

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Thomas P. Satterlee,
4 Petitioner,

No. 18F-H1817022-REL-RHG

5 vs.

**ADMINISTRATIVE LAW
JUDGE DECISION**

6 Green Valley Country Club Vistas II
7 Property Owner's Association,
8 Respondent.

9 **FINDINGS OF FACT**

10 1. Hearing in Case Number 18F-H1817022-REL was set to convene on March
11 19, 2018.

12 2. On January 26, 2018, Respondent filed a Motion to Dismiss alleging that the
13 Office of Administrative Hearings lacked subject matter jurisdiction over the petition
14 because Respondent was not a planned community as defined by A.R.S. § 33-1802(4)
15 because it did not own or operate real estate or have a roadway easement or covenant.
16 Because the motion was potentially dispositive, oral argument was held in lieu of hearing.

17 3. During oral arguments, Petitioner argued that because the developer built
18 walls and a sign at the entrance of the community and Respondent had maintained the
19 landscaping around the sign since that time, Respondent had a “covenant to maintain
20 roadways” that would give the Arizona Department of Real Estate jurisdiction over the
21 issues because Respondent was a “planned community.” Petitioner argued that
22 “roadway” in the statute included “roadway systems,” which would include the land at the
23 entrance of the community.

24 4. Respondent argued that the landscaping surrounding the sign did not
25 constitute a roadway and that because the statute defines a “planned community” as a
26 real estate development that includes “a covenant to maintain roadways”, Respondent
27 was not subject to the jurisdiction of the Arizona Department of Real Estate.

28 5. The Administrative Law Judge concluded that because Respondent was
29 not a “planned community” as defined by statute, the Office of Administrative Hearings
30

1 and the Arizona Department of Real Estate lacked jurisdiction over the petition and issued
2 an Administrative Law Judge Decision to that effect on March 15, 2018.¹

3 6. On or about April 10, 2018, Petitioner filed a Homeowner's Association
4 (HOA) Dispute Rehearing Request (Request) with the Arizona Department of Real
5 Estate. On or about April 30, 2018, Respondent filed a response to the Request. On May
6 3, 2018, the Commissioner granted the Request.

7 7. Because jurisdiction remained potentially dispositive, argument on the issue
8 was heard on September 5, 2018.

9 8. During oral arguments, Petitioner presented additional documentation
10 supporting his assertion that Respondent was a "planned community" under the statute.
11 That documentation is summarized as follows:

- 12 a. A May 18, 2018 letter from Ana M. Olivares, PE, Director of Pima County
13 Transportation, stating that Respondent "had been maintaining the
14 landscaping at the Northeast and Southeast corners of La Canada Drive
15 and La Canoa since its installation." Further, the letter provided that
16 "[t]his maintenance will continue until Pima County Department of
17 Transportation changes course and finds the funds to take over the
18 maintenance."
- 19 b. Chapter 1 of the Pima County Roadway Design Manual (RDM), dated
20 2013, provides that "[t]he focus of the RDM is on urban and rural
21 roadway design."
- 22 c. Page 1 of 3 of the Pima County, Arizona Board of Supervisors Policy
23 Number 54.1 entitled "Landscape Improvements in Pima County Right-
24 of-Way" provides that "[t]he Pima County Department of Transportation
25 will consider planting in County right-of-way" under certain conditions.
- 26 d. A website printout "About Complete Streets" from North Carolina
27 describes that "complete streets" are designed to be safe and
28 comfortable for all users, including pedestrians, bicyclists, transit riders,

29 ¹ At the same time, the Administrative Law Judge issued an Administrative Law Judge Decision in case
30 numbers 17F-H1716018-REL-RHG and 17F-H1716022-REL-RHG finding that Respondent was not a
planned community. The Office of Administrative Hearings has no knowledge that Petitioner appealed that
finding.

1 motorists, and individuals of all ages and capabilities.” It further provides
2 that “[t]hese streets generally include sidewalks, bicycle lanes, transit
3 stops, appropriate street widths and speeds, and are well-integrated
4 with surrounding land uses.”

