

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of:

**No. 24F-H037-REL
24F-H039-REL**

4 Taylor Kidd and Jerome L. Glazer

5 Petitioners

**ADMINISTRATIVE LAW JUDGE
DECISION**

6
7 vs

8 Heritage Village III Homeowners Association

9 Respondent

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11 **HEARING:** August 9, 2024

12 **APPEARANCES:** Petitioner Jerome L. Glazer appeared on his own behalf.
13 Petitioner Taylor Kidd was represented by Patrick T. Nackley. Respondent Heritage
14 Village III Homeowners Association was represented by Tessa Knueppel and Mark K.
15 Sahl.

16 **ADMINISTRATIVE LAW JUDGE:** Adam D. Stone

17 **EXHIBITS ADMITTED INTO EVIDENCE:** Petitioner Taylor Kidd's Exhibits 1- 11
18 were admitted into evidence. Respondent's Exhibits 1-5 were admitted into evidence.
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20 After review of the hearing record in this matter, the undersigned Administrative
21 Law Judge makes the following Findings of Fact and Conclusions of Law, and issues this
22 ORDER to the Commissioner of the Arizona Department of Real Estate ("Department").

23 **FINDINGS OF FACT**

24 **BACKGROUND AND PROCEDURE**

25 1. The Department is authorized by statute to receive and to decide petitions
26 for hearings from members of homeowners' associations and from homeowners'
27 associations in Arizona.
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1 2. On or about February 27, 2024, Petitioner Kldd filed a single-issue petition
2 against the Respondent with the Department. Petitioner tendered \$500.00 to the
3 Department with her petition. This was case number 24F-H037-REL.

4 3. On or about February 29, 2024, Petitioner Glazer filed a single-issue petition
5 against the Respondent with the Department. Petitioner tendered \$500.00 to the
6 Department with her petition. This was case number 24F-H039-REL

7 4. Respondent Heritage Village III Homeowners Association ("Association")
8 timely filed its Answer to both petitions with the Department whereby it denied all
9 complaint items in the petitions.

10 5. Per the Notice of Hearing for Petitioner Kidd's matter, the Department
11 referred this matter to the Office of Administrative Hearings ("OAH"), an independent state
12 agency, for an evidentiary hearing on May 31, 2024, regarding the following issue based
13 on Petitioner's petition:

14 Petitioner alleged the Respondent violated CC&Rs Article 7 Section
15 7 and Articles of Incorporation, Article 8 after the Respondent
16 approved an 'improvement project in a board vote in 2023...without
17 the required 75% of homeowner s agreeing to it'.

18 6. Per the Notice of Hearing for Petitioner Glazer's matter, the Department
19 referred this matter to the Office of Administrative Hearings ("OAH"), an independent state
20 agency, for an evidentiary hearing on May 31, 2024, regarding the following issue based
21 on Petitioner's petition:

22 Petitioner alleged Respondent violated CC&R Article 7,
23 Section 7 by, 'ACTING ALONE AND WITHOUT A
24 MEMBERSHIP VOTE,...FOR A CAPITAL IMPROVEMENT
25 PROJECT.'

26 7. Upon request by the Association to Consolidate the matters, the tribunal
27 Ordered the same, and continued the matter. Hearing was ultimately held on August 9,
28 2024.

29 **THE PARTIES AND GOVERNING DOCUMENTS**

8. Respondent is a homeowners' association whose members own properties in a residential real estate development located in Hereford, Arizona.

9. Petitioner area property owners and a members of the Association.

10. The Association is governed by its Covenants, Conditions, and Restrictions (“CC&Rs”), and overseen by a Board of Directors (“the Board”). The Association is also regulated by Title 33, Chapter 16, Article 1 of the Arizona Revised Statutes (“ARIZ. REV. STAT.”)

HEARING EVIDENCE

11. Taylor Kidd testified that she purchased the house in 2014 and did so because she wanted the lush green grass.

12. Ms. Kidd testified that on or about December 19, 2023, she and other homeowners received correspondence from the Association's attorney stating that the Board of Directors had approved a Landscape Improvement Project to commence on February 12, 2024.¹ The letter also informed homeowners that there was a project cost of \$1,557,950.00, which would be divided amongst the 166 homeowners, resulting in a special assessment in the amount of \$9,385.24 per homeowner.²

13. Ms. Kidd testified further that this amount would be a financial detriment, and was displeased that there was never a vote taken on the matter. Ms. Kidd testified that while the letter stated that engaging in the project would save water, there was no proof provided as to the same.

14. In addition, Ms. Kidd testified that there are two controlling CC&Rs, namely one for the Association,³ and one for McCormick Ranch.⁴ The McCormick Ranch CC&Rs specifically have a section concerning this issue, namely Article III Section 4,⁵ while the Association's CC&R's do not. Ms. Kidd testified that she believed that the Association was bound by McCormick Ranch CC&Rs, and as such, there must be a vote with two-thirds approval of all voting owners.

