

1 **BEFORE THE DEPARTMENT OF REAL ESTATE**
2 **OFFICE OF ADMINISTRATION**
3 **IN AND FOR THE STATE OF ARIZONA**

4
5 **Thomas Satterlee,**)
6 **Petitioner,**)
7)
8 **vs.**)
9)
10 **Green Valley Country Club Vistas II**)
11 **Property Owners Association**)
12 **Respondent.**)
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CASE NO. HO 17-16/018
CASE NO. HO 17-16/022

DOCKET NO. 17F-H1716018-REL
DOCKET NO. 17F-H1716022-REL

FINAL ORDER

11 Pursuant to Arizona Revised Statutes ("A.R.S.") § 41-1092.08, the attached
12 Administrative Law Judge ("ALJ") Decision is adopted by the Commissioner of the Department
13 of Real Estate ("Commissioner") and is accepted as follows:

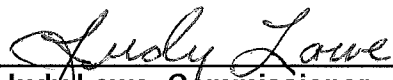
14 **ORDER**

15 The Commissioner accepts the ALJ decision that the Petitions in these
16 consolidated matters be dismissed with prejudice.

17 Pursuant to A.R.S. § 32-2199.02 (B), this Order is binding on the parties unless a
18 rehearing is granted pursuant to A.R.S. § 32-2199.04 within thirty (30) days after the service of
19 this final Order. A written request for rehearing should be addressed to Abby Hansen, 2910 N.
20 44th Street, Suite 100, Phoenix, Arizona, 85018.

21 This Order is a final administrative action and is effective immediately from the
22 date service is complete. A party may appeal this final administrative decision by filing a
23 complaint for judicial review pursuant to title 12, chapter 7, article 6. The Order will not be
24 stayed unless a stay is obtained from the court in conjunction with the judicial review action.

1 DATED this 7th day of July 2017.

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3 
4 Judy Lowe, Commissioner
DEPARTMENT OF REAL ESTATE

5 The foregoing mailed this 7th day of July 2017,
6 via certified mail receipt number 91 7199 9991 7038 0621 7992 to:

7 Thomas Satterlee
8 270 W LaCanoa
Green Valley AZ 85614

9 Copy sent via certified mail receipt no. 91 7199 9991 7038 0621 7985 to:

10 James A. Robles
11 722 East Osborn Road, Suite 100
12 Phoenix AZ 85014

13 COPY electronically transmitted to:

14 The Office of Administrative Hearings
15 1400 W Washington St, Suite 101
16 Phoenix, AZ 85007

17 By:



18 Abby Hansen
19 HOA Coordinator
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No. 17F-H1716022-REL
No. 17F-H1716018-REL

ADMINISTRATIVE LAW JUDGE DECISION

Green Valley Country Club Vistas II
Property Owners Association
Respondent.

ORAL ARGUMENT: June 27, 2017

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

ADMINISTRATIVE LAW JUDGE: Suzanne Marwil

FINDINGS OF FACT

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

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

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

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

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.

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

6 CONCLUSIONS OF LAW

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

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

10 4, "Planned community" means a real estate development that includes *real*
11 *estate owned and operated by or real estate on which an easement to*
12 *maintain roadways or a covenant to maintain roadways* is held by a
13 nonprofit corporation or unincorporated association of owners, that is
14 created for the purpose of managing, maintaining or improving the property
15 and in which the owners of separately owned lots, parcels or units are
16 mandatory members and are required to pay assessments to the
17 association for these purposes. Planned community does not include a
18 timeshare plan or a timeshare association that is governed by chapter 20 of
19 this title or a condominium that is governed by chapter 9 of this title.

20 Emphasis added. Before it was amended in 2014, the statute only required the ownership
21 of real estate for an association to be considered a planned community. See *Sunrise*
22 *Desert Vistas v. Salas*, 1 CA-CV 14-052 (Ct. App. 2016) at footnote 2 (noting revision)
23 and ¶ 8 (providing language of prior version).² Petitioner moved into the community in
24 2014, but under either definition Respondent is not a planned community because it does
25 not own or operate real estate or have an easement or covenant to maintain roadways
26 within that community.

27 2. The Administrative Law Judge declines to accept Petitioner's invitation to
28 construe the introductory sentence of A.R.S. § 33-1802 as permission to rewrite or
29 expand the express language of the definition of a planned community. As the *Sunrise*
30 *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 paragraph four *requires*
that in order to be considered a "planned community" an entity must own

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

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

17 Modification in original.

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

31 4. Because Respondent is not a “planned community” as defined by statute,
32 the Office of Administrative Hearings and the Arizona Department of Real Estate lack
33 jurisdiction over these Petitions. Petitioner remains free, however, to file an action in a
34 court of competent jurisdiction as specified by Respondent’s community documents.

35 RECOMMENDED ORDER

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

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

6 Done this day, July 6, 2017.

7 /s/ Suzanne Marwil
8 Administrative Law Judge
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