- 5 e. A website printout from the United States Department of Transportation
6 provides that “Complete Streets can support planners and engineers in
7 developing roadway designs that improve the safety of all users and
8 provide additional opportunities for physical activity from transportation.”
- 9 f. A website printout from the Federal Highway Administration provides
10 that “[a] complete street anticipates and accommodates the needs of all
11 road users as indicated” in an included diagram from North Carolina.
- 12 g. A second website printout from the Federal Highway Administration
13 provides that “[a]ccording to the National Complete Streets Coalition,
14 typical elements that make up a complete street include sidewalks,
15 bicycle lanes (or wide, paved shoulders), shared-use paths, designated
16 bus lanes, safe and accessible transit stops, and frequent and safe
17 crossing for pedestrians, including median”²
- 18 h. A document from the Indiana Department of Transportation provides
19 that “Complete Streets will . . . reduce the overall demand on our
20 roadways by allowing people to replace motor vehicle trips with multiple
21 transportation options.”
- 22 i. A Smart Growth America 11/14 Update provides that “the Senate
23 Committee on Environment and Public Works also chose not to
24 incorporate proposals in the proposed Safe and Complete Streets Act
25 (S. 1056).”
- 26 j. A website printout from Smart Growth America provides that “[b]y
27 adopting a Complete Streets policy, communities direct their
28 transportation planners and engineers to routinely design and operate
29 the entire right of way to enable safe access for all users.”

30

² Petitioner did not provide the next page of the printout to include the rest of the sentence.

- 1 k. Chapter 2 of the RDM, revised in 2013, provides that “this chapter is
2 based on the principles of “Complete Streets” which looks to incorporate
3 use by all existing and future users, and not be limited to just motor
4 vehicles.”
- 5 l. A word document purporting to be Appendix 1-A of the RDM provides
6 that “[e]xcept as otherwise agreed to in a maintenance agreement duly
7 authorized by the Board of Supervisors, all major roadway project
8 improvements including noise walls, public art, landscape medians, and
9 other similar features shall be maintained as part of Pima County’s
10 normal maintenance process.”
- 11 m. Pima County Code of Ordinances 10.56.260 provides that “[t]he
12 roadway design criteria for any major roadway project covered by this
13 chapter shall be specified in the current *Pima County Roadway Design
14 Manual*.”
- 15 n. Pima County Code of Ordinances 10.56.020 defines minor projects to
16 include “[o]verlay or maintenance of an existing roadway;” “[a]ddition of
17 paved shoulder, bike lanes, or multi-use lanes to an existing roadway;”
18 “[p]avement widening of an existing roadway which does not increase
19 the number of through traffic lanes;” and “[c]hanges or improvements to
20 the right-of-way area outside the shoulder of an existing roadway.”
- 21 o. Page 6 of 3 of the Pima County, Arizona Board of Supervisors Policy
22 Number 54.1 entitled “Landscape Improvements in Pima County Right-
23 of-Way” includes a diagram showing the Right of Way includes the travel
24 lanes, the median, the shoulder and bike lane, the sidewalk, and
25 landscaping.
- 26 p. A page from Chapter 2 of the RDM entitled Horizontal Alignment
27 provides that “[t]he horizontal alignment of a roadway is comprised of
28 horizontal curves and tangent sections. Superelevation is introduced
29 into the alignment to provide appropriate balance between centrifugal
30 forces and side friction on the tires of the vehicle moving through the

1 curved section.” The page further provides “[t]he design speed is based
2 on the physical features and functional classification of the roadway.”³

- 3 q. A word document purporting to be from the Pima County RDM with plan
4 phases provides “[t]he Final Design Phase plans, define in detail the
5 roadway and cross drainage geometry consistent with the requirements
6 put forth in the DCR, EAMR, Traffic Report, and other pre design
7 documents.” It further provides that “[p]reliminary landscape
8 approaches are also presented at this time.”
- 9 r. A word document purporting to be from the Pima County RDM Chapter 3
10 provides the scale for various construction plans to include “Roadway
11 Plans: 1” = 40’ horizontal, 1” = 4’ vertical” and “Landscape Plans: 1” =
12 20’.”
- 13 s. A word document appearing to be from the Pima County RDM includes a
14 statement that “[i]nstallation of landscaping shall begin not later than six
15 months after the formal completion date of the roadway project.”
- 16 t. A word document of “Definitions” as set forth by Petitioner attempting to
17 define the terms “right-of-way”, “roadway”, and “preponderance of the
18 evidence.” Petitioner cited to no authority to identify where the
19 definitions came from.
- 20 u. A printout of a Google.com search for “do complete streets use the term
21 roadway.” One of those results, the United States of Transportation’s
22 website on Complete Streets provides “[t]he concept of Complete
23 Streets encompasses many approaches to planning, designing, and
24 operating *roadways and rights of way* with all users in mind to make the
25 transportation network safer and more efficient.” Emphasis added.

