*; Testimony of Mr. Stacy.

1 19. Ron Stacy, Respondent’s Board President, testified that at the April 2023
2 annual Board meeting, it was announced that the City of Scottsdale and the Arizona
3 Department of Water Resources (ADWR) would be mandating all communities to
4 significantly reduce water consumption, which required community turf reduction over
5 “the next five years.”¹² Mr. Stacy testified that in early 2024, the Board conducted a
6 survey of all residents regarding the community landscaping and long-term turf
7 reduction plan. Thirty residents responded to the survey, and on February 5, 2024, the
8 Board presented the anonymized results to all residents via email.¹³ Mr. Stacy
9 specifically noted the results of questions 1 and 6. Question 1 asked, “Would you like to
10 move from grass to desert landscaping in our community?” The results were 26 “Yes” /
11 4 “No”. Question 6 asked, “Should an all-resident vote be taken each and every time a
12 recommendation is made to transition to a desertscape area?” The results were 8
13 “Yes” / 22 “No”. Mr. Stacy argued, notwithstanding the Board’s desire to include and
14 consider all members’ opinions, a member-vote prior to converting landscape in
15 common areas was not required.

16 20. Aaron Largo, Respondent’s property manager, testified that the types of
17 changes that required a member vote were those that created a physical barrier. Mr.
18 Largo gave examples including a community center, a pickleball court, a gated sports
19 area, or anything that created a physical obstruction so that a member no longer had
20 the same access.

21 21. Mr. von Johnson, on behalf of Respondent, argued that CC&R § 4.6 did
22 not apply to the conversion because it indicated that a change in use meant changing
23 the common area from open space to an alternative use. Mr. von Johnson argued that
24 “change in use” referred more specifically to zoning, providing examples such as
25 something that would require permitting, or potential rezoning of the plat. Additionally,
26 Mr. von Johnson argued that the landscape conversion was allowed and performed
27 pursuant to CC&R §§ 4.9 and 8.2(c), which also designated the Board to be the sole
28 judge as to the appropriate maintenance in the common areas. Additionally, Mr. von

29 ¹² See Respondent Exhibit G.

30 ¹³ See Respondent Exhibit F.

1 Johnson argued that despite the turf conversion, the areas were still common and open
2 space.

3 CONCLUSIONS OF LAW

4 1. A.R.S. § 32-2199 authorizes the administrative law judge to “adjudicate
5 complaints regarding and ensure compliance with . . . [t]itle 33, chapter 16 and planned
6 community documents.”

7 2. A.R.S. § 32-2199.01 permits a member of a planned community to file a
8 petition with the Department for a hearing concerning the planned community
9 association’s alleged violations as set forth in Title 33, Chapter 16. This matter lies
10 within the Department’s jurisdiction. The statute provides that such petitions will be
11 heard before the Office of Administrative Hearings.

12 3. A.R.S. § 32-2199.02 authorizes the administrative law judge to “order any
13 party to abide by the statute, condominium documents, community documents or
14 contract provision at issue and may levy a civil penalty on the basis of each violation.”
15 This Tribunal is not authorized to order other remediation or order civil penalties for
16 other conduct.

17 4. Petitioner bears the burden of proof to establish that Respondent violated
18 applicable statutes, CC&Rs, and/or Bylaws by a preponderance of the evidence.¹⁴
19 Respondent bears the burden to establish affirmative defenses by the same evidentiary
20 standard.¹⁵

21 5. “A preponderance of the evidence is such proof as convinces the trier of
22 fact that the contention is more probably true than not.”¹⁶

23 6. In Arizona, when construing statutes, we look first to a statute’s language as
24 the best and most reliable index of its meaning. If the statute’s language is clear and
25 unambiguous, we give effect to that language and apply it without using other means of
26

27
28 ¹⁴ See A.A.C. R2-19-119(A) and (B)(1); see also *Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d
837 (1952).

29 ¹⁵ See A.A.C. R2-19-119(B)(2).

30 ¹⁶ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

1 statutory construction, unless applying the literal language would lead to an absurd result.
2 Words should be given “their natural, obvious, and ordinary meaning.”¹⁷

3 7. Unless defined by the legislature, words in statutes are given their ordinary
4 meanings.¹⁸

5 8. Each word, phrase, clause, and sentence of a statute or rule must be given
6 meaning so that no part will be void, inert, redundant, or trivial.¹⁹

7 9. Statutes should be interpreted to provide a fair and sensible result.

8 10. In the instant matter, the relevant facts are not in dispute; Lot 21 was a
9 privately-owned single-family residence, and all other areas at issue were classified as
10 “common.” The issue here is limited only to areas designated as “common.” Petitioner
11 presented an argument suggesting that the size of modification to Lot 21, measured in
12 square footage, potentially re-classified the area as “common” for purposes of the
13 required approval process. However, the issue of property reclassification is not before
14 the Tribunal in this matter. Therefore, this decision does not consider the modifications
15 made to Lot 21, a privately-owned residence.