¹ See Petitioner's Exhibit 1.

² See *id.*

³ See Respondent's Exhibit 1.

⁴ See Respondent' Exhibit 2.

⁵ See *id.* at page 17.

1 15. Ms. Kidd testified that despite requests to hold a vote, the Board failed to do
2 so. However, Ms. Kidd testified that to date the project had not commenced, nor had the
3 \$9,385.24 assessment been assessed to the homeowners.

4 16. Jerome Glazer testified that the CC&Rs contained no authority to allow the
5 Board to take the action it did.

6 17. Jennifer Hutsko had been a member of the Board of Directors for
7 approximately 2 and half years. She also serves on the Community Planning Committee
8 ("Committee").

9 18. Ms. Hutsko testified that the grounds were filled with dead, dying and
10 diseased trees, as well as dying grass due primarily to a 40 year old irrigation system that
11 has undergone patchwork repairs.⁶

12 19. Further, Ms. Hutsko testified that the Board has a duty to maintain the
13 property per the CC&Rs, and was not required to hold a homeowner vote on the same, as
14 the Association's CC&Rs are silent on the issue.

15 20. Ms. Hutsko testified that the Committee that took a survey of property
16 owners, and there was 72% homeowner approval for the project.

17 21. In addition, Ms. Hutsko stated that as of the hearing, the project had not
18 moved forward and there had been no Board vote on the \$9,385.24 special assessment.

19 **CONCLUSIONS OF LAW**

20 1. This matter lies within the Department's jurisdiction. Pursuant to ARIZ. REV.
21 STAT. §§ 32-2102 and 32-2199 et al., regarding a dispute between an owner and a
22 planned community association, the owner or association may petition the department for
23 a hearing concerning violations of community documents or violations of the statutes that
24 regulate planned communities as long as the petitioner has filed a petition with the
25 department and paid a filing fee as outlined in ARIZ. REV. STAT. § 32-2199.05.

26 2. Pursuant to ARIZ. REV. STAT. §§ 32-2199(2), 32-2199.01(D), 32-2199.02,
27 and 41-1092, OAH has the authority to hear and decide the contested case at bar.

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30 ⁶ See Respondent's Exhibit 5.

1 3. In this proceeding, Petitioner bears the burden of proving by a
2 preponderance of the evidence that Respondent violated ARIZ. REV. STAT. § 33-1803.⁷

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

10 5. McCormick Ranch CC&R’s Article III, Section 4 state in relevant part, as
11 follows:

12 Section 4: Special Assessments for Capital Improvements. In
13 addition to the Annual Assessments authorized above, the
14 Association may levy, in any Assessment period, a Special
15 Assessment applicable to that period only for the purpose of
16 defraying, in whole or in part the cost of any construction,
17 reconstruction, repair or replacement of a capital improvement up the
18 Association Land, including fixtures and personal property related
19 thereto, provided that any such assessment shall have the assent of
20 two-thirds (2/3) of the votes cast by Voting Owners in person or by
21 proxy at a meeting duly called for such purpose...

22 6. The Association CC&R’s Article VII, Section 1 state in relevant part as
23 follows:

24 Section 1. Binding Effect and Enforcement. ...Those covenants,
25 conditions and restrictions and other provision as recorded or
26 required on the McCormick Ranch, including but not limited to the
27 assessment, lien and collection of Homeowner Association Dues,
28 are made part hereof and are hereby referenced as to the provisions
29 required for this entire property and for each individual lot and the
30 owner thereof....

31 7. Based upon the foregoing, Petitioners met their burdens of proof in
32 demonstrating that the Association was in violation the CC&R’s as it would be inconsistent

33 ⁷ See ARIZ. ADMIN. CODE R2-19-119.

34 ⁸ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

35 ⁹ BLACK’S LAW DICTIONARY 1220 (8th ed. 1999).

1 to assume that only part of Article III of the McCormick Ranch's CC&R's would apply to the
2 Association while Section 4 would somehow be excluded. Further the plain language of
3 Article VII, Section 1 of the Association's CC&R's, clearly state "including but not limited
4 to..." thus it would incorporate Article III, Section 4 in full.

5 8. Thus, the Association violated McCormick Ranch CC&R's Article III,
6 Section 4, as it did not take the required vote, as well as and the Association CC&R's
7 Article VII, Section 1, by failing to follow the McCormick Ranch CC&R's in regards to the
8 same.

9 **ORDER**

10 **IT IS ORDERED** that Petitioners' petitions in these matters are granted.

11 **IT IS FURTHER ORDERED** pursuant to ARIZ. REV. STAT. § 32-2199.02(A),
12 Respondent shall reimburse both Petitioner's filing fees as required by ARIZ. REV. STAT. §
13 32-2199.01.

14 **NOTICE**

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

20 Done this day, August 23, 2024.

21 /s/ Adam D. Stone
22 Administrative Law Judge
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29 Transmitted by either mail, e-mail, or facsimile August 23, 2024 to:
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