26 9. Petitioner asserted that all 50 states had adopted the “Complete Streets”
27 approach, but submitted no documentation in support of that assertion. Petitioner
28 indicated that the “Complete Streets” approach began in 2005 and was widely accepted
29 by 2013. When asked if the terms “roadway” and “right-of-way” were interchangeable in
30 his opinion, Petitioner asserted that the “right-of-way” must exist first, and then the

³ Aside from the use of the term “roadway,” this page seemingly has nothing to do with the issue presented.

1 “roadway” takes up the entire width of the “right-of-way.” When asked about the language
2 of the Pima County Code Ordinance quoted in paragraph 8.n. *supra*, specifically
3 “[c]hanges or improvements to the right-of-way area outside the shoulder of an existing
4 roadway,” Petitioner responded that the language proved his case. Petitioner argued that
5 the “shoulder of an existing roadway” was not that paved or unpaved area of the road on
6 which bike lanes may be found or where automobiles could pull over, but was, in fact that
7 area outside the paved area of the road that would normally have landscaping and/or
8 traffic signs.

9 10. Petitioner acknowledged that he had no formal definition of “roadway,” but
10 stated that, in his opinion, “roadway” is the new word for “street.”

11 11. Respondent argued that before that statute at issue was amended in 2014,
12 an association had to own real property to be considered a “planned community,” but after
13 the amendment, an association could have an “easement to maintain roadways or a
14 covenant to maintain roadways” to be considered a “planned community.” Respondent
15 indicated that by 2014, the term “Complete Streets” was well known, but the Arizona
16 legislature opted to use the term “roadway” in the statute. Respondent argued that the
17 landscaping surrounding the sign did not constitute a roadway and that because the
18 statute defines a “planned community” as a real estate development that includes “a
19 covenant to maintain roadways”, Respondent was not subject to the jurisdiction of the
20 Arizona Department of Real Estate.

21 **CONCLUSIONS OF LAW**

22 1. A lack of subject matter jurisdiction cannot be waived and must be
23 addressed because “[a]dministrative decisions that reach beyond an agency’s statutory
24 power are void.” *Ariz. Bd. of Regents for & on Behalf of Univ. of Ariz. v. State ex rel. State*
25 *of Ariz. Pub. Safety Ret. Fund Manager Adm’r*, 160 Ariz. 150, 156 (App. 1989). *See also*
26 *Swichtenberg v. Jack Brimer*, 171 Ariz. 77, 828 P.2d 1218 (App. 1991). Similarly, “it is
27 settled that . . . [j]urisdiction of the subject matter cannot be conferred upon a court by, or
28 be based on, the estoppel of a party to deny that it exists.” *Swichtenberg*, 171 Ariz. at 81,
29 828 P.2d at 1222, *citing*, 21 C.J.S. *Courts* § 108 at 161. *Accord* 20 Am. Jur. 2d *Courts* §
30 95 at 455. For this reason, the statutes, not the parties, lay out the boundaries of
administrative jurisdiction.

2. When construing statutes, one first looks to the language of the statute and gives the words their plain meaning. *Villa De Jardines Ass'n v. Flagstar Bank, FSB*, 227 Ariz. 91, 95 (App. 2011). Furthermore, one presumes the legislature expressed its meaning in as clear a manner as possible. *Callender v. Transpacific Hotel Corp.*, 179 Ariz. 557, 561 (App. 1993).

3. 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).⁴

4. The English Oxford Living Dictionaries website defines the term "roadway" as "[a] road" and "[t]he part of a road intended for vehicles, in contrast to the pavement or verge." It defines the term "street" as "[a] public road in a city, town, or village, typically with houses and buildings on one or both sides"

5. The Merriam-Webster website defines the term "roadway" as "a: the strip of land over which a road passes; b: road." It defines the term "street" as "a: a thoroughfare especially in a city, town, or village that is wider than an alley or lane and that usually includes sidewalks; b: the part of a street reserved for vehicles."

⁴ This unpublished case is cited only as persuasive, rather than controlling, authority. While Petitioner cited this case in support of his argument that Respondent was a "planned community," the case is not applicable to that analysis. Rather, the case stands for the proposition that an Administrative Law Judge cannot exercise subject matter jurisdiction where no such jurisdiction exists.

1 6. Dictionary.com defines the term “roadway” as “1. The land over which a
2 road is build; a road together with the land at its edge; 2. The part of a road over which
3 vehicles travel; road.” It defines the term “street” as “1. a public thoroughfare, usually
4 paved, in a village, town, or city, including the sidewalk or sidewalks. 2. such a
5 thoroughfare together with adjacent buildings, lots, etc.; 3. the roadway of such a
6 thoroughfare, as distinguished from the sidewalk.”

7 7. The Cambridge Dictionary website defines the term “roadway” as “the part
8 of the road on which vehicles drive.” It defines the term “street” as “a road in a city or town
9 that has buildings that are usually close together along one or both sides.”