16 11. The issue in this matter is whether the Board violated CC&R § 4.6 when it
17 removed turf and installed desertscape in designated common areas without first
18 holding a member-vote for approval. CC&R § 4.6 addressed procedure requirements for
19 “change of use” of common areas and provided an option of two methods. The first
20 option had two requirements: (1) the Board must adopt a resolution that the current use
21 of a specified part of the common area was no longer in the best interest of the Owners
22 and members, and (2) the resolution must be approved by a majority of votes of each
23 class of members at a meeting duly called for such purpose. The second option
24 required the Board to adopt a resolution as referenced above. However, in lieu of calling
25 a meeting to vote, the Board must notify all members, in writing, of the proposed change
26 and the members’ right to object. If within thirty (30) days after the notice was received,
27 not more than 10 percent of Class A members, eligible to vote, objected in writing, the

28 ¹⁷ *Arpaio v. Steinle*, 201 Ariz. 353, 355 ¶ 5, 35 P.3d 114, 116 (App. 2001) (footnotes and citations
omitted).

29 ¹⁸ See *U.S. Parking v. City of Phoenix*, 160 Ariz. 210, 772 P.2d 33 (App. 1989).

30 ¹⁹ See *Deer Valley v. Houser*, 214 Ariz. 293, 296, 152 P.3d 490, 493 (2007).

1 proposed change was deemed approved. In either option, the new use must be for the
2 common benefit of the owners and members, and must be consistent with any recorded
3 tract declaration, deed restrictions, or zoning regulations.

4 12. To determine whether the Board violated CC&R § 4.6, the term “use” must
5 first be defined. Because it was not defined within the CC&Rs, we look to the common
6 definition. Ms. Long argued “change in use” meant the appearance, character, function,
7 or nature of how the space was used. Mr. von Johnson argued it meant changing the
8 “open space” to an alternative use that would potentially require permitting or rezoning
9 of the plat.

10 13. According to the recorded plat, the common areas at issue were located in
11 “Tract C” which was designated as “open space.” Applying Respondent’s definition to §
12 4.6 produces an illogical result. Specifically, if a change in use meant to change the
13 open space to an alternative use that potentially required permitting or rezoning, § 4.6
14 would read to mean that a change of use from accessible open space (current use)
15 would be allowed, if the new use was also accessible (common benefit) and open space
16 (consistent with the recorded tract declaration), which results in no change at all. Thus,
17 the most appropriate definition applied here is, “a purpose, object, or end, esp. of a
18 useful or advantageous nature.”²⁰ This meaning is more in line with Ms. Long’s
19 argument that a change in use referred to the function or nature of how the space is
20 used. Applying this definition to § 4.6 would require a member vote if the Board adopted
21 a resolution determining that the current “function and nature of” use of the common
22 areas at issue was no longer in the best interest of the owners and members. In this
23 case, there was agreement between the parties that the common areas at issue were
24 located in open space used as a park.

25 14. The petition alleged specifically that § 4.6 was violated when the Board,
26 without a vote of approval, removed turf and installed desertscape in the common
27 areas. Thus, it must next be analyzed whether removal of turf and installation of
28 desertscape constituted a change of use pursuant to § 4.6. No individual Article or

29 ²⁰ Oxford English Dictionary, “use (*n.*), sense III.13.a,” March 2026,
30 <https://doi.org/10.1093/OED/1187545211>.

1 Section of the CC&Rs operates in a vacuum. Each must be considered as a part of the
2 whole. Particularly relevant to the removal of turf and installation of desertscape were
3 CC&R §§ 4.9 and 8.2. These two Sections addressed maintenance and landscaping of
4 areas that were the responsibility of the Association, including common areas. Section
5 4.9 imposed a duty on the Board to manage, maintain, repair, and replace the areas
6 that were the responsibility of the Association, in accordance with the maintenance
7 standard as determined by the Board. Section 8.2 granted the Board the right, without
8 owner approval required, to at any time, plant, replace, maintain and cultivate
9 landscaping, shrubs, trees, and plantings on any Common areas. Both Sections
10 appointed the Board to be the sole judge as to the appropriate maintenance. Because
11 the CC&Rs both imposed the duty and granted the right, without approval, to the Board
12 to maintain landscaping on common areas in accordance with the maintenance
13 standard determined by the Board, and appointed the Board as the sole judge as to the
14 appropriate measures to achieve this end, § 4.6 cannot be interpreted to mean that
15 'change of use' included landscaping. This exception to § 4.6 is further supported by
16 CC&R § 11.3(2) which provided that common areas were intended solely for aesthetic
17 purposes and limited recreational use. Therefore, the undersigned ALJ finds that the
18 Board did not violate CC&R § 4.6 when it removed turf and installed desertscape in the
19 common areas without a member vote.

20 **ORDER**

21 **IT IS ORDERED** that Respondent be deemed the prevailing party in this matter.

22 **NOTICE**

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

1 Done this day, May 28, 2026.
2

3 /s/ Nedra-Su Kawasaki
4 Administrative Law Judge
5

6 Transmitted by either mail, e-mail, or facsimile May 28, 2026 to:

7 Susan Nicolson, Commissioner
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