

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Thomas Satterlee,
4 Petitioner,

No. 17F-H1716022-REL
No. 17F-H1716018-REL

5 vs.

6 Green Valley Country Club Vistas II
7 Property Owners Association
8 Respondent.

ADMINISTRATIVE LAW JUDGE
DECISION

9
10 **ORAL ARGUMENT:** June 27, 2017

11 **APPEARANCES:** Thomas Satterlee (Petitioner) represented himself. James
12 Robles, Esq. represented Green Valley Country Club Vistas II Property Owners
13 Association (Respondent).¹

14 **ADMINISTRATIVE LAW JUDGE:** Suzanne Marwil

15 **FINDINGS OF FACT**

16 1. Hearing in these consolidated matters was originally set for April 4, 2017
17 and then continued to June 28, 2017, due to some personal issues that arose in
18 Petitioner's life.

19 2. On March 15, 2017, Respondent filed a motion to vacate alleging that the
20 Office of Administrative Hearings lacked subject matter jurisdiction over the Petitions
21 because Respondent was not a planned community as defined by A.R.S. § 33-1802(4)
22 because it did not own or operate real estate or have a roadway easement or covenant.
23 Because the motion was potentially dispositive, oral argument was held in lieu of hearing.

24 3. At oral argument, both Respondent and Petitioner agreed that the
25 Respondent did not currently own or operate real estate or have a roadway easement or
26 covenant.

27 4. Petitioner urged the Office of Administrative Hearings to nevertheless
28 exercise jurisdiction and hear the case because former Administrative Law Judge

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30 ¹ Petitioner argued that Mr. Robles was not authorized to represent Respondent. For purposes of this proceeding it is sufficient that Mr. Robles has filed a Notice of Appearance purporting to represent Respondent. Petitioner's concerns over the propriety of that representation may be addressed in another forum.

Douglas had exercised jurisdiction over a Petition he filed against Respondent in docket number 15F-H1515008-BFS. Petitioner also argued that the because Respondent's community documents contemplate being bound by the law governing planned communities, subject matter jurisdiction should be conferred upon the Office of Administrative Hearings.

CONCLUSIONS OF LAW

1. A.R.S. § 33-1802 provides in pertinent part:

In this chapter and in the community documents, unless the context otherwise requires:

4, "Planned community" means a real estate development that includes *real estate owned and operated by or real estate on which an easement to maintain roadways or a covenant to maintain roadways* is held by a nonprofit corporation or unincorporated association of owners, that is created for the purpose of managing, maintaining or improving the property and in which the owners of separately owned lots, parcels or units are mandatory members and are required to pay assessments to the association for these purposes. Planned community does not include a timeshare plan or a timeshare association that is governed by chapter 20 of this title or a condominium that is governed by chapter 9 of this title.

Emphasis added. Before it was amended in 2014, the statute only required the ownership of real estate for an association to be considered a planned community. See *Sunrise Desert Vistas v. Salas*, 1 CA-CV 14-052 (Ct. App. 2016) at footnote 2 (noting revision) and ¶ 8 (providing language of prior version).² Petitioner moved into the community in 2014, but under either definition Respondent is not a planned community because it does not own or operate real estate or have an easement or covenant to maintain roadways within that community.

2. The Administrative Law Judge declines to accept Petitioner's invitation to construe the introductory sentence of A.R.S. § 33-1802 as permission to rewrite or expand the express language of the definition of a planned community. As the *Sunrise Desert Vista* Court noted at ¶ 10 when presented the same argument:

Although A.R.S. § 33-1802 includes "unless the context otherwise requires" in the introductory sentence, the plain language of

² This unpublished case is cited only as persuasive, rather than controlling, authority.

1 paragraph four *requires* that in order to be considered a “planned
2 community” an entity must own and operate real estate. This court has
3 interpreted the phrase “unless the context otherwise requires” to allow
4 some flexibility in interpreting a statute, but not to the extent of
5 disregarding the language of a statute or the legislative intent
6 embodied by that language. *See Cable One, Inc. v. Ariz. Dept. of Revenue*,
7 232 Ariz. 275, 284, ¶ 42 (App. 2013) (“Although this prefatory phrase
8 may allow some flexibility in interpreting or applying [the statute at
9 issue], that flexibility does not allow us to disregard legislative intent or
10 to read into the statute terms, limits, or requirements that are simply
11 not there.”) (Internal citation omitted). Even though this court has
12 noted that this prefatory language means a statute is “not to be applied
13 mechanistically and rigidly,” *State v. Heylmun*, 147 Ariz. 97, 99 (App.
14 1985), interpreting § 33-1802(4) to mean what it precisely says is neither
15 mechanical nor rigid. The plain meaning of the statute requires
16 ownership and operation of real property in order for an entity to
17 qualify as a “planned community.” Based on that reading, we conclude
18 that Sunrise was not a “planned community” as defined by A.R.S. § 33-
19 1802.

20 Modification in original.

21 3. The undersigned has reviewed Administrative Law Judge Douglas’ prior
22 decision in 15F-1515008-BFS and finds that, although it contains standard
23 boilerplate language regarding jurisdiction, no party raised the issue of subject
24 matter jurisdiction and as such Judge Douglas did not consider it. In any event, a lack
25 of subject matter jurisdiction cannot be waived and must be addressed because
26 “[a]dministrative decisions that reach beyond an agency’s statutory power are void.”
27 *Ariz. Bd. of Regents for & on Behalf of Univ. of Ariz. v. State ex rel. State of Ariz. Pub. Safety*
28 *Ret. Fund Manager Adm’r*, 160 Ariz. 150, 156 (App. 1989). *See also Swichtenberg v. Jack*
29 *Brimer*, 171 Ariz. 77, 828 P.2d 1218 (App. 1991). Similarly, “it is settled that . . .
30 [j]urisdiction of the subject matter cannot be conferred upon a court by, or be based on,
the estoppel of a party to deny that it exists.” *Swichtenberg*, 171 Ariz. at 81, 828 P.2d at
1222, *citing*, 21 C.J.S. *Courts* § 108 at 161. *Accord* 20 Am. Jur. 2d *Courts* § 95 at 455. For

1 this reason, the statutes, not the parties, lay out the boundaries of administrative
2 jurisdiction.

3 4. Because Respondent is not a “planned community” as defined by
4 statute, the Office of Administrative Hearings and the Arizona Department of Real
5 Estate lack jurisdiction over these Petitions. Petitioner remains free, however, to file
6 an action in a court of competent jurisdiction as specified by Respondent’s
7 community documents.
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9 **RECOMMENDED ORDER**

10 In view of the foregoing, it is recommended that the Petitions in these
11 consolidated matters be dismissed with prejudice.

12 *In the event of certification of this Administrative Law Judge Decision by the*
13 *Director of the Office of Administrative Hearings, the effective date of these Orders will be*
14 *40 days from the date of the certification.*

15 Done this day, July 6, 2017.

16 /s/ Suzanne Marwil
17 Administrative Law Judge
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