10 8. The American Heritage Dictionary website defines the term “roadway” as
11 “[a] road, especially the part over which vehicles travel.” It defines the term “street” as “a.
12 a public way or thoroughfare in a city or town, usually with a sidewalk or sidewalks; b. such
13 a public way considered apart from the sidewalks”

14 9. The Oxford Learner’s Dictionaries website defines the term “roadway” as “a
15 road or the part of a road used by vehicles.” It defines the term “street” as “a public road in
16 a city or town that has houses and buildings on one side or both sides.”

17 10. Some of Petitioner’s evidence contradicted his assertion that “roadway”, as
18 used in the statute, equated to the entire right-of-way. For example, the Pima County
19 Code of Ordinances 10.56.020 that defined minor projects to include “[c]hanges or
20 improvements to the right-of-way area outside the shoulder of an existing roadway.”
21 Contrary to Petitioner’s assertion, the provision applies to the “right-of way” area outside
22 the paved area of an existing “roadway”. Similarly, Page 6 of 3 of the Pima County,
23 Arizona Board of Supervisors Policy Number 54.1 was entitled “Landscape Improvements
24 in Pima County Right-of-Way”, not “Roadway”. Further, the word document purporting to
25 be from the Pima County RDM Chapter 3 provided different scales for the categories of
26 “Roadway Plans” and “Landscape Plans.” Finally, the word document appearing to be
27 from the Pima County RDM included a statement that “[i]nstallation of *landscaping*” had to
28 begin not later than six months after the completion date of the “roadway project.” All of
29 these documents demonstrate that “roadway” and “right-of-way” are different.

30 11. Petitioner’s evidence presented a wide range of information on the
“Complete Streets” approach to civil engineering as it relates to making transportation

1 routes available to all parties regardless of means of transportation. However, the
2 definition or applicability of "Complete Streets" is not relevant to a statute that was
3 amended after the widespread adoption of the "Complete Streets" approach when the
4 legislature opted instead to use the term "roadway." Had the legislature intended to
5 include associations such as Respondent in the definition of "planned community" in
6 A.R.S. § 33-1802(4), it could have used the term "right-of-way" or "Complete Streets".

7 12. The fact that Petitioner presented a stack of documents purporting to equate
8 the term "roadway" to the phrase "Complete Streets" demonstrates that the plain meaning
9 of "roadway" does not include the entire right-of-way to every street. As demonstrated by
10 the definitions provided *supra*, the plain meaning of "roadway" is that portion of a road
11 upon which vehicles travel. The definitions of "street" provided *supra*, are similarly
12 worded. While there are some references to sidewalks in the definitions, the sidewalks
13 are not defined as part of the roadway or street, but as a common borders to a roadway or
14 street. It is noted that many of the definitions of "street" presented also include that a
15 street has buildings on one or both side and, presumably, no one would argue that
16 buildings are part of the street. Furthermore, many of the definitions included, as an
17 example of "street", the phrase, "don't play in the street." One would be hard pressed to
18 interpret that phrase as a warning not to play on the sidewalk or landscaping area
19 bordering a paved thoroughfare.

20 13. Therefore, regardless of whether Respondent had an express or implied
21 covenant to maintain the area around the walls and sign at the entrance of the community,
22 the Administrative Law Judge does not find that "roadways" in the statute to means
23 "everything within the right-of-way" such that Respondent's maintenance of that area
24 would render Respondent a "planned community."

25 14. Because Respondent is not a "planned community" as defined by statute,
26 the Office of Administrative Hearings and the Arizona Department of Real Estate lack
27 subject matter jurisdiction over the petition. Petitioner remains free, however, to file an
28 action in a court of competent jurisdiction as specified by Respondent's community
29 documents.

30 ORDER

IT IS ORDERED that Petitioner's petition is dismissed with prejudice.

1 Done this day, September 25, 2018.

2
3 /s/ Tammy L. Eigenheer
4 Administrative Law Judge
5

6 **NOTICE**

7 **This administrative law judge decision, having been issued as a result**
8 **of a rehearing, is binding on the parties. A.R.S. § 32-2199.02(B). A**
9 **party wishing to appeal this order must seek judicial review as**
10 **prescribed by A.R.S. § 41-1092.08(H) and title 12, chapter 7, article 6.**
11 **Any such appeal must be filed with the superior court within thirty-five**
12 **days from the date when a copy of this order was served upon the**
13 **parties. A.R.S. § 12-904(A).**

14 Copy mailed/e-mailed/faxed September 25, 2018 to:

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